Participation Terms and Conditions

The DPO operates and administers a scheme for listing providers of IT products and related services to the Government ("GITP scheme"). Interested IT suppliers may apply to join the GITP Scheme subject to compliance with the following terms and conditions ("Participation Terms and Conditions"). Please read them carefully.

You cannot complete your application to be enlisted under the GITP scheme without agreeing to comply with these Participation Terms and Conditions. The Government reserves the right, at its discretion, to change or modify these Participation Terms and Conditions at any time without giving prior notice to any person. Please check these Participation Terms and Conditions posted on the GITP Website regularly for any revisions and/or amendments.

1. Definitions

1.1 In these Participation Terms and Conditions the following words and expressions have the following meanings, unless otherwise defined or the context otherwise requires:

"Admission Requirements"	means the requirements required to be fulfilled by IT suppliers for admission to the GITP as summarised in paragraphs 3, 4 and 5 and the latter two of which are more particularly set out in the Admission Requirements on IT Products and the Admission Requirements on Support Staff;
"Admission Requirements on IT Products"	means a document named as such and published on the GITP Website under the "Related Documents" section;
"Admission Requirements on Support Staff"	means a document named as such and published on the GITP Website under the "Related Documents" section;
"B/D"	means any Government department or bureau;

"Conditions of Contract" or "Conditions of Contract for Individual Procurement"	means the document named as such and published on the GITP Website under the "Related Documents" section;
"Contract Schedules"	means the document named as such and published on the GITP Website under the "Related Documents" section;
"Details of Nominated Support Staff"	means the document named as such and published on the GITP Website under the "Related Documents" section, which is one of the support documents to be submitted by the applicant for application for admission to GITP;
"Details of Sample IT Product" and "Specifications for Sample IT Products"	means the documents respectively named as such and published on the GITP Website under the "Related Documents" section, which are part of the support documents to be submitted by the applicant for application for admission to GITP;
"e-Form"	means the online application form for admission to GITP published on the GITP Website under the "Related Documents" section;
"e-Procurement System"	means the electronic procurement system as described in paragraph 2;
"GITP provider" or "Registered Supplier" or "you"	means a provider of IT product of a sub-category within a major category appearing on the list of GITP providers for that sub-category;
"GITP scheme"	means a scheme to be operated by DPO allowing GITP providers submitting quotations of IT products within three major categories in response to invitations to be issued by a Government bureau or department via the e-Procurement System;

"GITP Website"	means https://www.digitalpolicy.gov.hk/en/our_work/digital_government/suppliers/gitp;
"Government"	means the Government of the Hong Kong Special Administrative Region of the People's Republic of China;
"GovProcurement"	means www.gov.hk/eprocurement which provides a platform for the e-Procurement System to operate;
"HKSAR"	means the Hong Kong Special Administrative Region of the People's Republic of China;
"Individual Contract"	means a contract for the supply of IT products and/or related services which may be awarded by the B/D under the GITP scheme;
"reference technical requirements"	means the document named as such and published on the GITP Website under the "Related Documents" section;
"Regulating and Monitoring Mechanism of GITP"	means the document named as such and published on the GITP Website under the "Related Documents" section;
"Related Documents" section	means the section appearing on the GITP Website: https://www.digitalpolicy.gov.hk/en/our_work/digital_government/suppliers/gitp#related_doc;
"Request for Inclusion"	means the document named as such and published on the GITP Website.
"Scheme Administrator"	means the Commissioner for Digital Policy or his/her designated officers who is responsible for administering the GITP;

"Use and Participation Terms and Conditions of the e-Procurement System"	means the terms and conditions named as such and published on the webpage: https://www.gov.hk/en/theme/eprocurement/terms/

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 GITP Scheme

2.1 The GITP, together with the e-Procurement System, is a scheme enabling any Government B/D to issue an invitation to quotation for the supply of IT products and/or related services within one or more sub-categories of one or more major categories. Such invitation shall be issued to all GITP providers on the list for each selected sub-category. Both the invitation and quotations will be issued via the e-Procurement System but the invited GITP providers can only bid for those IT products and/or related services of those sub-category(ies) in respect of which they are on the list.

2.2 Interested applicant to join the GITP scheme shall complete and submit the e-Form with supporting documents meeting the Admission Requirements. In that e-Form, the applicant shall indicate which sub-categories and of which major categories that the applicant wishes to be enlisted on the list of GITP providers. If the application is successful, the applicant will be notified accordingly and will be requested to sign the Request for Inclusion to signify the completion of the admission to the GITP. The following details of a successful applicant will appear on the list of that sub-category: its name, and the sub-categories of each major category which the successful applicant is listed as the GITP provider.

2.3 Upon the application for inclusion on the GITP list(s) is successful, the successful applicant will be given an activation ID and PIN. The GITP provider must go through another set of registration procedures on the GovProcurement Website to activate its account with the e-Procurement System using the activation ID and PIN. If the GITP provider already has an account with the e-Procurement Services, it is not necessary to set up another account with the e-Procurement System.

