

PART 3
SPECIAL CONDITIONS OF CONTRACT
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PART 3
SPECIAL CONDITIONS OF CONTRACT

1. Services to be Provided

- (a). The Contractor shall during the continuance of the Contract Period to
- (i). supply Supervisors and Tellers to the Park to discharge all the duties and services as specified in Schedule 4 - Service Requirements, and other parts of the Contract;
 - (ii). selling of and managing the bookings for all types of HKWP admission tickets, including but not limited to single-entry tickets, multi-entry tickets, family pass, temporary tickets and ticket coupons;
 - (iii). collection of fees and charges at the HKWP, including but not limited to admission fees, car-parking fees, permit fees and other Government revenue items. The Contractor is required to provide on-site ticket selling service at ticket selling counters of the Ticket Office and on-line ticket booking services through HKWP website (<http://www.wetlandpark.com>);
 - (iv). preparation and compilation of all returns and records of the fees collection and ticket selling at the HKWP as specified in Schedule 4 (including procuring the preparation of audited financial statements);
 - (v). handling and answer enquiries on fees collection and ticket selling of the HKWP. The enquiries includes but not limited to those enquires lodged through internet, telephone, letter, in person or referred by Government hotline (1823); and
 - (vi). provide all other services required under the Contract.
- (b). For the avoidance of doubt, the Contractor shall note that the Services are required throughout the Contract Period including days of inclement weather. However, the staff are normally not required to perform duty when typhoon signal No.8 or above is hoisted or when black rainstorm warning takes effect. The staff shall resume duty within two hours after the lowering of typhoon signal No.8 or above or when the back rainstorm warning is cancelled.
- (c). The Contractor shall ensure that all Staff provided for this Contract have knowledge and skill in the use of ticketing equipment required for the Service. All Staff should be properly trained, competent and efficient in carrying out the Services.
- (d). The Contractor shall make its own arrangement to deploy its staff to provide the Services as required in the Contract. The Contractor shall be responsible for arranging adequate manpower and appropriate equipment for completing the Service, in particular on Sundays and public holidays when the HKWP is on a crowd day.

2. Contractor's Acknowledgement

The Contractor acknowledges that -

- (a). it has made itself thoroughly conversant with all aspects of the Contract including but not limited to the nature and quality required of the Services, the equipment, materials and the number of Tellers and Supervisors required, and the necessary professional auditing requirements under the Contract;

- (b). it has been provided with sufficient information to enable it to provide the Services to the Government; and
- (c). it shall neither be entitled to any additional payment nor be excused from any liability for satisfying any requirement stipulated under this Contract on the ground of any misinterpretation by the Contractor of any matter or fact relating to this Contract.

3. Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Government that -

- (a). the Contractor and its employees shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b). the Contractor shall carry out the Services with all due and reasonable diligence care and despatch and in a safe, proper, skilful manner, and shall use his best endeavour to perform the Services to the satisfaction of the Government Representative;
- (c). the Contractor shall, through the Government Representative, keep the Government informed on all matters relating to the Services and shall answer all reasonable enquiries made by the Government Representative;
- (d). the Contractor shall comply with the Employment Ordinance (Cap. 57), Mandatory Provident Fund Schemes Ordinance (Cap. 485), Employee's Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115) and other relevant legislation in the employment of his staff;
- (e). the Contractor undertakes not to employ illegal workers in the execution of this Contract. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may, by notice in writing, terminate this Contract forthwith pursuant to Clause 22(g) of the General Conditions of Contract; and
- (f). the provision of the Services by the Contractor does not and will not infringe any Intellectual Property Rights of any party.

4. Contractor's Equipment, Materials and Tools

- (a). Except to the extent provided by the Government as specified in Schedule 4, the Contractor shall during the entire Contract Period provide at its own costs sufficient uniforms, tools and equipment for the safe, proper and efficient performance of the Services.
- (b). The Contractor shall, at his own costs, labour and materials, carry out and complete all repair and maintenance works on their own tools and equipments they provided in accordance with Clause 4 (a) above.
- (c). The Government shall not be liable for any loss of or damage howsoever caused to such equipment, materials, tools or vehicles belonging to the

Contractor and used for or in connection with the performance of the Contract.

