



Terms of Reference

IT Consultant for Trading System Market Readiness Procurement Project

For

The Stock Exchange of Thailand

20 December 2021

Terms of Reference

IT Consultant for Trading System Market Readiness Procurement Project

The Terms of Reference for IT Consultant for Trading System Market Readiness Procurement Project for the Stock Exchange of Thailand (hereinafter “**Terms of Reference**”) contain the following details:

1. Objective

The Stock Exchange of Thailand (“**SET**”) wishes to procure and select a company or a contractor for a consultancy work (“**Work Proposer**”) to be an IT consultant for Trading System Market Readiness Procurement Project (“**Project**”) for the SET and its subsidiaries¹ up until completion of the Project pursuant to the Terms of Reference within the time period stipulated and at the price agreed in order to attain decent work products of a quality in accordance with the objective of use and the conditions of the agreement.

2. Scope of Work

The details of the scope of work are outlined in Attachment 1 attached to the Terms of Reference.

3. Qualifications of the Work Proposer

The Work Proposer shall possess the following qualifications:

3.1 Specific Qualifications

3.1.1 Must be a juristic person established in Thailand or a foreign juristic person and possess an objective of operating the business of the same type as the work to be undertaken for the Project.

3.1.2 Consultant's experiences in review trading system for exchanges

3.2 General Qualifications

3.2.1 Must not be a person whose name appear on the list of persons who abandoned the work of the government and has been circulated or a person who has been affected by an order for another juristic person to be a person who abandoned the work pursuant to the regulations of the government and a person whose name has been specified by the SET and its subsidiaries as a person who abandoned the work, and must be a person with no history of bankruptcy or has a claim filed against it in the court in a bankruptcy case and a person who is not undergoing debt restructuring or business rehabilitation process, possesses a stable financial position, and has no tendency to go bankrupt and to cease its business.

¹ Means a company established by the SET or its subsidiaries whereby the SET holds, whether directly or indirectly, more than 50 (fifty) percent of the registered capital of such company

3.2.2 A director, executive, person with management power or interested person in the juristic person of the Work Proposer must not be a director, executive, person with management power or interested person in the juristic person who is another Work Proposer submitting the proposal for this work.

3.2.3 Must not possess privilege or immunity entitling it to refuse to attend proceedings in Thai courts unless the government of the Work Proposer has ordered for such privilege or immunity to be waived.

4. Bid Bond

<-None->

5. Work Proposal

5.1 General Details

5.1.1 Prior to the submission of the work proposal, the Work Proposer shall undertake the study and understand the nature of the Project, the Terms of Reference, the supporting documents for the Terms of Reference, and other relevant documents. The Work Proposer may not raise any claims or excuses by relying on the failure to examine or understand any one of the documents or on the mistaken belief with regard to the content or details of any one of the documents.

5.1.2 Under no circumstances may the Work Proposer alter any content in the work proposal documents or withdraw the work proposal submitted to the SET unless with the prior written consent from the SET.

5.1.3 If it turns out that there are differences in the proposed price, the Work Proposer agrees that the SET may deem the lower amount to be the proposed price.

5.1.4 In case a director, executive, major shareholder,² or person with management power³ in the business of the Work Proposer possesses any interest related to the business of the SET by:

(1) being a governor in the board of governors of the SET;

(2) being a high-level management of the SET;

(3) being a close relative⁴ of a person under (1) or (2); or

(4) being a connected person⁵ of the person under (1) or (2).

The Work Proposer shall clarify the details to the SET in writing.

² Means a shareholder, whether direct or indirect, in the business of the Work Proposer exceeding 10 (ten) of the total number of shares with voting right in such business whereby such shareholding shall also take into account the shares held by the connected persons.

³ Means a person with control under Section 89/1 of the Securities and Exchange Act B.E. 2535 (1992).

⁴ Means a person related by blood or via legal registration i.e. father, mother, sibling, spouse, child and spouse of the child.

⁵ Means the persons pursuant to Section 258 (1) to (7) of the Securities and Exchange Act B.E. 2535 (1992) *mutatis mutandis* such as a minor child / juristic person, partnership, company in which a person under (1) or (2) hold more than 30 (thirty) percent of the total voting rights taking into account also the voting rights of spouse and minor child of the person under (1) or (2).

(the names of the board of governors of the SET or the high-level management of the SET may be searched from https://www.set.or.th/th/about/overview/board_p1.html and https://www.set.or.th/th/about/overview/organization_p1.html)

5.2 Evidence on Qualifications

The Work Proposer shall submit the documents showing its qualifications as well as the following documents and details. In case of documents issued or certified by the government authority, such documents shall be issued or certified for not more than 3 (three) months from the date of the announcement of the Terms of Reference.

