

Tender Ref.: AFCD/NP/01/21

RESTRICTED (TENDER)

THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT
TENDER FOR SERVICES

TENDER FORM

**Tender for the Provision of Habitat Management Services for
the Biodiversity Zone of the Long Valley Nature Park**

Tender Reference: **AFCD/NP/01/21**

LODGING OF TENDER

This tender must be duly completed and signed in **TRIPLICATE** and enclosed in a sealed plain envelope marked "Tender for the Provision of Habitat Management Services for the Biodiversity Zone of the Long Valley Nature Park", addressed to the Chairman, Tender Opening Committee, Government Logistics Department and must be deposited in the Government Logistics Department Headquarters Tender Box situated on Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before **12 noon on 3 September 2021** (Hong Kong time). **Late tenders will not be accepted.**

Dated this <23th day of July 2021>



(Ms Aidia CHAN)

for Director of Agriculture, Fisheries and Conservation
Government Representative

INTERPRETATION

In the documents issued by the Government in connection with this Invitation to Tender and the Contract that is made pursuant to this Invitation to Tender, unless otherwise defined or the context otherwise requires:

1.1 The following expressions bear the same meanings as set out below:

- “Alternative Authentication Method” or “AAM” means the use of an Identification Code for the submission of a Tender via the e Tender Box in lieu of the use of a digital certificate;
- “Contract” means the contract made between the Government and the Contractor for the supply of the Services on the terms and conditions set out in the Tender Documents, the Tender submitted by Contractor (to the extent accepted by the Government), the Memorandum of Acceptance issued by the Government to that Contractor, and the attachments to any of the above;
- “Contract Deposit” means the sum of money deposited by the Contractor by cheque, cashier’s order or in the form of banker’s guarantee referred to in Clause 10 of the Terms of Tender and Clause 13 of the Conditions of Contract;
- “Contract Period” means, subject to early termination or extension provided for in the Contract, the period specified in the Clause 1 of the Conditions of Contract;
- “Contractor” means the Tenderer whose Tender is accepted by the Government;
- “Contract Manager” means the contract manager appointed by the Contractor to act as its representative for and on its behalf with responsibility for the overall administration of the provision of Services required in the Service Specifications;
- “Contractor’s Employees” means the Farming Workers, the Supervisors, the Contract Manager and any one or more employees of the Contractor who is/are deployed by the Contractor to perform the Services under the Contract;
- “Contract Venue” means the areas as specified in Clause 1 of Section 3 of the Service Specifications;
- “Demerit Point” means the demerit point referred to in Clause 2 of Annex A to the Terms of Tender;
- “Estimated Contract Price” means the amount quoted as such by the Contractor in Section 1 of Contract Schedule 1 as the estimated total amount of payment for the provision of the Services, to be payable by

	the Government to the Contractor by way of Monthly Service Fees in accordance with the provisions of the Contract;
“Electronic Record”	has the meaning given to it under the ETO;
“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“ETO”	Means the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
“Farming Staff”	means all Supervisors and Farming Workers deployed by the Contractor to provide the Services required in the Service Specifications;
“Farming Workers”	means the farming workers provided by the Contractor for provision of the Services required in the Service Specifications;
“Force Majeure Event”	means: (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, fire if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God; or (b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof; or

(c) any supervening epidemic outbreak in Hong Kong and/or any other part of the PRC;

and which, in any case of (a), (b) and (c) above, prevents the performance of the duties and obligations of any party hereunder;

“General Holiday” or
“Public Holiday”

means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);

“Good Industry Practice”

means the standards, practices, methods and procedures conforming to law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

“Government”

means the Government of the Hong Kong;

“Government Property”

means property of whatsoever nature (tangible or intangible) which may be passed to the Contractor or any Contractor’s Employees for performing the Services or otherwise in connection with the Contract;

“Government
Representative”

means:

(a) the Director of Agriculture, Fisheries and Conservation;

(b) any officer of the Government specified by the Director of Agriculture, Fisheries and Conservation for the purposes of the Contract; or

(c) any other officer authorized by the officer referred to in (b) for the purpose of the Contract.

“Hong Kong”

means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Identification Code”

means a unique 8 character code generated by the ETB and sent to the email account registered by the ETB User with the PCMS (viz., “registered email account”) upon the request of the ETB User for the submission of a Tender through the use of such code;

“Intellectual Property
Rights”

means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights of whatever nature and wheresoever arising, whether now known or created in the future, in each case whether registered or unregistered, and include applications for the grant of any such rights;

“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on and subject to the terms set out in the Tender Documents;
“LVNP”	means the Long Valley Nature Park in the North District;
“Materials”	means any and all works and materials (including their drafts and uncompleted versions) developed, written or prepared by the Contractor, its employees, agents or sub-contractors in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, models, questionnaires, analyses, papers, documents, records, plans, drawings, formula, tables, charts, data or information collected, compiled, produced or created by the Contractor in relation to the Services recorded or stored by whatever means;
“Monthly Rate”	means the monthly rate for calculating remuneration for the Services as set out in the Price Schedule chargeable by the Contractor to the Government for the provision of the Services before deductions;
“Monthly Service Fees”	means an amount payable each month to the Contractor for provision of the Services calculated in accordance with Clause 11 of the Conditions of Contract subject to and after any adjustment or deductions;
“non-skilled workers”	means those workers who perform the functions comparable to the duties of Government Model Scale 1 Grade Staff, and for the purpose of this Invitation of Tender, include the Farming Staff;
“Original Tender Closing Date”	means the latest date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently;
“Paper-based Tendering”	means the making and submission of a Tender in paper form in accordance with the “Lodging of Tender” section of the Tender Form;
“PRC”	means the People’s Republic of China;
“Price Schedule”	means “Part A – Price Proposal and Breakdowns” of Contract Schedule 1;
“Services”	means habitat management services and all other services to be provided by the Contractor to the Government as specified in this Contract, details of which are set out in the Service Specifications;

“Statutory Minimum Wage” or “SMW”	means the “minimum wage” as defined in the Minimum Wage Ordinance (Cap. 608);
“SMW plus rest day pay rate”	has the same meaning as ascribed to the term “statutory minimum wage plus rest day pay rate” in paragraph 2 of the Guidance Notes accompanying the Standard Employment Contract;
“Standard Employment Contract”	means the written employment contracts entered into between the Contractor and the Farming Staff (except a temporary relief worker whose period of engagement does not exceed 7 days) for performing the Services under the Contract and, where applicable, the written employment contracts entered into between the sub-contractor and its non-skilled workers performing such services if sub-contracting is approved, a copy of such contract and its guidance notes are annexed to the Tender Documents as Annex E;
“Supervisor”	means the supervisor provided by the Contractor for provision of the Services required in the Service Specifications;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to the Invitation to Tender;
“Tenderer”	means the person whose particulars are set out in the “Offer to be Bound”;
“Tender Closing Date”	means the latest date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	has the meaning given to it in Clause 1 of the Terms of Tender;
“Tender Form”	means: <ul style="list-style-type: none"> (a) in the case of a Tender submitted in paper form, the Tender Form issued for the Invitation to Tender; and (b) in the case of a Tender submitted electronically, the tender form available on the e-Tender Box for completion electronically;
“Tender Submission Date”	means the date of the Offer to be Bound;
“Tender Validity Period”	means the period of time described in Clause 3.4(b) of the Terms of Tender during which the Tender is to remain open;
“terms and conditions of use of the PCMS and the e Tender Box”	means all those terms and conditions for the use of the PCMS and the e Tender Box from time to time published on the website of the e Tender Box including the “Terms and

Conditions of Use of the PCMS and the e Tender Box” and the “e-Tender Box System and File Attachment Requirements” in the version prevailing immediately prior to the Tender Closing Date;

- “Website of the e-Tender Box” means the website of the following address:
<https://pcms2.gld.gov.hk>;
- “working day” means Monday to Friday other than a public holiday; and
- “WTO GPA” means the Agreement on Government Procurement of the World Trade Organization.