5. Employment of Staff and Manner of Superintendence

- (a). The Contractor shall provide such number of Staff as specified in Schedule 2 for the performance of the Contract. In the event of resignation, dismissal, refused admission or absence of any such staff for any reason whatsoever, immediate replacement shall be provided.
- (b). Without prejudice to the Mandatory Requirements set out in Annex B, and the Terms of Tender, in relation to each Supervisor, the Contractor shall before deploy the Supervisor for the Contract provide to the Government:
 - (i). copy of the records of education qualification and professional training on accounting, book-keeping, financial management issued by the training/educational institute confirming the satisfactory completion by that Supervisor of the course mentioned in Clause 6.2 (a) of the Schedule 4 in the first and second bullet point ; and
 - (ii). documentary evidence that the Supervisor has attained the experience mentioned in Clause 6.2 (a) of the Schedule 4 in the third bullet point.
- (c). The Contractor shall provide the Government Representative at least two (2) weeks before the commencement of the Contract Period with details of all his Staff, which shall include the names of each of such persons, sex, age, date of birth, identity card number, training records, photographs of the staff. In case there is a change of any of his Staff, the Contractor shall submit the above-mentioned details in relation to the new Staff, and those set out in (b) above (in case of a Supervisor) to the Government Representative within seven (7) days before the change will be effected. Save with the prior written approval of the Government, the Supervisors to be appointed shall be in accordance with the nominations as provided by the Contractor in Annex F.
- (d). The Contractor shall, at least two (2) weeks before the commencement of the Contract Period, nominate for Government Representative's approval a Contract Manager (which approval may at any time be withdrawn). Such Contract Manager shall be in charge of the Services and shall have the full authority to act on behalf of the Contractor including making all necessary decisions regarding the provision of the Services and to receive all instructions from the Government Representative. The nomination shall set out the name, qualifications and experience of the nominated Contract Manager and give full details of his address, telephone number and other means of direct contact. The Contract Manager shall be equipped with, at the Contractor's own costs, mobile phone and pager so that he can be contacted at all times during the Contract Period.
- (e). Each of the Contract Manager and the Supervisors shall act and respond promptly to any instructions or queries give or made by the Government Representative; shall be contactable by mobile phone; and shall upon being requested accompany the Inspecting Officer to the locations identified by the Inspecting Officer and show the Services that have been performed or to be performed. Each of the Contract Manager and the Supervisors shall give proper training, supervision of and instructions to the Staff.

- (f). The Contract Manager shall make such arrangements as are necessary that will enable him to attend meetings with the Government Representative within three (3) days of such a request having been made (or attend immediately at any time in the case of emergency). When requested by the Government Representative, the Contract Manager shall –
 - (i). attend and participate in meetings arranged with any persons, groups or associations whom the Government Representative agrees to meet in relation to the Services in order to resolve complaints or deal with suggested orders or improvements in relation to the Services; and
 - (ii). prepare a written report on any aspect relating to the Services as instructed by the Government Representative.
 - (g). The Contractor shall provide, upon request by the Government Representative, documentary evidence, to the satisfaction of the Government Representative, to substantiate that Clause 5 hereof has been fully complied with.
 - (h). The Contractor shall ensure the good conduct of its sub-contractors approved by the Government under Clause 9(c) in the General Conditions of Contract, employees and agents while they are performing the Services for or on behalf of the Contractor. A code of practice submitted as part of the Quality Assurance Plan in Schedule 3 should be issued to their staff, agents of subcontractors.
6. Uniforms and Name Badges of Staff
All Staff shall wear tidy and clean uniforms and shall display on their outer uniform at the chest position a name badge.
7. Modification and Review of the Management Plan, Work Plan, Quality Assurance Plan, Contingency Plan and Transition Plan
- (a). The Contractor shall at all times during the Contract Period comply with and implement the Management Plan, Work Plan, Contingency Plan, Quality Assurance Plan and Transition Plan submitted by the Contractor in its tender for the Contract subject to any further modifications stipulated by the Government, all of which are set out in Schedule 3 (collectively, “Plans”).
 - (b). The Contractor is required to submit a monthly work schedule showing detailed manpower deployment fourteen (14) days prior to the commencement of the Services to the Government Representative for approval.
 - (c). Throughout the continuance of the Contract -
 - (i). the Contractor shall perform the Services in such frequency, order, at such times and such locations as prescribed in the work schedule as approved by the Government and other applicable parts of Schedule 4 or as the Government Representative may direct from time to time; and
 - (ii). the Contractor shall carry out the Services in accordance with all requirements and specifications set out in the Contract, including without limitation Schedules 2 and 4. The Contractor shall not vary or amend any such specifications or requirements which are currently in force, without the prior written approval of the Government Representative.