5.2.1 Evidence of being a juristic person

5.2.1.1 In case of private sector

- (1) Copy of the certification document of the juristic person accompanied by the objectives;
- (2) Copy of the memorandum of association or the list of shareholders;
- (3) Copy of the document showing the financial position in the past 1 (one) year duly audited by the auditor as required by law.

5.2.2 In case the Work Proposer is a joint venture juristic person or a group of consortium juristic persons, all the joint venture juristic persons and juristic persons constituting the Work Proposer shall submit a copy of the contract or agreement of such joint venture or consortium and a copy of the identity cards of the authorized directors of the joint venture juristic persons and juristic persons (in case of a registered joint venture company) or a copy of the identity cards of the authorized directors of all joint venture juristic persons and juristic persons (in case an unregistered joint venture company).

5.2.3 In case of a foreign juristic person in the joint venture or consortium, the Notary Public in such country and the certificate of the relevant authority shall also be provided.

5.2.4 Self-certification document that the Work Proposer possesses all the qualifications and possesses no prohibited qualifications as stipulated in Clause 3 and document clarifying the details of interest related to the business of the SET (if any) as stipulated in Clause 5.1.5.

5.2.5 Copy of the identity cards of the authorized persons or copy of the passports in case the authorized persons of the Work Proposer are foreigner as well as work permit (if any).

5.2.6 Power of attorney (if any) clearly specifying the authorization, signed, affixed with seal (if any) and stamp duty in accordance with the law together with a copy of the identity cards or copy of passports (as the case may be) of the grantor(s) and grantee(s).

In case the evidence of the Work Proposer above is not original, the Work Proposer or the authorized person, as the case may be, shall sign and affix the seal (if any) on every page.

5.3 Technical Evidence

The Work Proposer shall submit documents showing technical information with the following details:

- 5.3.1 The main personnel of the Work Proposer and working team consisting of the names of the main personnel, organization chart and job description as well as documents showing the qualifications, duties, experiences and evidence of employment history, the details of which are outlined in Attachment 1.

All the main personnel under this Clause shall belong to the working team of the Work Proposer throughout the period of the performance of works under the agreement in relation to the Terms of Reference. In this regard, change to the main personnel without the prior written consent from the SET is prohibited.

The personnel specified in this Clause shall possess the following qualifications:

- Consultant's experiences in market readiness preparation of trading system for exchanges
- Consultant's experiences in Nasdaq MME trading system family for exchanges/organizations
- Consultant's experiences as a project manager, business analyst and auditor of trading system for exchanges
- Confidence in resource allocated to the project, including both main and supporting resources

- 5.3.2 Detailed work plan and technical documents, the details of which are outlined in Attachment 1.

- 5.3.3 Work products from the projects which are already completed and which possess similar scope of operation (Site Reference).

- 5.3.4 Supporting documents as specified in the documents to the Terms of Reference (if any).

5.4 Evidence on Price

- 5.4.1 The Work Proposer shall propose the price by filling in the details in the price proposal form as per Attachment 3 which shall cover all the expenses in relation to the performance of works pursuant to the Terms of Reference.

Even though certain labor and materials are not specified in the Terms of Reference, in case it is necessary to utilize such labor or materials so that all or any part of the works can be successfully completed, such labor or materials shall be deemed to be required and be within the scope of the Work Proposer's duties unless expressly stipulated otherwise in the Terms of Reference.

- 5.4.2 The Work Proposer shall adhere to the price pursuant to the price proposal form proposed to the SET for a period of 90 (ninety) days from the date the bidding is complete or comes to an end under any circumstances.

5.5 Submission of Work Proposal

- 5.5.1 The Work Proposer shall submit the work proposal pursuant to the procedures, conditions and within the time period specified in the Terms of Reference. In case the Work Proposer fails to submit the work proposal pursuant to such procedures, conditions and within such time period, the SET reserves the right not to accept the Work Proposer's work proposal for consideration under any circumstances.

5.5.2 The Work Proposer shall only prepare the work proposal in an electronic form (soft file) as “Read Only” which shall be divided into 2 (two) parts as follows:

Part 1 Qualification and technical proposal (**there shall not be proposal or information on price in part 1**) 2 separate files shall be prepared i.e. details on the qualifications and technical details, which shall consist of the following details:

- The complete details on qualifications and technical details as specified in Clauses 5.2 to 5.3;
- The details of the price proposal showing the quantity per unit of each item proposed **without specifying the amount** (if any)

Part 2 Price proposal **to be prepared as a file with password set up or in which information can be accessed via password (Zip with Password)** consisting of complete details on the price as specified in Clause 5.4 and the price proposal form as specified in the Terms of Reference completely filled in.