Once the supplier is enlisted as a GITP provider for a sub-category and has activated an account with the e-Procurement System, the GITP provider will by default receive all invitations from all B/Ds in relation to IT products of a sub-category which the GITP provider is on the list of such sub-category. It will be able to receive invitation to quotation from a B/D, and submit quotation in response, both via the e-Procurement System. Purchase orders by the relevant B/D may also be notified via the e-Procurement System.

2.4 DPO may request further information from you in processing your application to become enlisted as GITP provider under the GITP for all or any of the sub-categories of any major category(ies). The enlistment as a GITP provider does not confer or imply any special consideration towards you.

2.5 There will not be any other separate avenue for issuing invitation to quotation under the GITP scheme. The e-Procurement system is the only avenue.

2.6 Only procurement for an estimated value not exceeding the prevailing quotation limit as stipulated in the Stores and Procurement Regulations 220(a) comprising IT products of the relevant sub-category(ies) and related maintenance services and/or support services will be conducted under the GITP via e-Procurement System by a B/D.

2.7 Notwithstanding anything in these Participation Terms and Conditions to the contrary, the Government reserves the right to take out a person from the list of GITP providers on the grounds that the person (including any contractors / sub-contractors / suppliers / service providers that may be further engaged by that person) has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

3 Qualifications to become a Registered Supplier

3.1 Any sole proprietor, partnership, company or statutory corporation may apply for inclusion on the list of IT product within a sub-category of a major category. The sole proprietor or a partner of a partnership must be over the age of 18 in order to join. Besides the applicant must hold a valid business registration certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary

evidence showing that the applicant is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong).

For other admission requirements to become a GITP provider, they are set out in paragraphs 4.2 and 5.2 below.

3.2 In order to ensure that the application is successful, the applicant must provide all relevant information as required in the e-Form.

4 Provision of details of sample IT product and keeping of a Reference list of IT Products for each Sub-category

4.1 In the separate document "Details of Sample IT Products" (together with the Specifications for Sample IT Products), the applicant must provide details of at least one model for each IT product item designated as "requisite for admission" under the sub-category of each major categories A (Network Products and Infrastructure Equipment), B (Server Systems) and C (Microcomputer Equipment) which the applicant wishes to be listed on the list of IT products for such sub-category. The designation can be found in the Admission Requirements on IT Products.

4.2 In order for the application for inclusion of a sub-category list to be successful, the proposed model must comply with the reference technical requirements applicable to the relevant IT product. However, it is not the intention that this will form part of an authorised list of IT products which the B/D must limit its procurement under the GITP scheme. Under the GITP scheme, there is no authorised list of IT products but just a reference IT products list (as further mentioned in paragraph 4.3 below). The B/D is not obliged to buy, and the GITP provider is not obliged to sell, the IT products on the reference IT product lists.

4.3 Based on the information of the models provided by all successful applicants from time to time as mentioned in paragraph 4.1 above, the Scheme Administrator will compile reference lists of the IT products offered by each GITP provider for information internally within the B/Ds and will not be published publicly.

4.4 If requested by Scheme Administrator from time to time, the GITP provider shall, within two (2) weeks or such time allowed, submit to the Scheme Administrator electronic files containing lists of all hardware, software, maintenance services, support services and/or trade-in services (collectively, "Related Services" (in upper or lower case)) and price

information for such IT products and Related Services (if applicable) in specified layout and format (XML/e-form or other specified format) for updating the reference lists and/or upload the files (XML/e-form) to designated computer system to be operated by the Scheme Administrator for internal viewing within the Government, or to other place designated by Scheme Administrator for internal viewing.

5. Supply of Support Staff

5.1 In the separate document "Details of Nominated Support Staff", the applicant must nominate at least two of its employees to respectively fill the roles of "Programme Manager" and "Technical Staff" who shall act as such for so long as the applicant shall become and remain as the GITP provider under the GITP scheme.

5.2 The nominated support staff must comply with the applicable qualification and experience requirements as set out in the document "Admission Requirements on Support Staff" as at the date of submission of the e-Form, failing which the application will not be considered successful until the applicant successfully nominate qualified staff meeting the requirements.

6. Supply of IT products and Provision of Related Services to Government B/Ds Under the GITP scheme

6.1 A B/D wishing to invite proposal for the supply of IT products (in the case of hardware, to be known as "Add-on Hardware" and in the case of software, to be known as "Add-on Software") and/or related services of one or more sub-categories will issue a document to be known as the "Brief" via the e-Procurement System to all GITP providers on the list of each selected sub-category. However, the invited GITP providers can only bid for those IT products and/or related services of those sub-category(ies) in respect of which they are on the list. On this basis, such invitation must cover more than one group of item(s) with each group covering one sub-category. The evaluation will be either on a group by group basis or item by item basis. Alternatively, the B/D may only issue an invitation for proposals for IT products and/or related services within the same sub-category. Under this approach, the evaluation will normally be on an overall basis.