- (d). Notwithstanding the foregoing, from time to time, the Government Representative shall be entitled to vary the deployment of any of the Staff and frequency, order, priority, time and methods for carrying out the Services as the Government Representative may consider expedient so to do.

8. Performance

- (a). The Contractor shall ensure that all its Staff maintained the highest standard of discipline, courtesy, behaviour and consideration in performing the Services.
- (b). The Contractor and its Staff shall deal promptly and courteously with the Inspecting Officer, the general public and all others with whom they may have contact in performing the Services under the Contract.
- (c). The Contract Manager shall be responsible for the overall supervision of the performance of the Staff and he shall make surprise checking to the Park as frequent as possible and to record his findings on a record book for the purpose. The record book shall be made available for the Government Representative's inspection and copies of which (or part thereof) shall be made available to the Government for retention, from time to time upon request.

9. Site Record and Report

- (a). The Contractor shall maintain a day-to-day attendance record of his Staff showing in detail the number of Staff who are on duty together with their names, identity card numbers, posts, hours on duty, arrival time and departure times which information shall either be recorded by electric time recording equipment to be supplied by the Government or manually under the supervision of the Supervisor, as determined by the Government Representative in his absolute discretion. Such records shall be readily made available for the inspection of the Government Representative upon demand.
- (b). The Contractor shall provide any other information and documentation as may be requested by the Government Representative relating to the provision of the Services.
- (c). Notwithstanding the foregoing, the Contractor shall, as and when called upon to do so by the Government Representative, make available to the Government Representative, or such other person as the Government Representative may direct, such other information which may be within the Contractor's knowledge to enable the Government Representative to verify the data contained in the aforesaid records.
- (d). The Government Representative may prescribe the form of the Contractor's reports, records and schedules required under sub-Clauses (a) and (b) hereof.

10. Contractor's Employees or Agents

- (a). The Contractor shall be responsible for the good conduct of his employees while they are performing the Services under the Contract and shall ensure

that they behave accordingly. The Contractor shall ensure that his employees engaged in the provision of the Services are fit for their tasks.

- (b). The Government Representative shall be entitled to request, based on medical, security or disciplinary grounds and/or based on the Government's dissatisfaction with the performance of the relevant Staff, the removal and replacement of any of the Staff.
- (c). The Contractor shall replace any employee or agent so removed as soon as possible by a competent substitute meeting the requirements specified in the Contract.
- (d). The Government shall in no circumstances be liable either to the Contractor or to his employees or agents in respect of any liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Government from and against any claim made by such employees or agents.

11. Contractor's Personnel

- (a). The Contractor shall not employ any staff of known bad character, disorderly conduct or violent character. Any breach of this requirement shall be deemed to be the default, neglect or omission of the Contractor.
- (b). In compliance with Clause 11(a) hereof, the Contractor shall make diligent efforts to scrutinize the background of the potential employees before employing them to perform the tasks required.
- (c). The Government Representative shall be entitled to refuse admission to or evict from any premises or any part thereof occupied by the Government any person employed by the Contractor (including but not limited to staff failing to wear the approved uniform and name badge), whose presence will, in the opinion of the Government Representative, be undesirable. The Contractor shall immediately provide acceptable and competent substitute Staff to continue the performance of the Services under the Contract.