In case the Work Proposer prepares the work proposal in an electronic form (soft file) by converting a hard copy into a scan file so as to turn it into a soft file, in case of any scratch, deletion, omission, addition or amendment to such hard copy, the Work Proposer or the grantee(s) as the case may be shall sign and affix the seal (if any) accompanying the same before conversion into scan file, or otherwise such scratch, deletion, omission, addition or amendment shall be disregarded under all circumstances. In case of doubt, the SET shall have the right to invite the Work Proposer to provide clarification or explanation and the SET’s consideration shall be deemed final.

5.5.3 The Work Proposer shall submit the work proposal in an electronic form (soft file) via email, the details of which are as follows:

1) Submission of all the work proposal under Clause 5.5.2

To: ITProcurementUnit@set.or.th

Subject: Work proposal for (please specify the project name) by (please specify the name of the Work Proposer).....

Attached: 1) Qualification proposal 2) Technical proposal and 3) Price proposal zipped with password (**the name of the file should be follows by _Encrypted**)

2) Submission password used to the open the file on price proposal

To: ITProcurementPW@set.or.th *As the information is confidential, To, CC or BCC or disclosure to any other person within the SET is prohibited*

Subject: Notification of password used to open the file on price proposal for (please specify the project name) by (please specify the name of the Work Proposer)

The submission of the work proposal in an electronic form (soft file) as “Read Only” pursuant to the Terms of Reference shall be deemed that the Work Proposer or the grantee(s) as the case may be has accepted the correctness and completeness of the information submitted.

6. Criteria for the Consideration of Bidding

- 6.1 The SET has the criteria for the consideration and selection of a Work Proposer as follows:
 - 6.1.1 Consider the technical proposal of only the Work Proposer with correct qualifications as stipulated and open the price proposal of the Work Proposer who has passed the consideration on the qualification and technical proposal pursuant to the criteria stipulated by the SET.
 - 6.1.2 Consideration of the qualification and technical proposal and the price proposal by the SET shall be conducted as closed bid and there will be no announcement of score, price and details of the work proposal of the Work Proposer.
- 6.2 The SET reserves the right not to consider the work proposal of the Work Proposer with incorrect qualifications or who submitted the work proposal in deviation from the conditions specified in the Terms of Reference such as the evidence on price appears in the qualification and technical proposal, the electric information as “Read Only” has not been prepared, no password is set or used to access the information (Zip with Password) in the file on price proposal, or the password has been submitted to the SET in deviation from the conditions stipulated.
- 6.3 In case any Work Proposer submits the work proposal incorrectly or in an incomplete manner, the SET reserves the right not to consider the work proposal of such Work Proposer except in case of trivial error or immaterial deviation from the conditions of the Terms of Reference whereby such exception will only be allowed in case it is opined that it is in the interest of the SET.
- 6.4 The SET reserves the right not to consider the work proposal of the Work Proposer in the following events:
 - 6.4.1 The Work Proposer proposes the price in deviation from the conditions in the Terms of Reference;
 - 6.4.2 The Work Proposer fails to fill in the name of the juristic person and/or to sign the name of the Work Proposer in the price proposal form; or
 - 6.4.3 The Work Proposer proposes the details in deviation from the conditions in the Terms of Reference materially or which gives rise to advantage or disadvantage to other Work Proposers.
- 6.5 The SET reserves the right not to consider the price proposed in case of any scratch, addition, amendment or change not accompanied by the signature of the Work Proposer with seal affixed (if any).
- 6.6 The SET shall consider selecting the Work Proposer pursuant to the criteria deemed appropriate by the SET whereby the consideration and selection of the bidding winner by the SET shall be deemed absolute and final. In this regard, there is no obligation on the SET to always select the Work Proposer who proposes the lowest price. The Work Proposer accepts the criteria and the result of the selection of the bidding winner by the SET without any objection and may not launch any lawsuit or claim any damages whatsoever.

- 6.7 When the SET selected any Work Proposer to be the bidding winner, the SET shall inform such Work Proposer in writing.