6.2 Upon issue of such Brief, the GITP provider should it so decide to submit an offer in response, shall at its own costs and expenses and before the closing date and time for proposal submission as specified in the Brief

prepare and submit a timely and conforming offer ("Proposal") for the supply of Add-on Hardware and/or Add-on Software and/or Related Services covered by a sub-category under the GITP scheme.

6.3 The Proposal shall be submitted in accordance with the requirements of these Participation Terms and Conditions, the Use and Participation Terms and Conditions of the e-Procurement System, and the Brief.

6.4 Should the GITP provider opts to submit a Proposal in response to a Brief, in the Proposal to be submitted, the GITP provider must offer to supply all (but not some only, unless partial quotation is expressly allowed in the Brief) of such Add-on Hardware and/or Add-on Software and/or Support Services and/or Maintenance Services and/or Trade-in Services as the Government B/D may request in the Brief subject to the evaluation criteria as specified in each Brief in compliance with the requirements as stated in the Brief which may or may not be the same as the reference technical requirements and reference maintenance service requirements for such IT products and/or Related Services.

6.5 The contract for the supply of IT products and/or Related Services (viz., an Individual Contract) will be awarded to the GITP provider with a conforming proposal of the lowest offer (if marking scheme is not used) or highest combined score (if marking scheme is used).

6.6 If the GITP provider does elect to submit a Proposal in response to a Brief, and that its Proposal is successful as notified by the B/D through the issue of a notification of acceptance, an Individual Contract for the supply of IT products and Related Services will be constituted comprising, inter alia, the aforesaid notification of acceptance, the Conditions of Contract, the Brief, and the Proposal (in the form of Contract Schedules attached to the Brief). For the technical requirements and service requirements for the Maintenance Services, they may be set out in the Brief and/or incorporated into the Brief by reference to the reference technical requirements and the reference maintenance service requirements. Throughout the duration of an Individual Contract, the GITP provider perform that Individual Contract which has been awarded to it by a Government B/D in accordance with all terms and conditions of that Individual Contract.

6.7 The Government B/D is not obliged to award any Individual Contract to any GITP provider or to the GITP provider which has submitted the lowest price for an item of Add-on Hardware or Add-on Software or Support Services or Maintenance Services, or highest price for a Trade-in Item if no making scheme is used; or has attained the highest combined

score if marking scheme is used. The Government B/D has the discretion to determine the eventual scope of the Individual Contract to be awarded to the successful GITP provider based on the scope as stated in the notification of acceptance to be issued.

6.8 In submitting a Proposal in response to a Brief, the GITP provider may not submit terms and conditions not requested in the Brief or otherwise not in accordance with the Brief. Without prejudice to the generality of the foregoing, the GITP provider may not impose any of its standard terms and conditions in undertaking the Individual Contract. A submission in contravention of this restriction will be ignored and will not form part of the Individual Contract (even if awarded to it). No signature by any Government B/D to the GITP provider's Proposal or the issue of an acceptance letter shall contradict or remove any of the aforesaid requirements.

6.9 Each Individual Contract which may be awarded to the GITP provider shall constitute a separate binding contract between the Government (as represented by the Government B/D) and the GITP provider.

6.10 The Government may by written notice terminate the invitation set out in a Brief whether before or after the closing date for the submission of the Proposal, and the Government shall not be liable for any costs and expenses incurred by the GITP provider in the preparation of the Proposal or in connection with the issue of the Proposal or amended Proposal.

6.11 The GITP provider acknowledges that the request for a Proposal via the issue of a Brief does not constitute a commitment from the Government to order any Add-on Hardware and/or Add-on Software and/or Support Services and/or Maintenance Services and/or Trade-in Services. If the Government accepts the Proposal, the Government Representative will issue a notification of acceptance to the GITP provider, in which event the Individual Contract shall only be constituted.

6.12 No money shall be payable by the Government to the GITP provider under this GITP scheme or for performing any of the obligations under this GITP scheme.

6.13 The Government does not accept any IT products to be offered in the Proposal which is subject to a ban on, or a policy of denial of request for, export or re-export to Hong Kong from the place of origin (whether or not via any other place), and that no exemption from the export ban or policy will be available based on the law or regulation or policy of the place of origin of such IT products ("Export Ban"). The GITP provider shall not offer any such IT products from such place of origin; otherwise its

Proposal will not be considered further. To prove that there is no such Export Ban in respect of the IT products offered by the GITP provider in the Proposal, if expressly requested in the Brief, the GITP provider shall supply such documentary evidence as part of its Proposal. Such documentary evidence covering any item(s) of the IT products covered by the express request as aforementioned may include any one or more of the following items: (a) valid and binding export licence; (b) approval in principle issued by competent authorities of the place of origin(s); (c) past export record of the relevant IT products (or goods of the same type) from the same place of origin to Hong Kong and for a user similar to the B/D within twenty-four (24) months prior to the date of the Brief (or such other period as stipulated by the Government in the Brief; (d) a legal opinion issued by firm(s) of lawyers practicing in the place of origin(s) no earlier than one (1) month prior to the Proposal submission closing date confirming that there is no Export Ban affecting the relevant IT products from the applicable place of origin; (e) evidence that the relevant IT products have already been delivered to Hong Kong from the place of origin prior to the submission of the Proposal; and/or (f) other evidence as may be requested in the Brief. Where the GITP provider does not supply such evidence whether by the Proposal submission closing date or upon subsequent request by the Government, the Government may disqualify its Proposal.