1.2 The following rules of interpretation apply:

- (a) references to statutes or statutory provisions means references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and includes all subordinate legislation made under those statutes;
- (b) words importing the singular includes the plural and vice versa; words importing a gender includes all other genders; references to any person includes any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and do not affect the construction of the Tender Documents or the Contract;
- (d) references to a document:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
- (e) references to “Tenderer” or “Contractor” include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to “law” and “regulation” include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (h) any word or expression to which a specific meaning has been attached in any part of the Tender Documents bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (i) a time of a day means a reference to Hong Kong time;

- (j) references to “normal business hours” mean 0900 to 1800 hours;
 - (k) references to a day mean a calendar day;
 - (l) references to a month or a monthly period mean a calendar month;
 - (m) any negative obligation imposed on any party means if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party means if it were also an obligation to procure that the act or thing in question be done;
 - (n) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
 - (o) words importing the whole are treated as including a reference to any part of the whole;
 - (p) the expressions “include” and “including” shall be constructed without limitation to the works following;
 - (q) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
 - (r) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
 - (s) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation is not construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
 - (t) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- 1.3 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 1.4 All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) is, in the absence of manifest error, final and conclusive.
- 1.5 Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

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**The Government of Hong Kong Special Administrative Region
Agriculture, Fisheries and Conservation Department**

**Provision of Habitat Management Services for
the Biodiversity Zone of the Long Valley Nature Park**

PART 1

TERMS OF TENDER

1. Tender Documents

These tender documents identified as “Tender for the Provision of Habitat Management Services for the Biodiversity Zone of the Long Valley Nature Park” comprise the following:-

- (a) Tender Form;
- (b) Interpretation;
- (c) Part 1 - Terms of Tender with Annexes A to E;
- (d) Part 2 - Conditions of Contract;
- (e) Part 3 - Service Specifications with Annexes 1 and 2;
- (f) Contract Schedules 1 to 5;
- (g) “Offer to be Bound”; and
- (h) Memorandum of Acceptance.

(collectively “Tender Documents”). Each of the above Tender Documents is referred to by their names as stated above throughout the Tender Documents and the Contract.

2. Invitation to Tender

- 2.1 Tenders are invited for the provision of all of the Services subject to and in accordance with the Tender Documents.
- 2.2 A Tenderer should read the Tender Documents carefully prior to submitting a Tender. A Tenderer should ensure that it understands all requirements of the Tender Documents.
- 2.3 A Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 2.4 A Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 2.5 A Tender will be regarded to be thoroughly conversant with all aspects of the Tender

Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.

- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents of the Contract.
- 2.7 Information, statistics, forecasts and estimated requirement of the Services set out in the Tender Documents are provided for reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government's actual requirements of the Services may vary depending on the actual need of the Agriculture, Fisheries and Conservation Department and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.8 By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Documents.

3. **Tender**

3.1 **General**

- (a) Save in accordance with the terms of the Tender Documents, a Tenderer must not alter any provision of the Tender Documents.
- (b) A Tenderer shall note that a two envelope system is adopted in this Invitation to Tender. Regardless of whether Paper based Tendering or Electronic Tendering is used, the Tenderer shall submit its Tender in two (2) separate proposals, one as the proposal for price information and another as the technical information as detailed in Clause 3.2(b) below.
- (c) Counter-proposals by a Tenderer may, at the absolute discretion of the Government, render its Tender to be disqualified and not to be considered.
- (d) Tender may not be considered if false, inaccurate, incorrect or incomplete information is given in the Tender.
- (e) A Tenderer must submit its completed Tender together with all information and documents required under the Tender Documents or relevant to its Tender in accordance with the terms of the Tender Documents.
- (f) If a Tenderer submits a Tender by Electronic Tendering, the Tenderer must, in

addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e-Tender Box as set out in or referred to in the e-Tender Box.

- (g) All documents submitted by a Tenderer to the Government in relation to its Tender must be **original documents or certified true copies of the original documents**. In the case of Electronic tendering, the Tenderer must submit the original documents or certified true copies of the original documents in electronic format as part of its Tender via the e-Tender Box. If a Tenderer fails to comply with this requirement or fails to provide such verification as the Government may require to prove the authenticity of a document submitted, the Government may not further consider the Tender.

3.2 Preparation

- (a) The Tender must be:
- (i) completed in English or Chinese. The Government will not consider a Tender that is completed in any other language;
 - (ii) submit, in one of the following manners, its completed Tender together with all proposals, documents and information required under the Tender Documents or relevant to its Tender in accordance with the terms of the Tender Document. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will not be considered.
 - Paper-based Tendering
The Tender must be completed in ink or typescript and must be submitted in triplicate in accordance with the “Lodging of Tender” section of the Tender Form.
 - Electronic Tendering
The Tender must be submitted in accordance with the terms and conditions of use of the PCMS and the e-Tender Box and through the e-Tender Box through the use of any one type of digital certificates recognized by and uploaded to the e-Tender Box or through an Identification Code.
 - (iii) submitted, for Paper-based Tendering, in a sealed envelope clearly marked “**Tender Reference: AFCD/NP/01/21 – Provision of Habitat Management Services for the Biodiversity Zone of the Long Valley Nature Park**” which should contain the following two envelopes clearly marked Envelope A and Envelope B on the outside:
 - (1) Documents relating to the price information, i.e. the original copy and two copies of the Contract Schedule 1 that are fully completed, signed, stamped with company chop, should be enclosed in a sealed envelop clearly marked “Envelope A” and “**Tender Reference: AFCD/NP/01/21 – Provision of Habitat Management Services for the Biodiversity Zone of the Long Valley Nature Park – Price Information**”; and
 - (2) Documents relating to the technical information, i.e. the original copy and two copies of all other remaining information, the duly signed “Offer to be Bound”, forms, schedules other than Contract Schedule 1 and documents required by the Tender Document **but without any indication on the prices for provision of the Services**, should be enclosed in another sealed envelope clearly marked “Envelope B”

and “**Tender Reference: AFCD/NP/01/21 – Provision of Habitat Management Services for the Biodiversity Zone of the Long Valley Nature Park – Technical Information**”.

- (iv) submitted through Electronic Tendering will be regarded to have submitted by a Tender or authorised to have been submitted by a Tenderer if it is submitted in any one of the following:
- (1) submission of the Tender via the e-Tender Box through the use of an Identifications Code; or
 - (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB.
- (v) for Electronic Tendering, a Tender must submit its Tender proposals for technical information and price information as separate attachment files in accordance with a two-envelope system as specified below –
- (1) documents relating to the price information as stated in Clause 3.2 (b)(i) should be using the file name “envelope2.doc”; and
 - (2) documents relating to the technical information as stated in Clause 3.2 (b)(ii) should be using “technical.doc” as the file name or other file name except “envelope2.doc”.
- (b) Tenderers must complete (if applicable) and submit the following documents together with all necessary information including documentary evidence in its Tender in **triplicate**:-
- (i) **Price Information** shall comprise the following:
 - (1) Contract Schedule 1 – Rates for Provision of Services, Wages and Working Hours;
 - (ii) **Technical Information** shall comprise the following:
 - (1) “Offer to be Bound”;
 - (2) Contract Schedule 2 – Background and Experience of Tenderer’s Employee and Execution Plan;
 - (3) Contract Schedule 3 – Information and Status of Tenderer;
 - (4) Contract Schedule 4 – Statement of Past Convictions and Authorisation;
 - (5) Contract Schedule 5 – Non-collusive Tendering Certificate;
 - (6) the information and documents referred to in Clause 4.2, if applicable;
 - (7) the information and documents referred to in Clause 19.2;
 - (8) documentary proof of the Tenderer’s claim of experience as requested in Clause 4.5 of Annex A;
 - (9) a certified true copy of the valid Business Registration Certificate of the Tenderer as requested in Contract Schedule 3;
 - (10) a certified true copy of the Certificate of Incorporation or the latest Certificate of Change of Name (if any) or its equivalent (if the Tenderer is incorporated outside Hong Kong) of the Tenderer; and
 - (11) a certified true copy of the relevant document (e.g. written authorisation for an authorised person of a sole proprietor, a partner of a partnership, or the board resolutions or minutes for the director of a body corporate) showing that the authorised person, partner or director (as the case may be) who signs the Offer to be Bound has the authority to sign it for and on behalf of the Tenderer.