7. Reservation of Right

- 7.1 The SET reserves the right to amend, add or change any conditions specified in the Terms of Reference, attachments and any relevant documents as appropriate for the operation and in conformity to the intention to the SET and its subsidiaries, to change, postpone or cancel the bidding on this occasion under any circumstances, and not to consider the work proposal of any Work Proposer in case there is reasonable belief that the Work Proposer provides false representation or fails to clarify any details on the interest it has in relation to the business of the SET, the bidding on this occasion is conducted dishonestly, there exist any connivance in the price proposal and/or benefit, or there exist other reason as the SET deems appropriate. In this regard, the SET is not required to clarify any reason and the Work Proposer agrees not to claim any damages from the SET.
- 7.2 Under no circumstances including under Clause 7.1 shall the SET be required to be responsible for any expenses of the Work Proposer including expenses incurred in the preparation and submission of the work proposal pursuant to the Terms of Reference.
- 7.3 The SET's negotiation, agreement on the price or agreement on any other matter after the bidding shall not release the Work Proposer from any obligations it has towards the SET under such price proposal form.
- 7.4 The Work Proposer acknowledges and agrees that any information in the Terms of Reference and relevant documents are owned by and/or are intellectual property of the SET solely and the Work Proposer agrees not to use the same for objectives other than for the proposal of the work specified in the Terms of Reference.
- 7.5 During the bidding and when the bidding under this document comes to an end, the Work Proposer, whether or not it has been selected as the bidding winner and approved by the SET to enter into the agreement, agrees to keep confidential all information learnt by any means from its participation in the bidding and not to disclose the same to third party unless with the prior written consent from the SET. The Work Proposer agrees to ensure that its personnel, employees, representatives and persons under its responsibility to strictly comply with this Clause.
- 7.6 The Work Proposer represents that the bidding and any documents proposed to the SET are created through the creativity of the Work Proposer itself without any copy, modification, imitation or fabrication, whether in whole or in part, from the documents of other person with a dishonest intent. The SET reserves the right to disqualify the Work Proposer from the selection process immediately if it appears that, during the bidding or after the bidding is complete, the document proposed by the Work Proposer to the SET has been improperly proposed and the Work Proposer agrees that the SET may consider claiming damages.
- 7.7 The SET has an anti-corruption policy and encourages the business to be operated in a transparent manner and to have business ethics pursuant to the SET's Supplier Code of Conduct. In this regard, the Work Proposer, its executives, employees and any other connected persons of the Work Proposer agree not to take any actions or participate in any actions constituting corruption and to operate the business in conformity to the guideline specified in such Supplier Code of Conduct. The SET reserves the right not to consider the work proposal of the Work Proposer whose behavior may constitute corruption and may consider cancelling the result of the selection of such Work Proposer whether in whole or in part, and the Work Proposer agrees not to claim any damages from the SET.

8. Conditions of the Agreement

The Work Proposer selected as the winning bidder and approved by the SET to enter into the agreement shall execute the agreement, any other agreements related to the performance of works and the personal data processing agreement in the form stipulated by the SET in the capacity of the contractor or the company (as the case may be) within 30 (thirty) days from the date the SET has notified the result of the selection to the bidding winner or within the time period the SET deems appropriate. In this regard, the form of the agreements related to the provision of services stipulated by the SET shall contain at least the following particulars. In case there is no execution of the agreement in the form stipulated by the SET, the bidding winner agrees that the following content shall be an integral part of the conditions for the performance of works.

Nonetheless, in case of force majeure or any other event deemed appropriate by the SET such as an event which may give rise to safety concern for the area users, participants or persons related to the performance of works under the agreement, the SET reserves the right to change or postpone the period for the execution of the agreement with the bidding winner under the previous paragraph and the Work Proposer selected as the bidding winner agrees not to claim any damages from the SET.

8.1 Remuneration

Subject to the correct performance of the works by the contractor/company as stipulated in this agreement, the SET agrees to pay remuneration for the performance of works under the agreement at a lump sum rate throughout the period of this agreement to the contractor/ company in accordance with the conditions and time period stipulated in this agreement. Such remuneration shall be at a lump sum rate which covers the relevant software license, maintenance cost (if any), labor cost, material cost, equipment cost, vehicle cost, transportation cost, relevant taxes, operation cost and all other costs related to the performance of works under this agreement, but excluding stamp duty which the contractor/company agrees to be responsible at the rate stipulated by law and value added tax which the SET shall pay pursuant to the law. Such amount of remuneration is an amount from which no withholding tax has been deducted whereby the contractor/company agrees that the SET may deduct tax from such remuneration and deliver the same to the Revenue Department at the rate stipulated by law.

The contractor/company agrees not to change the remuneration specified under the agreement throughout the period of the agreement for any reason such as there is an increase in the material cost, labor cost and other costs related to the performance of works under the agreement. The remuneration under the agreement will be increased or decreased only where the SET issues a variation order pursuant to the conditions stipulated in this agreement.

8.2 Payment of Remuneration

The SET agrees to pay remuneration for the works under the agreement to the contractor/company in installments pursuant to the details and order as agreed.

The SET shall pay the remuneration pursuant to the installments above within 30 (thirty) days from the date the SET receives the correct and complete invoice from the contractor/company and the SET has accepted the works under the agreement in writing.

The contractor/company acknowledges and agrees that the SET shall have the right to change the details of remuneration payment as the SET deems appropriate.

8.3 Fees and Taxes

Any fees or taxes arising from or related to the performance of works under this agreement shall be solely borne by the contractor/company.