12. Personnel Records

- (a). It is the responsibility of the Contractor to seek permission and consent from his employees and agents engaged to release and provide their personal data, records and photographs to the Government Representative pursuant to any applicable provision of the Tender Document or Contract.
- (b). The Contractor shall maintain proper current and accurate records of all employees or agents employed by the Contractor under the Contract, and such records shall include the names and photographs of such persons, their grades, posts, sex, identity card numbers, ages, training, the time sheet showing their attendance and their wage books.
- (c). The Contractor shall maintain proper records of all managerial and supervisory staff employed by him under the Contract. Such records, including the relevant qualifications, shall be produced to the Government Representative on demand.

13. Failure to meet Performance Requirements and Standards

- (a). At any time during the Contract Period, the Inspecting Officer may investigate each case where the Contractor has failed to perform the Services or any part thereof in accordance with the provisions of the Contract. The Inspecting Officer shall be entitled to interview any member of the Contractor's employees, sub-contractor or agents and to inspect all records relevant to the Services and to obtain copies of such records from the Contractor free of charge.
- (b). Where the Inspecting Officer is satisfied that in any particular case the Services provided by the Contractor has failed to meet the standards required under the Contract, or the Contractor has failed to provide Staff in accordance with Schedule 2, it shall be entitled to instruct the Contractor either verbally or in writing to remedy/rectify the failure in order to comply fully therewith within such period as it in its absolute decision may determine, but such period should in no case be later than twenty-four (24) hours after giving such instructions to the Contractor.
- (c). Without prejudice to other rights and claims of the Government (including its other rights to terminate the Contract), if the Contractor persistently fails to comply with the instruction of the Inspecting Officer issued either verbally or in writing under sub-Clause (b) hereof, the Government Representative may terminate the Contract in accordance with Clause 22(b) of the General Conditions of Contract.
- (d). Without prejudice to any other rights or remedies, the Government Representative shall be entitled to withhold any payment to the Contractor until the Services have been performed to the satisfaction of the Government Representative in strict accordance with the terms and conditions of the Contract, and until all terms and conditions of the Contract have been complied with and observed, and until all costs and expenses which may be incurred in accordance with sub-Clause (e) hereof has been recovered (if any).
- (e). If the Contractor fails to provide any of the Services or fails to provide the Services to the satisfaction of the Government Representative, the Government shall be entitled to have such Services carried out by its own resources or by other contractors and to recover any loss, damages, claims or any liability that may be incurred by the Government and may deduct the same from any money due or becoming due to the Contractor under this or other contract with the Government.
- (f). The Government Representative or the Inspecting Officer shall be the sole judge in determining whether or not a particular standard of service/performance has been achieved whose determination shall be binding on the Contractor in the absence of manifest error.

14. Sanction against Committing of Offences under Employment Ordinance and Immigration Ordinance

If the Contractor is convicted of an offence under the Employment Ordinance (Cap. 57) arising from the performance of this Contract or other Government contracts or is

convicted of an offence under the Immigration Ordinance (Cap. 115) for employing a person who is not lawfully employable to perform under this Contract or other Government contracts, such conviction(s) will constitute a sufficient ground for the Government Representative to suspend the Contractor from tendering for other Government contracts in future. The duration of suspension will depend on the seriousness of the offence(s) and other relevant considerations in connection with the performance of this Contract.