- (c) Any failure to complete or submit the documents and/or information in a form or manner required under Clause 3.2(b) may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. However, a Tenderer should note that **its Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to provide:**
- (i) a duly signed “Offer to be Bound” (for Paper-based Tendering);
 - (ii) the box signifying the Tenderer’s agreement with “Offer to be Bound” have been checked (for Electronic Tendering);
 - (iii) a Contract Schedule 1 with the price information in Sections 1 and 2 of the Price Schedule duly completed; and
 - (iv) an Execution Plan in Section 5 of Contract Schedule 2.
- (d) The Tenderer should note that the e-Tender Box only accepts the use of the types of digital certificates specified in the e-Tender Box for submission of Tenders and must be duly submitted by the Authorised User of the digital certificate used by the Tenderer to submit its Tender.
- (e) If any attachment to a Tender submitted via the e-Tender Box:
- (i) does not comply with the terms and conditions of use of the PCMS and the e-Tender Box;
 - (ii) is found to be contaminated with Virus; or
 - (iii) is corrupted or otherwise not readable or printable into readable text by the Government,
- and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 3.2(c)(ii), 3.2(c)(iii) or 3.2(c)(iv) by the Tender Closing Date, the Tender will not be considered further and its Tender will be notified of such.
- (f) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of the Tenderer’s digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.
- (g) A Tender will not be considered further if the digital certificate used by a Tenderer for submission of Tender via the e-Tender Box is found invalid (i.e. expired, revoked, or it is not a digital certificate recognized in the e-Tender Box for submission of Tenders) upon verification.

3.3 Prices

- (a) A Tenderer must quote all the prices requested for in the Tender Documents in Hong Kong dollars. Such prices must be net prices allowing for all discounts

except the payment discount to be quoted in Part C of Contract Schedule 1. The prices must cover all expenses incidental to the due and proper performance of the Contract by the Contractor. Under no circumstances will the Government compensate the Contractor for any loss incurred in the fluctuation of the currency in which the prices are quoted.

- (b) A Tenderer must quote fixed prices which must remain valid for the whole Contract Period. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- (c) A Tenderer should make sure that all prices quoted in its Tender are accurate before it submits the Tender. The Tenderer will be bound by the Tender prices quoted in its Tender if the Tender is accepted by the Government. Under no circumstances will the Government be obliged to accept any request for price adjustment on any ground (including any mistake made in prices quoted).
- (d) Prices quoted by a Tenderer must only be shown in the Price Schedule.
- (e) Payment to a successful Tenderer from a place outside Hong Kong will be made by telegraphic transfer. A Tenderer from a place outside Hong Kong is therefore required to provide the banking details in Contract Schedule 3.

3.4 Tenders to Remain Open

- (a) A Tender once submitted by a Tenderer will be binding on the Tenderer.
- (b) A Tender must remain valid and open for acceptance for not less than 120 days after the Tender Closing Date.
- (c) If a Tenderer does not state in its Tender the period for which the Tender is to remain valid and open for acceptance, the Tender Validity Period of that Tender will be 120 days after the Tender Closing Date.
- (d) If a Tenderer offers in its Tender a period that is shorter than 120 days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with Clause 3.4(b) within 5 working days or such other period as specified by the Government without any other change to the Tender (except any change made in response to any clarification by the Government pursuant to Clause 3.7). If the Tenderer fails to confirm compliance with Clause 3.4(b) within the specified deadline or, despite confirming compliance therewith, introduces any change to the Tender not in response to any clarification by the Government pursuant to Clause 3.7, its Tender will not be considered further.

3.5 Tender Closing Date

- (a) For paper-based tendering, a Tender must be deposited in the tender box as specified in the Tender Form before the Tender Closing Date. **Late Tenders will not be considered.**
- (b) For Electronic Tendering, transmission of a Tender through the e-Tender Box

must be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Date. Save as otherwise provided for in the Tender Documents, a Tender will **not** be considered if the relevant proposal, document or information as described in Clause 3.2(c)(ii), 3.2(c)(iii) or 3.2(c)(iv) is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Date.

- (c) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted or a Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any duration between 0900 and 1200 hours on the date and time specified in the “LODGING OF TENDER” section of the Tender Form, the Tender Closing Date referred to in the Tender Form and at the e-Tender Box will be extended to 1200 hours on the following working day on which no Tropical Cyclone Warning Signal No. 8 or above is hoisted nor a Black Rainstorm Warning Signal is in force for any duration between 0900 and 1200 hours.
- (d) In case of blockage of the public access to the location of the tender box at any time between 0900 and 1200 hours on the date and time specified in the “LODGING OF TENDER” section of the Tender Form, the Government will announce extension of the Tender Closing Date until further notice. Following removal of the blockage, the Government will announce the extended closing time as soon as practicable. The above announcements will be made via press release on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

3.6 Cancellation of Tender

Without prejudice to the Government’s right to cancel this Invitation to Tender at its absolute discretion or for public interest reasons, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming Tender and reserves the right to cancel this Invitation to Tender.

3.7 Request for Information

- (a) If the Government considers that clarification in relation to any Tender is necessary, or a document or a piece of information, other than the document or information set out in Clause 3.7(b), is missing from any Tender, it may request the Tenderer to make the necessary clarification, or submit the required document or information. Each Tenderer must thereafter within 5 working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A Tender will not be considered further if complete information or document is not provided by the deadline specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the Tender further or may proceed to evaluate the Tender on an “as is” basis.
- (b) The document and information not covered by Clause 3.7(a) are:

- (i) in case of Paper-based Tendering, a duly signed “Offer to be Bound”;
 - (ii) a Contract Schedule 1 with the price information in Sections 1 and 2 of the Price Schedule duly completed; and
 - (iii) an Execution Plan in Section 5 of Contract Schedule 2.
- (c) The Government will not consider any clarification or information submitted by a Tenderer (whether or not submitted at the request of the Government) if the Government considers that such clarification or information would alter the Tenderer’s Tender in substance or give the Tenderer an advantage over other Tenderers.

3.8 Tenderer’s Commitment

All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate. The Government reserves the right not to consider a Tender that directly or indirectly attempts to preclude or limit the effect of this Sub-clause.

3.9 Documents of Unsuccessful Tenderers

The Government may destroy all documents submitted by unsuccessful Tenderers 3 years after the Contract has been constituted under Clause 8.

3.10 Consent to Disclosure

- (a) The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer, particulars of the Services to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer and the Estimated Contract Price.
- (b) Nothing in Clause 3.10 will prejudice the Government’s power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 3.10) if the disclosure is made under any one of the following circumstances:
- (i) 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, contractors and consultants);
 - (ii) the disclosure of any information already known to the recipient;
 - (iii) the disclosure of any information which is public knowledge;
 - (iv) 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
 - (v) without prejudice to the power of the Government under Clause 3.10(a), to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

3.11 Personal Data Provided

- (a) All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from the Invitation to Tender).
- (b) By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 3.11(a) above.
- (c) An individual to whom personal data belongs and a person authorized by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.

3.12 Tender Addenda

The Government may issue addendum to the terms and conditions set out in the Tender Documents before the Tender Closing Date. The addendum will be posted on the Agriculture, Fisheries and Conservation Department website at **www.afcd.gov.hk**. Tenderers are advised to check the said website from time to time for any issue of addendum and the contents thereof.

3.13 Unreasonably Low Price

Without prejudice to the generality of the Terms of Tender, the Government may require a Tenderer who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that it is capable of carrying out and completing the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government's satisfaction.