8.4 Insurance

<None>

8.5 Intellectual Property

The contractor/company acknowledges and agrees that any information and details used in the performance of works under this agreement be it information or details received from the SET including work products arising from the performance of works under this agreement are owned by and constitute intellectual property of the SET solely. The contractor/company agrees not to use such information and works for objectives other than for the performance of works under the agreement and not to allow other person to reproduce, modify, disseminate or take any actions in connection with such information and works under this agreement in a manner which infringes intellectual property or any rights of the SET or any other person, whether during the period for the performance of works under this agreement or after this agreement comes to an end, unless with the prior written consent from the SET.

During the period of this agreement and when this agreement comes to end, if any third party claims or exercises any claim to the effect that there is an infringement of copyright or intellectual property pertaining to the works under this agreement or the deliverables under any circumstances, the contractor/company agrees to inform the SET within 60 (sixty) days from the date the contractor/company knows about such event and the contractor/company shall take all actions to promptly eliminate such claim so that the SET may use the works or deliverables as required by this agreement as soon as possible. In case the SET is required to pay any damages to third party as a result of the infringement of copyright or intellectual property, the contractor/company shall solely be responsible for damages, fines, expenses, fees and legal attorney fee.

8.6 Confidentiality

Throughout the period of this agreement and after this agreement comes to an end for any reason, the contractor/company agrees to keep confidential all the details and information learned or known by any means from the performance of works under this agreement and shall not disclose the same to any person for any objective unless with the prior written consent from the SET. In case such information is personal data, the contractor/company shall also obtain consent from the personal data owner and shall comply with the laws on personal data protection, or comply with the provisions of the law or court order or when such details and information enter the public domain. The contractor/ company agrees to ensure that its personnel, sub-contractors and persons under its responsibility strictly comply with this provision.

Confidential information means information, news, content, documents or other communications learnt or known by the contractor/company, whether directly or indirectly, from the performance of works under this agreement be it written, verbal, images, digital media, magnetic media or any media and whether or not the information is specified as “confidential” as well as the performance of works by the contractor/company for the SET and/or SET’s subsidiaries and information related to such information that the SET and/or SET’s subsidiaries may disclose to the contractor/company prior to the execution of this agreement both currently and in the future.

8.7 Bond

8.7.1 Retention

<None>

8.7.2 Performance Bond

<None>

8.7.3 Maintenance Bond

<None>

8.8 Variation

The SET shall have the right to amend or change the works under the agreement by increasing or reducing the scope of work under this agreement without cancelling this agreement, and this shall not lead to the loss of right under this agreement.

8.9 Breach of the Agreement

In case the contractor/company breaches any provision of the agreement or there exists other event which cause the SET to believe that the contractor/company is unable to perform the works under the agreement or to complete the works within the time period under this agreement, the SET shall have the right to take any or all of the following actions:

8.9.1 To immediately deem the works under this agreement to belong to the SET including the works currently being undertaken by the contractor/company;

8.9.2 To enforce the bond under this agreement (if any);

8.9.3 To withhold the remuneration under the agreement that the SET shall pay to the contractor/company;

8.9.4 To claim other damages from the contractor/company;

- 8.9.5 To immediately set off any obligations, expenses and any other damages that the SET has the right to claim from the contractor/ company under this agreement with the remuneration under this agreement that the SET shall pay to the contractor/company or the bond under this agreement (if any);
- 8.9.6 To engage other contractor to undertake the works and the contractor/company shall have the duty to pay all expenses arising from such engagement;
- 8.9.7 To impose fine on the contractor/company at the daily rate of 0.2 (zero point two) percent of the remuneration under the agreement for the works which have not been accepted, which shall not be less than Baht 100 (one hundred) per day, from the date the contractor/ company breaches the agreement or is unable to comply with the agreement under the date the contractor/ company has complied with the agreement or the date the SET terminates the agreement, as the case may be; or
- 8.9.8 To immediately terminate this agreement without advance notice whereby the SET is not required to be responsible for any expenses and damages incurred by the contractor/ company as a result of the termination of the agreement under this Clause.

The failure of the SET to exercise any right under this agreement shall not be deemed to be a waiver of the right to terminate the agreement or an acceptance or acknowledgement that such action does not amount to the breach of the agreement by the contractor/company, and shall not release the contractor/company from any liabilities under this agreement whatsoever.