15. Passes

- (a). The Government Representative may issue passes to the Contractor for the admission of its vehicles, employees or agents to the Government premises. Any person who fails to show such a pass on demand may be refused admission to the premises or any part thereof by the Government, as the case may be.
- (b). The Contractor shall submit a list of the names and identity card numbers of all its employees or agents and copies of vehicle registration document of all vehicles requiring passes together with two (2) photographs of each person and shall prove to the satisfaction of the Government their bona fide identities.
- (c). Any pass so issued shall be returned to the Government Representative on demand or upon termination of the Contract, or cessation of the bearer's employment with the Contractor, or cessation of the use of the vehicles for the performance of the Services, as the case may be.
- (d). The Contractor shall on demand deposit with the Government Representative the sum of one hundred Hong Kong dollars (HK\$100) for each pass issued which sum shall be refunded without interest upon the return of the pass to the Government Representative.

16. Contract Deposit

- (a). The Contractor shall deposit with the Government within fourteen (14) days from the date of acceptance of the offer, a Contract Deposit in an amount equal to 2% or 5% of the Estimated Contract Sum, depending if Clause 13(f) or (h) of the Terms of Tender applies, in cash, as continuous security for the due and faithful performance of the Contract.
- (b). Should the Contractor fail to pay the required deposit by the due day aforesaid, the Government shall immediately thereupon be at liberty to terminate the Contract by notice in writing to the Contractor without prejudice to any claims that the Government has or may have in respect of any loss, damages, claims or any liability that may be incurred by the Government as a result of the Contractor's default of this Clause.
- (c). The Government shall (without prejudice to any other rights and remedies of the Government) have the right to deduct from the Contract Deposit the amount of any and all costs, losses, damages or expenses suffered by the Government as the direct or indirect result of any breach of the Contract by the Contractor with or without the Contract being determined.
- (d). If any deduction shall be made by the Government from the Contract Deposit during the continuance of the Contract, the Contractor shall, within fourteen (14) days of such deduction, deposit a further cash sum in a sum equal to the amount

so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit.

- (e). Seven (7) months after the submission by the Contractor of the financial statements as required under Clause 4.2(e) of Schedule 4 in respect of the last Financial Year to the satisfaction of the Government, the Government will return to the Contractor without interest the balance of the Contract Deposit (if any) after having deducted therefrom any sum due from the Contractor to the Government and when all the Contractor's obligations have been observed and complied with to the satisfaction of the Government Representative.
- (f). The application of the Contract Deposit as aforesaid shall be without prejudice to the right of the Government to recover from the Contractor any losses, damages, claims or any liability that may be incurred by the Government that exceed the sum of the Contract Deposit.

17. Deduction

The Government reserves the right to make a deduction in the amount specified in the right column below from a Monthly Payment payable in respect of a Month on the occurrence of an event in that Month specified in the left column below as and for liquidated damages and not as a penalty. Multiple occurrences entitle the Government to make multiple deductions without limit.

For the Shortfall per hour or part thereof of any one of the following:	Amount of Deduction(HK\$)
(a) a Teller	The applicable hourly rate as specified in Schedule 2
(b) a Supervisor	

18. Monies or Valuables Found

All monies or other items of value found by the Contractor's employees and agents during the performance of the Services at any place shall be handed to the Government Representative as soon as possible and a written receipt obtained therefore.

19. Addition/Reduction of Staff

There may be addition or reduction of Staff including equipment (if required) by the Government Representative during the Contract Period and should such changes arise, the Contractor will be notified to provide or suspend the services including equipment (if required) accordingly and the Monthly Payment shall be adjusted in accordance with the rates shown in Schedule 2.

20. Relationship of the Parties

- (a). Nothing herein shall be construed as in any way constituting a partnership, agency or joint venture between Government and the Contractor and neither party shall (without the consent in writing of the other) commit the other to any obligation whatsoever.
- (b). The Contractor enters into this Contract with Government as an independent contractor only and shall at all times remain as an independent contractor throughout the Contract Period.

- (c). For the avoidance of doubt, the Contractor shall not represent itself as an employer, employee, agent or servant of Government.
- (d). The Contractor shall declare to all its employees and agents the provisions of this Clause.
- (e). For the avoidance of doubt, the control of, and the power to manage, the Park rests at all times with the Government Representative and the Government Representative does not and will not surrender such control or delegate such power to the Contractor. The Contractor is appointed as an independent contractor to provide the Services only. Nothing herein shall be construed to confer on the Contractor any control of, or power to operate or manage, the Park.