4. **Tenderer's Background, Experience, Information and Status**

- 4.1 Tenderers must complete and submit Contract Schedule 2 on background and relevant experience of its tenderer's employee in providing the Services as well as in implementing its Execution Plan, and Contract Schedule 3 on information and status of tenderers. Without prejudice to the Government's right to seek clarification or missing information under Clause 3.7 above, failure to complete and submit Contract Schedule 2 or Contract Schedule 3 may render the Tender invalid.
- 4.2 If a Tenderer is incorporated outside Hong Kong, it must, if required and at its own cost, provide a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation of the Tenderer and acceptable to the Government on the following issues and any other issues as may be required by the Government:
 - (a) the Tenderer is duly incorporated and validly existing under the laws of the place of the Tenderer's incorporation, and that the Tenderer has full power, capacity

and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract;

- (b) the Tenderer has the full power, authority and legal capacity to:
- (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to Clause 8.3, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation and is enforceable against the Tenderer in accordance with its terms;
- (d) the execution, delivery and performance of its Tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation of the Tenderer; and
- (i) it is not necessary under the laws of the place of incorporation of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation in order to enable it to enforce its rights under the Tender Documents and the Contract.

5. **Wages of Farming Staff and Maximum Working Hours for Farming Worker**

- 5.1 A Tenderer must propose the monthly wage payable to its Farming Staff in Section 3 of Part A of Contract Schedule 1. The proposed monthly wage for each **Supervisor** and **Farming Worker** must not be less than the "SMW plus rest day pay rate", i.e. \$9,300 on the basis of 6 working days per week, 8 working hours per

day and 31 calendar days in a month and 8 normal hours of work per day.

- 5.2 The monthly wage payable by the Contractor to each **Supervisor and Farming Worker must not be less than the higher of** (i) the corresponding proposed monthly wage quoted by the Contractor in Contract Schedule 1; and (ii) the “SMW plus rest day pay rate”. (Note A)
- 5.3 If the respective monthly wage for Supervisor and Farming Worker proposed in a Tender is less than the respective SMW as mentioned in Clause 5.1 above, that Tender will be evaluated nevertheless but the proposed wage will be deemed to be not less than the respective SMW for the purpose of tender evaluation.
- 5.4 All Farming Workers shall not work for more than ten (10) hours in any twenty-four hour (24) period unless with the prior written consent of the Government Representative. The Contractor shall not alter the schedule of such break without the prior written consent of the Government Representative. For the avoidance of doubt, it is the Contractor’s responsibility to make necessary arrangement for his staff to take meal breaks by mutual agreement between the Contractor and his staff.
- 5.5 The Contractor shall promptly pay wages and salaries to the Contractor’s Employees, failure to do so will entitle the Government to terminate the Contract.
- 5.6 The Contractor shall use autopay for payment of wages to the Contractor’s Employees (payment by cheque is only allowed upon termination of employment contract and is made at the request of the workers concerned). The Contractor shall submit the autopay record on a half-yearly basis to the Government Representative for inspection and record purposes. A breach by the Contractor of its obligations under this Clause shall be a breach of a fundamental term of the Contract and shall entitle the Government to terminate the Contract pursuant to Clause 15 of Conditions of Contract.

Explanatory notes for the “SMW plus rest day pay rate”

Note A:

- (i) The “SMW plus rest day pay rate” on the basis of 31 days (27 working days plus 4 paid rest days) per month, 8 normal hours of work per day and current minimum hourly wage rate (**HK\$37.5**) is **HK\$9,300** per month.
- (ii) The SMW may be adjusted from time to time. Under no circumstances will the Government accept any request for price adjustment on such grounds. A Tenderer should take into consideration the adjustment of SMW and its impact on the monthly wage and price quotation. The Government will not provide any “top-up” arrangement in case of any adjustment of SMW.
- (iii) The “SMW plus rest day pay rate” on the basis of work patterns other than that in Note A(i) above should be derived with reference to Example 1 on “Determining the monthly wages” in the “Guidance Notes on Signing of Standard Employment Contract for Employees of Contractors of Government Service Contracts” at the end of the Standard Employment Contract.

6. Essential and Other Requirements

Tenderer must meet all of the essential and other requirements in Annex A. **Failure to comply with any of the essential requirements in Annex A will render the Tender invalid and the Tender will not be considered further.**

7. Criteria of Assessment

- 7.1 All tenders will initially be checked against the documents and information required in Clause 3.2(c) and essential requirements stated in Annex A. Tenders that fail to submit complete set of documents and information nor meet all of the essential requirements will not be further considered. Tenders that has met all requirements stated in Annex A will be evaluated according to the marking scheme specified in Annex B. A technical to price weighting of 70:30 will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. Tenders with the highest combined score will normally be selected to provide the Services.
- 7.2 A Tenderer is requested to indicate in the space provided in Part C – Payment Discounts of Contract Schedule 1 what discounts it will allow on the Monthly Rates if payment is made in full within a specified period of time. Any payment discount offered by a Tenderer will not be taken into consideration in the tender price assessment, except when there is more than one Tenderer fully capable of undertaking the Contract and offering the same highest combined score.
- 7.3 Notwithstanding anything herein to the contrary, the Government is not bound to accept the Tender with the lowest price offer or the Tender with the highest combined score or any Tender and reserves the right to accept any Tender at any time within the Tender Validity Period.

8. Award of Contract

- 8.1 The Government will issue to the successful Tenderer by either post or facsimile transmission a letter notifying conditional acceptance of offer (“the Letter”), subject to the following conditions precedent:
- (a) delivery of the Contract Deposit to the Government pursuant to Clause 10 ;
 - (b) the selected Tenderer, and where applicable the shareholder(s), not having been debarred from tendering for this Contract as at the date of the Letter due to:
 - (i) conviction of any offence under the relevant Ordinances as specified in Clause 1.1 of Annex A; or
 - (ii) accumulation of an aggregate of 3 or more Demerit Points from 1 or more government departments as mentioned in Clauses 2.1 to 2.4 of Annex A;
 - (c) The Government having completed its check to confirm that the Tenderer is not so debarred under sub-clause (b) above; and
 - (d) other conditions as the Government may specify therein.

- 8.2 Upon issuance of the Letter, unless the expiry date of the Tender Validity Period of the Tender of the successful Tenderer is a date which is 14 days or more after the date of the Letter, such expiry date must be automatically extended to the date which is 14 days from the date of the Letter.
- 8.3 Upon and subject to the successful Tenderer having duly complied with Clause 8.1 hereof, the Government will issue the Memorandum of Acceptance notifying fulfillment of the conditions precedent and the Contract is deemed to have been formed on the date of the issuance of the Letter.
- 8.4 If the conditions precedent set out in Clause 8.1 above are not satisfied, the Government will be at liberty to award the Contract to another Tenderer, cancel this Invitation to Tender with or without conducting a fresh tender exercise or take such appropriate action as the Government deems fit. Without prejudice to the foregoing, if the successful Tenderer fails to deliver the Contract Deposit to the Government pursuant to Clause 10, such failure may prejudice its future standing as a Government contractor or service provider.
- 8.5 Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.

9. **Financial Assessment**

- 9.1 If the Estimated Contract Price of a Tender exceeds HK\$15 million, the Tenderer has to demonstrate its financial capability before it can be considered for the award of the Contract. For this purpose, the Tenderer is required to submit the following documents for financial vetting upon request by the Government:
- (a) Originals (or copies certified by its auditors) of the accounts of the Tenderer audited by a certified accountant or a public accountant registered under the Professional Accountants Ordinance (Cap. 50) for the 3 years prior to the Tender Closing Date. The audited accounts must comply with the following requirements:
- (i) The audited accounts must be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
 - (ii) The latest audited accounts must be for the period ending no more than 18 months before the Tender Submission Date.
 - (iii) The audited accounts (as the case may be) must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income statement), statement of changes in equity, statement of cash flows and notes to the accounts.
 - (iv) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by its local law.
 - (v) If any such accounts are in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided.
- (b) Management accounts with a period ending not more than 3 months before the Tender Submission Date if this has not been covered by the latest audited accounts.