8.10 Termination of the Agreement

- 8.10.1 The SET shall have the right to terminate this agreement under any circumstances by notifying the contractor/company in writing at least 30 (thirty) days in advance.
- 8.10.2 In case any of the following facts appears, the SET shall have the right to terminate this agreement immediately by notifying the contractor/company in writing whereby such exercise of termination right shall not preclude the exercise of other rights stipulated by the SET in the agreement and such right shall constitute an additional right to any other rights under this agreement or the applicable law.
 - 8.10.2.1 The contractor/ company fails to comply correctly with the law, rules or regulations applicable to the works under the agreement;
 - 8.10.2.2 The contractor/ company fails to comply with the order of the SET or the representative or agent of the SET which issues an order to the contractor/ company or its representatives or sub-contractors in connection with the performance of works under the agreement in order for the works under the agreement to be successfully and efficiently completed;
 - 8.10.2.3 The contractor/company has been alleged to have performed the works dishonestly or without impartiality, or to have failed to observe its professional morality or ethics whereby the SET has undertaken investigation and found that there is a ground that such allegation is believable or true;
 - 8.10.2.4 The contractor/company becomes insolvent, the court issues a receivership order (whether absolute or temporary), or the court issues an order to accept the petition for the rehabilitation of business of the contractor/company in the business rehabilitation case;

- 8.10.2.5 If it subsequently appears that the contractor/company lacks all or any of the qualifications pursuant to this agreement or any representations provided to the SET in relation to the performance of the works under this agreements and any representations in the technical proposal or price proposal submitted by the contractor/company to the SET are false or deviate from the facts; or
- 8.10.2.6 The contractor/ company undergoes liquidation whether voluntary or compulsory.

8.11 Force Majeure

In case any of the parties in unable to comply with this agreement as a result of force majeure, the party experiencing the force majeure shall notify the other party in writing immediately and if the force majeure lasts for more than 15 (fifteen) days, any of the parties shall have the right to terminate the agreement immediately by notifying the other party in writing and the failure to comply with the agreement due to such force majeure shall not be held to be a breach of the agreement.

Moreover, the SET reserves the right to extend the time period for the performance of the works under the agreement until the force majeure comes to an end or as the SET deems appropriate whereby the SET shall notify the other party in writing in advance. In this regard, the contractor/company agrees not to charge any additional service fee or expenses during the extended time period as well as in case of the exercise of the termination right under paragraph one. In case the SET has paid any remuneration under the agreement to the contractor/company, the contractor/company agrees to refund such remuneration under the agreement for the unused services to the SET without interest within 30 (thirty) days from the date of the receipt of the notification from the SET.

The force majeure under paragraph one means any event or disaster arising or about to arise and which cannot be prevented even though the person experiencing or about to experience it has taken action reasonably expected of a person in such situation such as calamity, governmental action, war, civil war, hostility, protest, riot, political disorder, unrest, use of military force, rebellion, coup d'état, overthrow of status quo, boycott, arson, bombing, sabotage, act of terrorism, explosion, fire hazard, natural disaster, flood, influenza, contagious disease such as the spread of COVID-19 or other outbreaks of disease, interruption or delay as a result of governmental process required from time to time by the relevant authority, interruption in transportation, strike, closure of workplace or dispute regarding labor, law or governmental order etc. including event that the parties foresee to give rise to safety concern for the area users, participants or persons related to the performance of works under the agreement.

8.12 Personnel

All the personnel specified in this agreement shall be employees of the contractor/company under the law on labor protection throughout the period of the agreement and the contractor/company agrees to supervise and exercise supervisory control over its personnel to ensure the successful completion of the works under the agreement.

8.13 Liability for Damage

The company agrees to be responsible for any damage incurred by the SET and/or SET's subsidiaries as a result of an intentional or negligent act or omission of the performing personnel and to pay the damages to the SET within 14 (fourteen) days from the date of the receipt of the notification from the SET about such damage.

8.14 Indemnity

The contractor/company agrees to indemnify the SET or SET's subsidiaries from any damage arising from the performance of works by the contractor/company, personnel or persons under the responsibility of the contractor/company, any claim related to labor dispute, claim for damages by other person in relation to the performance of the works under the agreement, the breach by the contractor/company of any provision of this agreement, or the intentional or negligent act of the personnel or person under the responsibility of the contractor/company which causes damage to the SET or SET's subsidiaries.

In case of any damage to the SET or SET's subsidiaries as a result of an action in the previous paragraph, the contractor/company agrees solely to compensate the SET or SET's subsidiaries for any damage including all expenses, fees and legal attorney fee which may arise. The duty and obligation in relation to the indemnity above shall remain effective even if this agreement has come to an end.

8.15 Relationship between the Parties

The execution of this agreement shall not give rise to any relationship of partnership or any implication that a party is a representative or employee of another party.

8.16 Compliance with the Law on Personal Data Protection

In any undertakings in relation to personal data under or in connection with this agreement, the contractor/ company agrees to strictly comply with the Personal Data Protection Act B.E. 2562 (2019), any relevant subordinated legislation and any laws to be amended in the future ("Personal Data Protection Law") including taking any necessary actions to ensure that the personal data owner has read and understood the details specified in the announcement regarding privacy policy of the SET group (<https://www.set.or.th/en/privacy-notice.html>).

In case the scope of the performance of this agreement entails that any one party shall have the duty to store, collect, use, disclose and/or transfer abroad personal data ("**Personal Data Processing**") pursuant to an order of another party, both parties agree to sign the Data Processing Agreement in the form and within the time period stipulated by the SET or SET's subsidiaries.