21. Confidentiality of Information

- (a). The Contractor shall treat as confidential all information, drawings, specifications, documents, contracts, design materials and all other data (including without limitation any personal particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) and materials of any nature (in or on whatever media)) accessible by the Contractor under this Contract or in performing the Services or which the Government has for the purposes of or in the course of performing this Contract disclosed supplied made available or communicated to the Contractor (collectively “confidential information”) PROVIDED THAT the restrictions contained in this Clause 21 shall not apply:
 - (i). to the disclosure of any confidential information to any person employed, used or engaged by the Contractor in the conduct of the Services in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor for the performance of the Contractor’s duties and obligations under the Contract (“permitted recipients), provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the said information;
 - (ii). to the disclosure of any confidential information already known to the recipient other than as a result of disclosure by the Contractor or any permitted recipient or their respective associates or associated persons;
 - (iii). to the disclosure of any confidential information which is or becomes public knowledge other than as a result of disclosure by the Contractor or any permitted recipient or their respective associates or associated persons;
 - (iv). to the disclosure of any confidential 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
 - (v). to the disclosure of any confidential information with the prior consent in writing of the Government

- (b). The Contractor hereby agrees that it will use the confidential information described in Clause 21(a) solely for the purposes of this Contract and that it will not and shall procure that the permitted recipient will not, at any time whether during or after the completion, expiry or termination (howsoever occasioned) of this Contract use, disseminate, retain, make copies, sell, or otherwise deal with in any manner whatsoever of, the same for any other purposes without the Government's prior written consent.
- (c). The Contractor undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by this Clause 21(a) to keep secret and treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- (d). The Contractor shall ensure that each of its employees, agents, associates, sub-contractors, consultants and any other persons engaged in any work in connection with this Contract are aware of and comply with the provisions of this Clause 21 and the Official Secrets Ordinance (Cap. 521).
- (e). The Contractor undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of its employees, agents, sub-contractors, consultants and certified public accountant to whom any confidential information is required to be disclosed to do so.
- (f). The Contractor agrees that if so required by the Government it will at its cost take such actions and steps as are lawful and necessary to enforce the confidentiality agreements executed by any of the persons mentioned in sub-Clause (e) above in the event of any breach thereof by any of them. Alternatively, the Contractor shall give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons in the event of any breach by any of them of the aforesaid confidentiality agreement.

22. Copyright and Waiver of Moral Rights

The copyright subsisting in the materials prepared by the Contractor in submitting the tender for this Contract and in performing the Services (including the plans set out in Schedule 3) belongs to the Government immediately upon their creation. The Contractor hereby warrants that the materials are original work prepared by the Contractor and no third party Intellectual Property Right subsists in such materials. The Contractor hereby waives and undertake to procure its employees, sub-contractors and agents to waive all moral rights (whether past, present or future) in any materials developed or prepared by the Contractor or the Staff pursuant to this Contract, such waiver to take effect upon creation of such materials.

23. Execution of Further Documents

The Contractor shall at its own costs and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to all and any provisions of the Contract, and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the government in writing.

24. Arrangement during Epidemic Illness

In the event of an out-break of any disease or epidemic, the Contractor shall comply with all such orders, arrangements or regulations as may be issued or imposed by the Government of the Hong Kong Special Administrative Region with a view to stamping out the same. The Contractor shall comply with any instructions issued by the Government of the Hong Kong Special Administrative Region regarding measures to be adopted to prevent or control diseases of any kind.

25. Disputes

Without prejudice to Clause 15 of the General Conditions of Contract, if disputes arises between any officer of the Agriculture, Fisheries and Conservation Department and the Contractor in reference to the performance of the Contract, or any part thereof which cannot otherwise be resolved, such dispute shall be referred to the Director of Agriculture, Fisheries and Conservation whose decision shall be final and binding (in the absence of manifest error).

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