The accounts must be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (i) the sole proprietor, partners or directors of the Tenderer, or (ii) certified public accountants or other accountants acceptable to the Government;

- (c) Projected statement of profit or loss and other comprehensive income and statements of cash flows of the Contract for each contract year and the pre-operating period (if applicable) and, if possible, those of the company during the Contract Period, setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the sources of finance, and other particulars showing how the Tenderer will deal with the Contract. The projected accounts and statements must comply with the following requirements:
- (i) They should be certified by the company's chief executive.
 - (ii) The assumptions used in preparing the projections should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided.
 - (iii) The assumptions by the Government included in the Tender Documents must be reflected in the Tenderer's projections.
- (d) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/ unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
- (e) Copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable; and
- (f) Written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable.

9.2 Tenderers must upon the request in writing by the Government provide the documents mentioned in Clause 9.1 and any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract within the time stipulated in the written request by the Government.

10. **Contract Deposit**

- 10.1 The successful Tenderer must pay the Contract Deposit either by cheque, cashier's order or in the form of a banker's guarantee. Each Tenderer should state clearly in Part B of Contract Schedule 1 the method of providing the Contract Deposit. If the successful Tenderer fails to do so, it will be regarded to have undertaken to pay the Contract Deposit to the Government by cheque or cashier's order.
- 10.2 If the Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$1.4 million but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer must deposit with the Government, within 21 days from the date of the Letter, a Contract Deposit equivalent to 2% of the Estimated Contract Price.

- 10.3 If the Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer must deposit with the Government, within 21 days from the date of the Letter, a Contract Deposit equivalent to 2% (if it passes the financial vetting) or 5% (if it fails the financial vetting or where the financial information available is inadequate for a meaningful assessment of the Tenderer's financial capability) of the Estimated Contract Price.
- 10.4 If the successful Tenderer elects to pay the Contract Deposit by way of a banker's guarantee, the banker's guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the Government;
 - (b) unless otherwise agreed by the Government, it must be on the terms set out at Annex D; and
 - (c) the banker's guarantee must come into effect on the date of commencement of the Contract Period unless another date is specified in the Letter.
- 10.5 The Contract Deposit, whether paid by way of cheque, cashier's order or banker's guarantee will be returned to the Contractor or released in accordance with the Contract.

11. **Contractors' Performance Monitoring**

If a Tenderer is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other tenders/quotations exercises are evaluated.

12. **New Information**

A Tenderer should inform the Government in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Documents. The Government reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

13. **Costs of Tender**

A Tenderer must submit its Tender at its own cost and expense. The Government will not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the Government, (b) site visits or surveys made by the Tenderer, and (c) presenting the Tenderer's equipment to the Government Representative during the site visits, whether before or after the Tender Closing Date.

14. **Warning against Bribery**

14.1 The offer of an advantage to any Government officer with a view to influencing the

award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.

- 14.2 The successful Tenderer must inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer must also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

15. **Site Visit cum Tender Briefing**

A site visit cum tender briefing will be held at 2 p.m. on 3rd August 2021 (Tuesday). Tenderers are advised to attend the site visit in order to determine the scale and costs of the Services to be provided. Interested parties who wish to attend are requested to complete the reply slip at Annex C and fax it to the Director of Agriculture, Fisheries and Conservation (Attn: Nature Park Officer (Planning and Administration)) at fax number 2631 9162 or email address of ho_yin_chow@afcd.gov.hk **on or before 3 p.m. (Hong Kong time) on 2nd August 2021 (Monday).** Each Tenderer can register not more than 2 persons for the site visit.

16. **Enquiry**

- 16.1 Any enquiries from the Tenderer concerning the Tender Documents should be in writing and reach the address or fax number below at least 5 working days prior to the Tender Closing Date.

the Director of Agriculture, Fisheries and Conservation
(Attn : Nature Park Officer (Planning and Administration))
Agriculture, Fisheries and Conservation Department
5/F, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Cheung Sha Wan, Kowloon
Kong
Fax: 2631 9162
Email: ho_yin_chow@afcd.gov.hk

- 16.2 Unless otherwise expressly stated by the Government in writing, any response by the Government (whether oral or written) to any enquiry by a prospective Tenderer is for information only. No such response will constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied).
- 16.3 After lodging a Tender with the Government, the Tenderer should not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents.
- 16.4 All communications given or made by the Government or a Tenderer in relation to

the Invitation to Tender must be in writing and sent or delivered to the other party in the manner provided in Clause 26 of the Conditions of Contract, save that the Government may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. A Tenderer should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

17. **Warranty against Collusion**

- 17.1 By submitting a Tender, a Tenderer is regarded to have represented and warranted to the Government that in relation to the Invitation to Tender:
- (a) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its Tender;
 - (b) it has not fixed and will not fix the amount of any price submitted in its Tender by arrangement with any person;
 - (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Tender; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.
- 17.2 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 17.1, the Government will be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Tenderer's Tender;
 - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- 17.3 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 17.1.
- 17.4 A breach by a Tenderer of any of the representations and/or warranties in Clause 17.1 may prejudice its future standing as a Government contractor or service provider.
- 17.5 Clause 17.1 has no application to a Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.

- 17.6 The rights of the Government under Clauses 17.2 to 17.4 are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.
- 17.7 Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance. The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the Form set out in Contract Schedule 5).

18. **Negotiations**

The Government reserves the right to negotiate with any Tenderer the terms of the Tenderer's Tender and conditions of the Contract.

19. **Government Discretion**

- 19.1 Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Date or an order is made or a resolution is passed for the winding up of the Tenderer;
 - (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
 - (c) a claim is made alleging or the Government has grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
 - (d) the Tenderer, who were in anytime within thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, has made significant or persistent breaches or deficiencies in the performance of any substantive requirement or obligation under any Government or other contracts;
 - (e) the Tenderer has been convicted of a serious crime or offence;
 - (f) the Government has grounds to believe that the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer is guilty of professional misconduct that adversely reflect on the commercial integrity of the Tenderer during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award;

- (g) the Tenderer has failed to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; or
 - (h) the Tenderer has attempted to limit or avoid its responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer/Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.
- 19.2 For the purposes of Clause 19.1, each Tenderer must provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:
- (a) details of any petition or proceeding mentioned in Clause 19.1(a);
 - (b) details of conviction of the Tenderer in Hong Kong or any overseas jurisdictions in respect of (i) serious offences; and (ii) other crimes or offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of award;
 - (c) details of all infringement claims as mentioned in Clause 19.1(c); and
 - (d) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in Clause 19.1(d).

If none of the events as mentioned in Clauses 19.2(a) to 19.2(d) above has ever occurred within the applicable period as mentioned above, the Tenderer must provide a statement to that effect at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 19.3 below.

- 19.3 In addition to the information mentioned in Clause 19.2, the Government reserves the right to request from a Tenderer and take into account all information about:
- (a) the Tenderer itself;
 - (b) any of the directors or management staff of the Tenderer who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer; and
 - (c) any of the related persons of the Tenderer and of any directors and management staff of the related persons who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer.

to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 19.1.

- 19.4 If the Tenderer fails to comply with the request made by the Government pursuant to Clause 19.3 above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer.
- 19.5 In providing the information required under Clauses 19.2 and 19.3 above, the Tenderer may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract.
- 19.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly owns 50 percent or more of the issued share capital of the Tenderer ("majority shareholder");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder of the Tenderer; and
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly owns 50 percent or more of its issued share capital or controls the composition of its board of directors.

The expressions "holding company" and "subsidiary" have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

- 19.7 If the Tenderer is a sole proprietor or partnership, the expression "related person" includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child will be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; and
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns 50 percent or more of its issued share capital or controls the composition of its board of directors.
- 19.8 References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at the time of the incident referred to in Clauses 19.1(d), 19.1(e), 19.1(f), 19.1(g) or Clause 19.2(b).