9. Notes

Work proposal and/or performance of works as stipulated in the Terms of Reference

- 9.1 Unless otherwise stipulated in the Terms of Reference, in case the Work Proposer breaches any conditions regarding bidding as stipulated in the Terms of Reference and the SET considers and opines that such breach is material, the Work Proposer agrees to be responsible for any damages to the SET and/or for the Work Proposer's price proposal bond to be immediately confiscated (if any).

- 9.2 The Work Proposer shall comply with the regulations for access to the area of the SET, other rules or laws specifically related to safety, the SET's information and technology safety policy, any regulations related to information and technology of the Office of the Securities and Exchange Commission, any other relevant guidelines, and conditions for the maintenance of confidentiality of the SET.
- 9.3 In case of undertakings related to information and technology:
- (1) The Work Proposer shall allow the SET, SET's subsidiaries and supervisory authorities of the SET and SET's subsidiaries under the law to inspect relevant documents and evidence and the performance of works by the Work Proposer.
 - (2) The Work Proposer shall have in place measures for the control and maintenance of security and safety of the information and technology system including in case of sub-contracting to another supplier.
- 9.4 The Work Proposer accepts and agrees to comply with the control procedure in relation to the maintenance of security and safety of information and technology of the SET and SET's subsidiaries and as stipulated in Clauses 9.2 and 9.3 for section related to the Project and to allow the SET, SET's subsidiaries and supervisory authorities of the SET and SET's subsidiaries under the law to inspect any undertakings to ensure compliance with the relevant notifications or criteria such as Notification No. Nor Por. 3/2559 Re: Guidelines for Establishment of Information Technology System of the Office of the Securities and Exchange Commission.
- 9.5 The Work Proposer acknowledges that in complying with the Personal Data Protection Law, the Work Proposer has taken any necessary actions to ensure that the personal data owner has fully read and understood the details specified in the announcement regarding privacy policy of the SET group (<https://www.set.or.th/th/privacy-notice.html>). In addition, in case the Personal Data Protection Law stipulates that the storage, collection, use or disclosure of any personal data shall require the personal data owner's consent, the Work Proposer shall have procured the personal data owner to provide consent to the SET and/or SET's subsidiaries for the storage, collection, use or disclosure of such personal data for the purpose of complying with the Terms of Reference.

10. Schedule and Contact Venue for Additional Information

The schedule of the bidding under the Terms of Reference is as per the table below:

No.	Details	Schedule
1	Announcement of invitation	20 Dec 2021 – 31 Jan 2022
2	Time period for the acceptance of Terms of Reference documents, confidentiality documents and documents of agreement to and acknowledgement of the terms in case the Work Proposer is the bidding winner	20 Dec 2021 – 31 Jan 2022
3	Inquiry and response in writing	10 – 31 Jan 2022
4	Work proposal submission	17 Jan - 14 Feb 2022
5	Announcement of the bidding winner	After 1 Apr 2022

Remarks

- a. The schedule above may be subject to change as appropriate and the SET shall notify of the change in writing in advance.
- b. Additional queries may be raised via E-mail to the information and technology procurement unit, information technology management division at ITProcurementUnit@set.or.th pursuant to the schedule specified above.
- c. The Work Proposer who is not selected may receive back the price proposal bond obtained by the SET without interest or any other remuneration and shall deliver back any documents, information and details received from the SET (if any).
- d. In case any Work Proposer fails to submit the work proposal on the date and at the time scheduled, the SET shall not accept the work proposal of such Work Proposer for consideration under circumstances.

11. Attachments

The following attachments to the Terms of Reference shall be deemed an integral part to the Terms of Reference:

- Attachment 1: Details of Scope of Work
- Attachment 2: Work Proposer's Qualifications Certificate
- Attachment 3: Price Proposal Form

Details of Scope of Work
For
Terms of Reference
IT Consultant for Trading System Market Readiness Procurement Project

1. Works under the Agreement

1.1 Technical Requirements

Scope of Work

1. Test Management and Quality Assurance plan

- Review market rehearsal and industry wide test plans
- Review test scenario, test statistics, checklist and step to cut over
- Review SET internal infrastructure, IT operations and internal systems readiness
- Review SET's documents operations manual on Nasdaq MME and SMARTS

2. Launch criteria

- Decision criteria and related processes
- Migration plan, transition gates, transition check lists
- Feedback MR result and IT operations concerns

3. Incident management preparation

- Lists of possible incidents and preventive actions

1.2 Operation and Deliverables

Deliverables

- Reports / Facts finding / Recommendations
- Present the summary of works to the SET executives

2. Time Period

- 2 May 2022 - 1 Mar 2023

"In case the personnel of the Work Proposer is unable to performance the works under the agreement for the SET or it becomes necessary for the Work Proposer to change its personnel whether in whole or in part and for whatever reason, the Work Proposer agrees to notify the SET in writing immediate upon becoming aware of such event or at least 5 (five) business days in advance prior to the date such personnel will be unable to perform the works under the agreement. In this regard, the Work Proposer agrees to procure substitute personnel with the qualifications equaling or not less than the original personnel to perform the works under the agreement for the SET within the time period stipulated by the SET so as to avoid any impact on the work."