6.14 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to a Brief issued by a B/D or a Proposal submitted by an GITP provider in response to such Brief or to any Individual Contract to be constituted.

7. Consent to Disclosure

7.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been an IT Supplier) without any further reference to or consent from the GITP provider, (for sub-paragraphs (a) to (d)), information concerning an Individual Contract which may be awarded to the GITP provider), and (for sub-paragraph (e)), information concerning the GITP scheme:

(a) the particulars of the items supplied or to be supplied by the GITP provider under any Individual Contract;

(b) the Estimated Contract Price (as defined in the Individual Contract) and any other fees, cost and expense payable to the GITP provider pursuant to any Individual Contract, and any

subsequent variation of any such amount after award of the Individual Contract;

(c) the engagement by the Government of the GITP provider under an Individual Contract awarded to that GITP provider and the name and address of the GITP provider to assist in the performance of Individual Contract;

(d) the date of award of the Individual Contract; and

(e) for the GITP scheme, the list of the GITP providers containing the name of each GITP provider, its sub-contractors and the sub-categories of each major category which the GITP provider is enlisted.

7.2 Nothing in paragraph 7.1 shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in paragraph 7.1) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

(a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, GITP providers and consultants);

(b) the disclosure of any information already known to the recipient;

(c) the disclosure of any information which is public knowledge (including due to disclosure to a public body under paragraph 7.2(a));

(d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction; or

(e) without prejudice to the power of the Government under paragraph 7.1, to the extent the information relates to a GITP provider, with the prior written consent of that GITP provider.

7.3 Nothing in this paragraph 7 or any other provision of this GITP scheme shall imply or be construed that the Government owes any duty of confidentiality to the GITP provider.

8. GITP provider's Obligation not to Disclose Confidential Information and Government Data

8.1 The GITP provider shall not disclose any information, report, document, plan, record, data, database, code or particulars (a) furnished by or on behalf of the Government or by any other person to the GITP provider or anyone of the GITP provider employees and contractors and suppliers, and employees of such contractors and suppliers (collectively, "GITP provider Personnel"), or any part respectively thereof; or (b) otherwise is accessible by or available to the GITP provider or anyone of the GITP provider Personnel in the course of participating in the GITP scheme and discharging obligations under the GITP scheme ("Work") (collectively "confidential information"), provided that the restrictions on disclosure contained in this paragraph 8.1 shall not apply to the disclosure of any confidential information:

(a) to any person employed, used or engaged by the GITP provider in the conduct of the Work in circumstances where such disclosure is necessary in the reasonable opinion of the GITP provider for the performance of the GITP provider's duties and obligations under the Contract, provided that the GITP provider has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the GITP provider to refrain from disclosing the said information to a third party;

(b) already known to the recipient other than as a result of disclosure by the GITP provider or anyone of the GITP provider Personnel or their respective associates or associated persons in breach of this paragraph 8 or in breach of confidence under the general law;

(c) which is or becomes public knowledge other than as a result of disclosure by the GITP provider or anyone of the GITP provider Personnel or their respective associates or associated persons in breach of this paragraph 8 or in breach of confidence under the general law;

(d) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order or judgment of a court of Hong Kong; or

(e) with the prior consent in writing of the Government.

8.2 Any disclosure permitted under paragraph 8.1 shall be in strict confidence

and shall extend only so far as may be necessary for the purposes specified in paragraph 8.1 and the GITP provider shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.

8.3 The GITP provider shall not, and shall procure and ensure each one of the GITP provider Personnel and other persons who may be imparted with any confidential information in accordance with paragraph 8 not to disclose, make use of or reproduce any confidential information other than in the performance of the GITP provider's obligations under the Contract or with the prior written consent of the Government.

8.4 The GITP provider shall inform every person to whom any confidential information is disclosed pursuant to paragraph 8.1 of the restrictions on reproduction and disclosure attaching to such information and the GITP provider shall require such person to notify the same restrictions to any and every other person to whom he makes any such disclosure pursuant to paragraph 8.1.