20. Complaints about Tendering Process or Contract Award

A Review Body on Bid Challenges under the WTO GPA has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA. The relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department. They may also be sent to the interested parties upon request to the Secretariat of the Review Body. In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may, within 10 working days after it knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless the Tenderer is encouraged to seek resolution of its complaint in consultation with the procuring department before lodging a complaint to the Review Body. In such instances, the procuring department will accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body. The Review Body may receive and consider a late challenge but a challenge will not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known to the Tenderer.

21. **Environmental-friendly Measures**

- 21.1 Tenderers are requested to minimize the impact of their activities on the environment.
- 21.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:
- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
 - (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
 - (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

Annex A**Essential and Other Requirements****1. Non-Conviction**

1.1 A Tenderer who is convicted of an offence under the relevant sections of the following Ordinances (such offences are collectively referred to as “Relevant Offences”) is debarred from tendering for this Contract for a period of 5 years (“debarment period”) from the date of the Tenderer’s last conviction or such shorter period as may be determined by the Central Tender Board under the review mechanism referred to in Clause 1.4 below:

- (a) the Employment Ordinance (Cap.57) or the Employees’ Compensation Ordinance (Cap.282), convictions of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);
- (b) Section 17I(1) of the Immigration Ordinance (Cap. 115);
- (c) Section 89 of the Criminal Procedure Ordinance (Cap. 221) or Section 41 of the Immigration Ordinance (Cap. 115) (aiding and abetting another person to breach his condition of stay);
- (d) Section 38A(4) of the Immigration Ordinance (Cap. 115);
- (e) Sections 7, 7A, 7AA, 43B(3A), 43BA(5) or 43E of the Mandatory Provident Funds Schemes Ordinance (Cap. 485); or
- (f) the Occupational Safety and Health Ordinance (Cap. 509) or the Factories and Industrial Undertakings Ordinance (Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

(collectively “relevant Ordinances”).

1.2 A Tenderer must not have been debarred from tendering for this Contract as at the Tender Closing Date due to its having accumulated three or more Demerit Points over a rolling period of 36 months. If a Tenderer has accumulated three or more Demerit Points over a rolling period of 36 months, it shall be debarred from tendering for this Contract for a period of five years from the date on which the third Demerit Point was obtained. Subject to Clause 1.4, any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.

1.3 For the avoidance of doubt,

- (a) for the purpose of debarment, a conviction will count if the Tenderer was convicted of an offence under the relevant Ordinances in relation to any Government or private contract and irrespective of the type of services offered under that contract. Convictions will be counted by the number of summonses convicted.
- (b) a conviction under appeal or review will still be counted as a conviction for the purpose of debarment unless it has been quashed by the court before such evaluation is

conducted.

- (c) if the Tenderer is a partnership or a company, the Tenderer would be treated as having been convicted of a Relevant Offence if any partner of the partnership or any shareholder of the company has been convicted of a Relevant Offence during the five-year period immediately preceding the Tender Closing Date.
- (d) notwithstanding Clause 1.1, in respect of the following offences of the Relevant Offences, only convictions obtained on or after 1 April 2019 will count:
 - i. Sections 7AA, 43B(3A) and 43BA(5) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
 - ii. any offence under the Occupational Safety and Health Ordinance (Cap. 509) or the Factories and Industrial Undertakings Ordinance (Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).
- (e) Demerit Points means the Demerit Points defined in the Interpretation. Demerit Points under appeal will still be counted for the purpose of debarment; and
- (f) where applicable, the Demerit Points issued to its partners if the Tenderer is a partnership or its shareholders if it is a company shall be counted.

1.4 The debarment period applicable to the relevant Tenderer stands until and unless a revised debarment period is determined by the Central Tender Board. The revised debarment period will apply to this Invitation to Tender if it is determined by the Central Tender Board under the established review mechanism before the Tender Closing Date. However, the revised debarment period will become invalid as soon as the Tenderer is convicted of an offence under the relevant Ordinances subsequent to the Central Tender Board's determination. For details of the review mechanism, please visit the homepage of the Treasury Branch of the Financial Services and the Treasury Bureau at http://www.fstb.gov.hk/tb/en/docs/review-mechanism_e.pdf.

1.5 A Tenderer must complete and submit Contract Schedule 4 as part of its Tender stating that it and where applicable, each of its Participants or Shareholders:

- (a) have not been convicted of any offence; or
- (b) have been convicted of any offence (together with particulars of the conviction, including without limitation, dates of all such convictions),

under the relevant Ordinances during the 5-year period immediately preceding the Tender Closing Date. Where any conviction is under appeal or review, Contract Schedule 4 must also specify the date when the appeal or review is expected to be heard.

1.6 Contract Schedule 4 must be certified to be true and correct by an authorized person of the Tenderer who is duly authorised to submit the Tender for and on behalf of the Tenderer. Without prejudice to any other rights which the Government has or may have, the Government will not consider the Tender if Contract Schedule 4 is found to be false or untrue about any conviction of an offence under the relevant Ordinances. Where the Tenderer has been

awarded the Contract, the Government may, without prejudice to any other rights which it has or may have, forthwith terminate the Contract.

- 1.7 The Tenderer must consent and must procure its Participants or Shareholders to consent to and authorise (i) the Government Representative to obtain from any Government bureaux/departments documents or information in relation to any conviction of an offence under the relevant Ordinances; and (ii) the relevant Government bureaux/departments to release and make available to the Government Representative all documents or information in relation to such conviction.

2. *Demerit Point System*

- 2.1 A Tenderer's past performance will be assessed with reference to compliance with its contractual obligations in respect of non-skilled workers employed for or in connection with the performance of the Tenderer's contracts with the Government (except temporary relief worker whose period of employment does not exceed 7 days) on the following matters:

- (a) wages;
- (b) daily maximum working hours;
- (c) the requirements on signing Standard Employment Contracts;
- (d) making wage payment by means of autopay (payment by cheque is only allowed upon termination of employment contract and upon the request of the worker concerned);
- (e) statutory holiday pay payable to the non-skilled workers having been employed under a continuous contract for not less than one month;
- (f) wages at a rate of at least 150% for the non-skilled workers who are required to work when the typhoon signal no. 8 or above is hoisted.

- 2.2 A default notice would be issued to the Tenderer concerned for each breach of those contractual obligations set out in Clause 2.1 above. Each default notice would attract one Demerit Point.

- 2.3 If a Tenderer has accumulated, over a continuous period of 36 months, an aggregate of 3 or more Demerit Points on or after 1 May 2006 from one or more Government bureaux / departments for its non-compliance with those contractual obligations as set out in Clause 2.1 above, the Tenderer is debarred from tendering for this Contract for a period of 5 years from the date the 3rd Demerit Point is obtained. Any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.

- 2.4 Demerit Points under appeal will still be counted for the purpose of debarment until it is overruled by the appeal panel set up by the procuring Government department concerned.

3. *Joint Venture*

- 3.1 Tender submitted by a joint venture (either incorporated or unincorporated) will not be considered.

4. Requirements on the Proposed Contract Manager and the Proposed Supervisor

- 4.1 It is an essential requirement that a Tenderer must propose a Contract Manager possessing the following qualification and experience as at the Tender Closing Date:
- (a) a postgraduate qualification in ecology, environmental science, biology, geography or related disciplines issued by a registered post-secondary institution; and
 - (b) an aggregate of not less than five (5) years' full-time working experience in wetland habitat management in the twelve (12)-year period immediately preceding the Tender Closing Date; and
 - (c) an aggregate of not less than five (5) years' full-time working experience at managerial or supervisory level in the twelve (12)-year period immediately preceding the Tender Closing Date.
- 4.2 It is an essential requirement that a Tenderer must propose a supervisor possessing the following qualification and experience as at the Tender Closing Date:
- (a) an undergraduate degree in ecology, environmental science, biology, geography or related disciplines issued by a registered post-secondary institution; and
 - (b) an aggregate of not less than two (2) years' full-time working experience in wetland habitat management in the twelve (12)-year period immediately preceding the Tender Closing Date; and
 - (c) an aggregate of not less than two (2) years' full-time working experience at supervisory level in the twelve (12)-year period immediately preceding the Tender Closing Date.
- 4.3 **Any Tenderer who does not satisfy any of the essential requirements set out in Clauses 4.1 and 4.2 above will be disqualified and its Tender will not be further considered.**
- 4.4 A Tenderer must submit documentary proof of its compliance to the above qualification and experience specified in Clauses 4.1 and 4.2. The Government is not bound to count any experience claimed by a Tenderer if documentary proof is not provided.