Attachment 2

Work Proposer's Qualifications Certificate

To: Information Technology Management Division, The Stock Exchange of Thailand

We (name of juristic person) _____ by _____
and _____ authorized directors or grantee(s) (pursuant to the evidence
attached to this document) Office No. _____ Road _____
Sub-District/Tambol _____ District/Amphur _____
Province _____ Telephone _____ Facsimile _____

have considered the various conditions in the Terms of Reference for the _____
procurement project ("**Terms of Reference**") and accepted those conditions and confirmed that we possess
all the qualifications and have complied with the criteria and conditions for the submission of work proposal
as stipulated in the Terms of Reference in all respects including:

1. We hereby submit the price proposal for the works under the Terms of Reference, the details of which appear in the price proposal form and this attachment.
2. We agree to adhere to the price under this work proposal for 90 (ninety) days from the date of the submission of the work proposal or 90 (ninety) days from the date the bidding is complete or comes to an end for any reason.
3. In case we have been considered as the Work Proposer who has been selected and have been notified by the SET to enter into an agreement or to acknowledge and enter into an agreement concerning the works, performance of the agreement and/or any other documents, we hereby confirm that we will proceed to enter into such agreement in the form stipulated by the SET within 30 (thirty) days from the date of the receipt of notification or within the time period the SET deems appropriate. We further agree to comply with the details and conditions specified in the Terms of Reference in all respects and with the agreement in relation to the performance of works to be mutually agreed with the SET.
4. We hereby confirm that we operate business in conformity to the guideline specified in the SET's Supplier Code of Conduct and that the work proposal is transparent, free from corruption, fraud or collusion in violation of the law with other person or juristic person regardless of whether or not such person has submitted the work proposal on this same occasion.
5. We confirm that the persons who are directors, executives or persons with management power in our business have no interest in a juristic person who is another Work Proposer.
6. We confirm that none of the personnel in our business who is a director, executive, major shareholder or person with management power has interest in the business of the SET unless we have simultaneously provided clarification to the SET in writing and (if any) we confirm that documents clarifying the details of relationships and interests of such persons in the business of the SET in this attachment are true in all respects.

7. We confirm that the qualification and technical proposal in an electronic form (soft file) pursuant to the Terms of Reference contains no evidence on price and we confirm the correctness and completeness of the information submitted even though such information is not accompanied by our signature or the signature of the grantee(s).

8. We confirm that we have strictly complied with the applicable laws in force including the Personal Data Protection Law and have taken any actions necessary as required under the Personal Data Protection Law including ensuring that the personal data owner fully receives announcement regarding privacy policy of the SET group.

Work proposal submitted on _____ Month _____ Year _____

Signature _____

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Position

Affix company seal (if any – seal to be affixed on every page)

Attachment 3

Price Proposal Form

To: Information Technology Management Division, The Stock Exchange of Thailand

We hereby propose the service items as stipulated in the Terms of Reference which the consultant may propose as a package by specifying the details (man day rate, related expenses, etc.) as follows:

No.	Item	Quantity	Unit Price	Total
	Total			

The price includes all expenses in connection with the performance of works but excludes stamp duty for which the Work Proposer agrees to be responsible at the rate prescribed by law and value added tax.

1. The price shall be adhered to in this proposal for a period of 90 (ninety) days from the date of the submission of the work proposal or 90 (ninety) days from the date the bidding is complete or comes to an end for any reason and the SET may accept this proposal at any time prior to the expiration of such period and/or within the time period as extended as deemed appropriate and notified to the Work Proposer by the SET.
2. We acknowledge and agree that the SET is not bound to accept this proposal or any price proposal form and shall not be responsible for any expenses in the preparation and submission of this work proposal.
3. We have reviewed any figures and letters (if any) and inspected the various documents submitted together with this price proposal form in detail and understand that the SET will not be responsible for any incorrectness or incompleteness of such details.
4. This work proposal is transparent, free from corruption, fraud or collusion in violation of the law with other person or juristic person regardless of whether or not such person has submitted the work proposal on this same occasion

Remark: The Work Proposer is still required to submit the price proposal form (quotation) together with the details of goods (BOM) and services in the form the Work Proposer itself determines.

Proposed on.....Month.....Year

Signature

(.....)

Position

Affix company seal (if any – seal to be affixed on every page)