8.5 If and when requested by the Government, the GITP provider shall forthwith require each member of the GITP provider Personnel as the Government may stipulate, and such other persons to whom disclosure is made pursuant to this paragraph 8, to execute a written undertaking in favour of the GITP provider and the Government in a form to be determined by the Government agreeing to the restrictions attached to the confidential information set out in this paragraph 8 and the GITP provider agrees to provide original or certified true copies of such undertakings to the Government within one month after that individual becomes a member of the GITP provider Personnel. The GITP provider further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

8.6 The GITP provider shall establish and maintain all necessary security measures and procedures for the safe custody of the confidential information in the GITP provider's possession or under its control and to prevent unauthorised access thereto or use thereof. All obligations of the GITP provider specified in paragraph 10 applicable to Personal Information shall also be deemed incorporated herein and extend to confidential information, mutatis mutandis.

8.7 The GITP provider shall not, shall ensure that its officers, directors, each member of the GITP provider Personnel and the GITP provider's

professional advisers and consultants will not, save to the extent necessary for performing the Work, peruse, retain possession or control of, or duplicate, any confidential information or any copy thereof (in whatsoever media or format). The GITP provider shall put in a place a mechanism to periodically review and monitor on compliance with all of the restrictions set out in this paragraph 8 and paragraph 10.

8.8 The GITP provider shall ensure that all of the GITP provider Personnel and any other persons engaged in any Work in connection with the Contract are aware of and comply with the provisions of this paragraph 8 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) and the GITP provider shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified on the terms set out in paragraph 20 as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.

8.9 The GITP provider acknowledges that any unauthorised disclosure or use of the confidential information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the GITP provider agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this paragraph 8 and/or specific performance ensuring the compliance of this paragraph 8 in light of any threatened or actual breach of this paragraph 8, without prejudice to its other rights and remedies including those available under the Contract or at law arising from such breach.

8.10 The GITP provider shall promptly notify the Government of any breach of confidence, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against such persons in light of such breach of confidence.

8.11 Without prejudice to the generality of the foregoing provisions, the GITP provider undertakes, if so requested by the Government, to deliver to the Government on such date as specified by the Government, separate confidentiality agreements duly executed by the GITP provider and/or each person to whom any confidential information is to be disclosed by the GITP provider in accordance with the Contract. The GITP provider shall not be regarded to have complied with this paragraph 8 unless such confidentiality agreement is executed on terms prescribed by the Government. The GITP provider further undertakes that it will not at any times itself or through any associate, associated person, employee, sub-contractors or agent use, sell, license, sub-license, create, develop or

otherwise deal in any confidential information set out in this paragraph 8.

8.12 For the avoidance of doubt, to the maximum extent permitted by the law, and without prejudice to any provision in the Code on Access to Information, the Government does not owe any duty of confidentiality to the GITP provider with respect to the GITP provider or any Individual Contract which may be awarded or the Work and nothing in the Individual Contract which may be awarded or in the Brief or at law shall be construed or applied to give rise to any such duty. Any alleged loss or claim or liability incurred by the GITP provider arising from any alleged breach of any alleged duty of confidentiality shall be denied and disclaimed to the fullest extent.

9. GITP provider's Obligation to Inform Government of Relevant Facts

9.1 The GITP provider shall keep itself informed and immediately inform the Government of any or all circumstances, facts and matters which will or may lead to default of or non-compliance with any of the GITP provider's obligations under the GITP scheme.

9.2 The GITP provider shall notify in writing the Government Representative immediately of any circumstances relating to the GITP provider and/or the Work, of which the GITP provider is aware or which it anticipates may justify the Government taking action to protect its interests (including its reputation and standing).

9.3 The GITP provider shall provide the Government and all persons from time to time authorised by the Government with access to all records and data in the possession or under the control of the GITP provider concerning the Work. The Government may make and retain copies of any of the same.

10. Protection of Personal Data

10.1 The GITP provider shall (and shall ensure that its GITP provider Personnel) comply with:

(a) any applicable privacy or data protection laws (including the Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong) and all guidelines issued by the Office of the Privacy Commissioner for Personal Data, Hong Kong; and

(b) any privacy procedures or policies stipulated by the Government

from time to time.

10.2 Throughout this paragraph 10, "Personal Information" shall mean personal data which in turn has the meaning given to it in Section 2(1) of the Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong. This paragraph 10 shall be in addition to, and without prejudice to, the generality of paragraph 8 above.

10.3 If the GITP provider collects, stores, controls, processes or discloses any Personal Information in connection with the provision of the Work, the GITP provider:

(a) shall take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;

(b) shall not, directly or indirectly use the Personal Information except to the extent necessary to provide the Work;

(c) shall not disclose the Personal Information whether directly or indirectly to any person without the prior written consent of the Government;

(d) shall disclose the Personal Information to GITP provider Personnel only to the extent that they have a need to know for the purpose of providing the Work;

(e) shall provide appropriate training to GITP provider Personnel with respect to the correct handling of the Personal Information so as to minimise the risk of accidental security breaches;

(f) shall ensure that its internal operating systems permit only properly authorised personnel to access the Personal Information; and

(g) shall notify the Government as soon as possible after it becomes aware that use or disclosure of the Personal Information is required by an order of the court.