Annex B

**Marking Scheme for
the Provision of Habitat Management Service for
the Biodiversity Zone of the Long Valley Nature Park**

1 The Marking Scheme

- 1.1 The Government will use a marking scheme in assessing Tenders which have met all “Essential Requirements” stipulated in Annex A. A technical to price weighting of 70:30 will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. All Tenders will be assessed according to the marking scheme and assessment criteria in Sections 2 and 3. The Tender with the highest combined score will normally be recommended for acceptance.

2. Technical Assessment

- 2.1 The maximum total technical marks are 100 and are divided into nine (9) Assessment Criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. Passing marks of 5 is set for Assessment Criteria 1, which is 20% of the maximum mark of the Assessment Criteria. **Any Tenders failing to attain the passing mark under Assessment Criteria 1 of Section A will not be considered further.** The Tender which has passed the technical assessment and attained the highest technical mark will be awarded a weighted technical score of 70, while the weighted technical mark for other Tenders which have passed the technical assessment will be calculated by the formula in Clause 2.5.
- 2.2 The submission for the Execution Plan, excluding related annexes and documentary proof, shall not be more than one hundred (100) pages in A4 size paper for text (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit and/or not complying with the specified requirements on margin and/or font size will be considered in the tender evaluation but marks will be deducted from the total technical marks as follows:

Each excessive page	0.5 marks per page (subject to a maximum of 5 marks)
Non-compliance with the margin requirement	0.5 marks
Non-compliance with the font size requirement	0.5 marks

- 2.3 The submission for Sections B, C and D of the marking scheme shall be in separated pages from that of Section A of the marking scheme and in A4 size paper for text (with margin not less than 25 mm and character font size not less than 12). The submission for Sections B, C and D of the marking scheme shall include but not limited to the documentary proof and statement for fulfilling the Services requirement. The pages submitted for Sections B, C and D of the marking scheme would not be accumulated to the limitation of pages as specified at Clause 2.2 above.

2.4 The Assessment Criteria and respective marks/ standard scores are set out below:

Assessment Criteria (See Note 1)	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Mark Scored (M x S)	Passing Mark
			5	4	3	2	1	0		
Section (A) - Execution Plan										
(1) Operation Plan (See Notes 2 and 5)	25	5								5
(2) Resource and Supervision Plan (See Notes 3 and 5)	10	2								–
(3) Contingency and Transition Plan (See Notes 4 and 5)	5	1								–
(4) Innovative Suggestion										
(a) Type I – directly relevant to the Services (See Note 6)	6	2								–
(b) Type II – not directly relevant to the Services but can bring positive values or benefits to the Government or public (See Note 7)	6	2								–
Sub-total for Section (A)	52									–
Section (B) - Experience and Qualification										
(5) Experience of the Proposed Contract Manager (See Note 8)	6	2								–
(6) Qualification and Experience of the Proposed Supervisors (See Note 9)	9	3								–
Sub-total for Section (B)	15									–
Section (C) - Employment of Long Valley farmers										
(7) Employment of Long Valley farmers (See Note 10)	6	2								–
Sub-total for Section (C)	6									–
Section (D) - Labour Benefit										
(8) Proposed monthly wages for Farming Workers (See Note 11)	25	N.A.								–
(9) Proposed daily maximum working hours for Farming Workers (See Note 12)	2	2								–
Sub-total for Section (D)	27									–
Total Technical Mark	100									–

2.5 A Tender which has passed technical assessment will be considered as a “conforming tender”. A maximum weighted technical score of 70 will be allocated to the conforming tender with the highest total technical mark, while the weighted technical score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Technical Score} = 70 \times \frac{\text{Total technical mark of the conforming tender being assessed}}{\text{The highest total technical mark among the conforming tenders}}$$

[Note: The weighted technical score of each Tender will be rounded to the nearest 2 decimal places. Figures with the value at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the value at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the value at the second decimal place.]

Explanatory Notes for Technical Assessment

Note 1 : for Assessment Criteria (1) to (9)

Tenderer's proposal, experience and qualification will be rated as follows:

For Assessment Criteria (1), (2) and (3)

Standard score of 5, 4, 3, 2, 1 or 0 will be awarded.

For Assessment Criteria (4)(a), (4)(b), (5), (6) and (7)

Standard score of 3, 2, 1, or 0 will be awarded.

For Assessment Criterion (8)

See Note 11 below.

For Assessment Criterion (9)

Standard score of 1 or 0 will be awarded.

Note 2: for Assessment Criterion (1) – Operation Plan

The Operation Plan shall cover the following items:

- (a) the strategy and methodology of the overall habitat management in the Contract Venue in meeting the requirements of the Services;
- (b) the strategy and methodology on establishment and maintenance of paddy fields in the Contract Venue, including but not limited to preparation of crops and fields, planting schedule and rotation of fields, in meeting the requirements of the Services;

- (c) the strategy and methodology on establishment and maintenance of wet habitats other than paddy fields in the Contract Venue, including but not limited to selection of crops, preparation of crops and fields, planting schedule and rotation of fields and crops, in meeting the requirements of the Services;
- (d) the strategy and methodology on establishment and maintenance of dry habitats in the Contract Venue, including but not limited to selection of crops, preparation of crops and fields, planting schedule and rotation of fields and crops, in meeting the requirements of the Services;
- (e) the strategy and methodology on establishment and maintenance of shallow water habitat (Type 2) of the LVNP in meeting the requirements of the Services;
- (f) the strategy and methodology on hydrological control of the dry and wet habitats under this Services, including but not limited to provision of irrigation water, water level control and monitoring and drainage;
- (g) the strategy and methodology on controlling weeds, diseases, pests and invasive alien species in the dry and wet habitats under this Services; and
- (h) the strategy and methodology on fertilisation and handling of plant debris and unwanted plant materials.

Note 3: for Assessment Criterion (2) – Resource and Supervision Plan

The Resource and Supervision Plan shall cover the following items:

- (a) an organisation chart showing the off-site management/ supporting staff and on-site supervisory/ frontline staff for this Contract, including the allocation of duties and responsibilities of the proposed workforce, in meeting the requirements of the Services;
- (b) a staff deployment plan, including the number of the Farming Workers required and working hours in different months/ seasons, in meeting the requirements of the Services;
- (c) a training plan, including work safety, eco-friendly farming practices and responses or mitigation measures when encountering wildlife in the fields, for supervisory and frontline staff in meeting the requirements of the Services;
- (d) a resource plan, including the list of equipment and tools and their maintenance, in meeting the requirements of the Services; and
- (e) a recruitment plan, including recruitment of the Farming Workers, deployment of human resources and meeting the requirement of manpower in different seasons and weather, in meeting the requirements of the Services.

Note 4: for Assessment Criterion (3) – Contingency and Transition Plan

The Contingency and Transition Plan shall cover the following items:

- (a) the strategy and methodology on handling contingency or emergency situations, such as prolonged flooding and drought, fire and accident;
- (b) the strategy and methodology on deployment of additional resources and equipment for the Services within a short period of time;
- (c) the mechanism on maintaining close communication with the Government Representative, especially during the contingency or emergency situation; and
- (d) a transition plan, including arrangement and timeframe of (i) recruitment and deployment of human and other resources upon commencement of the Contract; and (ii) handing over of duties and equipment, upon expiry of this Contract.