10.4 When no longer be a GITP provider, the IT supplier shall promptly return to the Government or, if requested by the Government, destroy all copies of the Personal Information, in which case any right to use, copy or disclose that Personal Information ceases.

10.5 With relation to the GITP provider Personnel's access to Personal Information:

(a) the GITP provider shall implement and maintain a system for logging and identifying all of the GITP provider Personnel that access any Personal Information. If requested by the Government, the GITP provider shall provide to the Government a copy of that access log; and

(b) if required by the Government, the GITP provider shall, in addition to the training, arrange for any of its GITP provider Personnel with access to Personal Information to sign an undertaking in accordance with paragraph 8.5.

10.6 If the GITP provider becomes aware that any GITP provider Personnel is using, or has used, Personal Information in contravention of any of these paragraphs 10.1 to 10.7, the GITP provider must promptly notify the Government in writing with full details of the contravention. The Government's knowledge of, or response to, such notification, will not affect any other rights of the Government under the GITP scheme.

10.7 The personal data of any individual provided by the GITP provider to the Government will be used by the Government for the purposes of, arising from or incidental to the GITP scheme, including for the purposes of exercising or enforcing any of its rights and powers under the GITP scheme or at law, and for resolution of any dispute arising from the GITP scheme. The Government may disclose the data to any public officer within the Government, its adviser, GITP providers and consultants or any public body (as defined in the Interpretation and General Clauses Ordinance, Chapter 1 of the Laws of Hong Kong) or any court with competent jurisdiction for all or any of the aforementioned purposes.

10.8 The GITP provider shall ensure that each individual whose personal data has been passed by the GITP provider to the Government has been made aware of (prior to the passing of such personal data to the Government), acknowledged and consented that his personal data may be disclosed by the Government to those persons for such as purposes as mentioned in paragraph 10.7.

10.9 The GITP provider shall indemnify and keep fully and effectively indemnified each of the Indemnified Parties including the Government on the terms set out in paragraph 20 in the event of any non-compliance with any provisions of this paragraph 10 or any claim instituted by any person in relation to his personal data or the Privacy Commissioner for Personal Data, which claim would not have arisen but for any act, omission, breach of this Contract or negligence on the part of the GITP provider or anyone of the GITP provider Personnel.

11. Prevention of Bribery

11.1 The GITP provider shall inform all of the GITP provider Personnel and its associates and associated persons ("Relevant Group") in writing, and keep them informed in writing regularly and not less than once every three (3) months, that soliciting or accepting advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), is a serious crime and may in addition result in substantial civil liability. Without limitation, the GITP provider shall inform each member of the Relevant Group that offering any advantage to a public servant, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), as an inducement to or reward for or otherwise on account of that public servant's performing or abstaining from performing any act in his capacity as a public servant, or expediting, delaying, hindering or preventing the performance of an act, or assisting, favouring, hindering or delaying any person in the transaction of any business with a public body, is an offence under Section 4 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong).

11.2 The GITP provider shall arrange to circulate among all GITP provider Personnel regularly and not less than once every three months the information contained in such internal guidelines concerning prevention of bribery as the Government may distribute to the GITP provider ("Internal Guidelines"), and extracts of relevant provisions of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong).

11.3 Notwithstanding anything herein to the contrary, if the GITP provider or any of its employees, officers (including directors), agents or representatives shall be convicted (whether or not such conviction is subject to any appeal to a higher court) to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any officer, employee, GITP provider, agent or representative of the Government, the Government shall be at liberty forthwith to delist the GITP provider in accordance with paragraph 15.1.

12. Publicity

12.1 The GITP provider may not, without the prior written consent of the Government, publish or use any advertising or other publicity materials relating to the GITP scheme or the Work or any facility supplied or any other work done in connection with the GITP scheme wherein the

Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.

12.2 Subject to paragraph 12.1 above, the GITP provider shall submit to the Government Representative for approval all the proposed advertising or other publicity materials relating to the GITP scheme or the Work or any other work done in connection with the GITP scheme wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.

12.3 The Government shall have absolute discretion to request the GITP provider to remove any advertisement or publicity material relating to the GITP scheme or the Work or any other work done in connection with the GITP scheme wherein the Government or the Work is/are mentioned or language used from which a connection with the Government or the Work can reasonably be inferred or implied and the GITP provider must comply with such request.

13. Data Privacy

13.1 All personal data provided under the GITP scheme will be kept by the Government in accordance with the Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong ("the PDPO").

13.2 Any personal data provided under the GITP scheme will be kept properly by the Government. The information is used by the Government for the purposes as further stated in paragraph 13.3 (a) to (c) and other related purposes. Refusal to supply personal data may result in the Government being unable to process the request. In addition, personal data may be used for other purposes as specified below.

13.3 Any and/or all personal data provided to the Government may be used or disclosed by the Government, its employees, contractors, agents for any of the following purposes (where appropriate):

(a) the operation and administration of the GITP scheme or the provision of services through the GITP scheme;

(b) enforcement of the Government's rights and obligations under these Participation Terms and Conditions

(c) complying with any legal, governmental or regulatory requirement including any disclosure or notification requirements.

13.4 In relation to personal data belonging to you, you acknowledge and

consent that it may be disclosed to other persons for purposes mentioned above.

13.5 You or the owner of the personal data have/has the right of access and correction with respect of your personal data as provided for in Sections 18 and 22, and Principle 6 of Schedule 1 of the PDPO. The right of access includes the right to obtain a copy of the personal data provided belonging to you.

13.6 Enquiries concerning the personal data kept for the GITP scheme including the making of access and corrections, should be addressed to the Scheme Administrator, acting as the Personal Data Privacy Officer for the purposes of this GITP scheme.

14. Reporting and Contact

14.1 The GITP provider shall submit a monthly management report to DPO (Attn.: Systems Manager (DG)3J3) within ten (10) calendar days after the end of each reporting month. The monthly report shall contain the status of individual purchase orders issued under each Individual Contract awarded to the GITP provider, response time to fault calls (as defined in Schedule 8 of the Contract Schedules) under each Individual Contract, resolution time for repairing or replacing Items covered by the Maintenance Services (as defined in the Conditions of Contract) under each Individual Contract, and other particulars as may be required by the Government Representative in writing. Unless otherwise agreed by the Government Representative, the monthly report shall be made in the format set out by the Government Representative.

14.2 The GITP provider shall also provide an electronic copy of the monthly report in a format (including but not limited to ASCII file, electronic spreadsheet and database file) as required by the DPO.

14.3 The GITP provider shall provide a single point of contact by telephone (hot-line facilities) to the B/D for enquires relating to activities under the Individual Contracts (including but not limited to product information and hardware and software maintenance).

14.4 Contact details of the GITP scheme for other enquiries are as follows:

DPO GITP Support Team

Hotline: 2231 5403 / 2231 4095

Email: gitp_admin@digitalpolicy.gov.hk

15. Suspension or Delist of GITP provider

15.1 In the event that:-

(a) you do not comply with any of these Participation Terms and Conditions;

(b) the Government considers that you will not be capable of fulfilling the standards terms of quotation published on the GITP Website in the document titled "Standard Terms of Quotation" (as may be updated from time to time at the discretion of the Government) and/or the conditions of contract for individual procurement published on the GITP Website in the document titled "Conditions of Contract (as may be updated from time to time at the discretion of the Government) (or "Conditions of Contract for Individual Procurement");

(c) you have engaged or are engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;

(d) the continued engagement of you is contrary to the interest of national security;

(e) the Government reasonably believes that any of the events mentioned in above is about to occur; or

(f) the Government considers that it is in the public interest to terminate or suspend your listing under the GITP scheme as a GITP provider under this GITP scheme,

the Government reserves the right to terminate or suspend your listing under the GITP scheme as a GITP provider under this GITP scheme in respect of all or any of the sub-categories of all or any of the major categories. Upon such termination or suspension, you shall immediately cease to be listed under the GITP scheme for all or the relevant sub-categories.

15.2 Without prejudice to the generality of the foregoing, if a GITP provider has, over a continuous period of 180 calendar days, accumulated exceeding a total number of ten (10) adverse Contractor Performance Appraisal Reports ("CPARs") as reported by one or more B/Ds, without prejudice to the rights and claims of the Government including the

termination of the Individual Contracts under the Conditions of Contract, the adverse CPARs of the GITP provider will be submitted to the Reporting Review Committee ("RRC") of the DPO for review and further investigations. Subject to the findings and decision of the RRC, the GITP provider may be removed from the GITP providers list for 90 calendar days from the date determined by RRC.

15.3 GITP providers are required to verify and update its information annually upon notification from DPO. Within one month upon receipt of such notification, a GITP provider shall submit a duly signed declaration form confirming its compliance with the retention requirements as specified in Regulating and Monitoring Mechanism of GITP and provide updated information. If considered necessary, DPO will request a GITP provider to provide supporting documents for review. Failure to meet the prevailing retention requirements, failure to submit the declaration or the support documents, or provision of incorrect or false declaration and/or information may lead to removal from the GITP providers list.

16. Continuing Acceptance of Terms and Voluntary Termination

16.1 The Government has the right to revise these Participation Terms and Conditions and other documents as listed in the Related Documents section from time to time. Changes can be made by the Government after their first posting to the GITP Website. The Government reserves the right to modify, suspend/cancel or discontinue any or all channels, or services available on the GITP Website at any time without prior notice.

16.2 Your continued listing on the GITP provider list shall constitute your acceptance of the Participation Terms and Conditions and other documents listed in the Related Documents section as from time to time revised by the Government. If at any time you do not accept any revisions to these Participation Terms and Conditions and other documents listed in the Related Documents section, you shall terminate your listing under the GITP scheme pursuant to paragraph 16.3.

16.3 If you wish to terminate your listing in respect of all or any of the sub-categories of any of the major categories, you may do so by giving a written notice to this effect to the Scheme Administrator with a copy to each of the relevant responsible officers of the B/Ds having awarded Individual Contracts to you which are still ongoing, whereupon:

(a) the termination shall take effect within 30 days after the Scheme Administrator has received such notice;

(b) as soon as you have issued the notice of termination in respect of the relevant sub-categor(ies), you may no longer receive any Brief or issue any Proposal in response to any Brief under the GITP Scheme in relation to such sub-categor(ies);

(c) any Proposal submitted within the applicable validity period prior to your written notice of termination shall not be affected; and

(d) your obligations under any Individual Contracts awarded to you under the GITP scheme remain unchanged and without prejudice to the generality of the foregoing, you shall continue to comply with all purchase orders issued under such Individual Contracts pursuant to any subsisting contracts until the termination has come into effect.

17. Obligations to ensure that information submitted is true, accurate and complete

17.1 By applying to become a Registered Supplier under the GITP scheme, you agree to:

(a) provide true, complete and accurate information as required by the GITP scheme; and

(b) if there are any changes to any such information, you shall promptly update the information by writing direct to the Scheme Administrator through email to gitp_admin@digitalpolicy.gov.hk to ensure that it will continue to be true, complete and accurate. If you provide any information that is untrue, inaccurate, not current or incomplete, the Government will not approve your application to become a GITP provider.

18. Copyright

18.1 All contents on the GITP Website such as text, graphics, logos, buttons, icons, images, sound, audio clips and software are the properties of the Government (or its content providers or suppliers which the Government is licensed to use) and are protected under the laws of the HKSAR and/or relevant international copyright laws.

18.2 The compilation (i.e. the collection, arrangement and assembly) of all contents on the GITP Website are the exclusive property and ownership

of the Government and are protected under the laws of the HKSAR and/or relevant international copyright laws. Software used on the GITP Website is the property of the Government (or its software providers or suppliers which the Government is authorised and licenced to use) and protected under the laws of the HKSAR and/or relevant international laws protecting intellectual property rights.

18.3 All contents and software on the GITP Website may be used as a resource or venue for the sale and purchase of goods and services between the Government and Registered Suppliers, and the provision of product literature, catalogues, news and information relating to goods and/or services offered by the Registered Suppliers. Any other use including the reproduction, modification, distribution, transmission, republication, display or performance of any or all the contents on the GITP Website is strictly prohibited.

18.4 A Registered Supplier must not upload or transmit any material with contents that infringe intellectual property rights of any person.

19. Disclaimer

19.1 You agree that use of the GITP scheme is at your sole risk. The GITP scheme 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.

19.2 The Government makes no warranty that the GITP scheme or its services will meet your requirements or expectation, that the GITP scheme 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 GITP scheme and its services or as to the accuracy or reliability of any information obtained from the GITP scheme or its services.

19.3 You agree that the Government shall not be responsible or held liable for any delayed, untimely, slow or unsuccessful download or upload of any documents (including the GITP provider list) or materials from or to the GITP Website or otherwise to or from the e-Procurement System.

19.4 You agree that neither the Government nor any of its employees, contractors and agents shall be liable for any direct, indirect, incidental,

special, consequential or exemplary damages, resulting from your use or the inability to use the GITP scheme 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.

19.5 You waive and discharge any and all claims against the Government arising out of related access or lack thereof.

20. Indemnification

20.1 By using the GITP scheme and its services, you agree to defend, indemnify and hold harmless the Government and its employees from and against all losses, expenses, claims, suits, demands and liability of any nature, including the Government's costs and expenses, arising out of the use of the GITP scheme by you or any non-compliance with these Participation Terms and Conditions. This provision shall extend to claims and liability arising out of any models of IT product or Related Services offered by you or as shown in the reference IT product list from time to time.

21. Miscellaneous

21.1 These Participation Terms and Conditions shall be governed by and interpreted in accordance with the laws of the HKSAR.

21.2 The failure of the Government to exercise or enforce any right or provision of these Participation Terms and Conditions shall not constitute a waiver of such right or provision. If any of these Participation Terms and Conditions is found by a court of a competent jurisdiction to be invalid, you agree that the court should endeavour to give effect to the intentions of the Government as reflected in these Participation Terms and Conditions, and the other provisions of these Participation Terms and Conditions shall remain in full force and effect.

21.3 (a) You agree that any dispute or difference arising out of or in connection with the Contract shall be referred to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

(b) If the said dispute or difference is not settled by mediation according to sub-paragraph (a) above, you or the Government may institute litigation in respect of the said dispute or difference. You

agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

*** End ***