Note 5: for Assessment Criteria (1), (2) and (3)

- (a) Standard scores will be given to Assessment Criteria (1), (2) and (3) in accordance with the following six-grade approach –
- 5 – The proposed plan is **practical** and with **detailed information** on **all** items as well as **proposals** that could effectively **enhance/ improve** the **quality/ performance of the Services** on **two or above** of the items of the respective plan as required in Notes 2 to 4 above.
 - 4 – The proposed plan is **practical** and with **detailed information** on **all** items as well as **one proposal** that could effectively **enhance/ improve** the **quality/ performance of the Services** on **one** of the items of the respective plan as required in Notes 2 to 4 above.
 - 3 – The proposed plan is **practical** and with **detailed information** on **all** items of the respective plan as required in Notes 2 to 4 above.
 - 2 – The proposed plan is **practical** and with **detailed information** on **over half but not all** of the items and with brief information covering the remaining items of the respective plan as required in Notes 2 to 4 above.
 - 1 – The proposed plan is **practical** and with **detailed information** on **half or less than half** of the items and with brief information covering the remaining items of the respective plan as required in Notes 2 to 4 above.
 - 0 – The proposed plan is **impractical** or **fails** to provide information on **any one** of the items of the respective plan as required in Notes 2 to 4 above.
- (b) The meaning of “over half” of the items of the respective plan as required in Notes 2 to 4 are as follow:

	Operation Plan	Resource and Supervision Plan	Contingency and Transition Plan
Over half (items)	5	3	3

- (c) For the avoidance of doubt, proposal(s) that could effectively enhance/ improve the quality/ performance of the Services to be assessed under Assessment Criteria (1), (2) and (3) will normally not alter the existing or conventional mode of service delivery, e.g. shortening the response time when the level of service fails to meet the requirements set out in the contract, increasing the percentage of time meeting the level of service required in the contract, etc. “Innovative suggestions” to be assessed under Assessment Criteria (4)(a) to (4)(b) are suggestions that are not featured in the existing or conventional mode of service delivery.
- (d) All practical information included in the proposed Execution Plan submitted by the successful Tenderer under Assessment Criteria (1) to (3) shall form part of the Contract to the extent as accepted by the Government.

Note 6: for Assessment Criterion (4)(a) – Type I – Innovative suggestions directly relevant to the Services

- (a) Marks will be given if the proposed innovative suggestions are directly relevant to, effective and practicable in improving the delivery of the Services as compared with the conventional

mode of service delivery adopted by the Government in general.

- (b) Type I innovative suggestions shall cover any of the following items –
- (i) adoption of technology to enhance service delivery in habitat management, e.g. use of automated equipment for water level control;
 - (ii) adoption of technology to monitor the performance of service, e.g. use of drone for monitoring vegetation coverage;
 - (iii) adoption of technology to enhance service delivery in enhancing ecological value of Long Valley, e.g. use of big data for analysing local and regional ecological condition; and
 - (iv) any other benefits which are relevant to habitat management.
- (c) Standard scores will be given in accordance with the following rule:
- 3 – **Three (3) or more practicable** innovative suggestions covering any of the items as required in (b) of this Note above are proposed.
 - 2 – **Two (2) practicable** innovative suggestions covering any of the items as required in (b) of this Note above are proposed.
 - 1 – **One (1) practicable** innovative suggestion covering any of the items as required in (b) of this Note above is proposed.
 - 0 – **No practicable** innovative suggestion covering any of the items as required in (b) of this Note above is proposed.
- (d) Paragraph (b) of Note 5 above is also applicable to this Note.
- (e) Marks will not be given to any innovative suggestion which is related to labour benefit measures, e.g. cash allowance, cash/ coupon bonus/ award and additional leaves, or a Tenderer will neither be capable of nor responsible for implementation.
- (f) An innovative suggestion that scores marks under Type I will not earn marks again under Type II and vice versa. If the Tender Assessment Panel (“TAP”) considers that the same innovative suggestion could earn marks under Types I and II, it will be taken as scoring marks under Type I only. Each innovative suggestion will be counted once, irrespective of the number of improvements/positive values/benefits involved.
- (g) Tenderers shall highlight the proposed innovative suggestions with all of the following details –
- (i) the type (i.e. Type I or Type II) of innovative suggestion which each of them belongs to;
 - (ii) sufficient details on what improvements/ benefits/ positive values to which their proposed innovative suggestions can bring about; and
 - (iii) how they are to be implemented,
- in their submissions to facilitate tender evaluation. If a Tenderer fails to specify item (i) above, it will be deemed as proposed under Type I.

- (h) Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following –
- (i) if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle, etc.: scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
 - (ii) if the suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate and
 - (iii) if the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (i) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports/ certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the TAP to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original tender submissions.
- (j) All practicable innovative suggestions accepted by the Government shall form part of the Contract.

Note 7: for Assessment Criterion (4)(b) – Type II – Innovative suggestions not directly relevant to the Services but can bring positive values or benefits to the Government or public

- (a) Marks will be given if the proposed innovative suggestions, though not directly relevant to the Services, can bring about positive values/benefits to the Government or public at large.
- (b) Type II innovative suggestions shall contribute to any of the following positive values –
- (i) to contribute to the development of Smart City and local area, e.g. social function to the nearby local community;
 - (ii) to enable the managed sites as a test bed to foster research and development opportunities by tertiary institutes, non-governmental organisations, start-ups or young entrepreneurs for sustainable development of the ecologically friendly farming industry;
 - (iii) to promote consumption of fewer resources and reduction of wastes, and make the society more environmental friendly;
 - (iv) to promote ecologically friendly and organic farming practices.

(c) Standard scores will be given in accordance with the following rule:

- 3 – **Three (3) or more practicable** innovative suggestions contributing to any of the positive values as listed in (b) of this Note above are proposed.
- 2 – **Two (2) practicable** innovative suggestions contributing to any of the positive values as listed in (b) of this Note above are proposed.
- 1 – **One (1) practicable** innovative suggestion contributing to any of the positive values as listed in (b) of this Note above is proposed.
- 0 – **No practicable** innovative suggestion contributing to any of the positive values as listed in (b) of this Note above is proposed.

(d) Para. (b) of Note 5 and paras. (e) to (j) of Note 6 above are also applicable to this Note.

Note 8: for Assessment Criterion (5) – Experience of the Proposed Contract Manager

(a) Assessment will be based on the experience, apart from that stated in the essential requirements, possessed by the proposed Contract Manager set out in the Tenderer's Contract Schedule 2. A Tender which fails to propose a Contract Manager meeting the essential requirements by the Tender Closing Date will not be considered further.

(b) Standard scores will be given to Assessment Criterion (5) in accordance with the following rule –

- 3 – The proposed Contract Manager possessing working experience meeting all the following two requirements –
 - (i) have an aggregate of more than nine (9) years' full-time working experience at managerial or supervisory level in the twelve (12)-year period immediately preceding the Tender Closing Date;
 - (ii) have an aggregate of more than nine (9) years' full-time working experience in wetland habitat management in the twelve (12)-year period immediately preceding the Tender Closing Date; and
- 2 – The proposed Contract Manager possessing an aggregate of more than seven (7) to nine (9) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above.
- 1 – The proposed Contract Manager possessing an aggregate of more than five (5) to seven (7) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above.

- 0 – The proposed Contract Manager possessing an aggregate of not less than five (5) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above
- (c) The aggregate of full-time working experience shall refer to that possessed by the **same** proposed Contract Manager.
- (d) (d) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of not less than five (5) years' working experience" is equivalent to have accumulated 1 826 days (i.e. 365 days x 4 + 366 days) of working experience.

Note 9: for Assessment Criterion (6) –Experience of the Proposed Supervisor

- (a) Assessment will be based on the working experience, apart from those stated in the essential requirements, possessed by the proposed Supervisor set out in the Tenderer's Contract Schedule 2. A Tender which fails to propose a Supervisor meeting the essential requirements by the Tender Closing Date will not be considered further.
- (b) Standard scores will be given to Assessment Criterion (6) in accordance with the following rule –
- 3 – The proposed Supervisor possessing working experience meeting the following two requirements –
- (i) have an aggregate of more than six (6) years' full-time working experience at supervisory level in the twelve (12)-year period immediately preceding the Tender Closing Date;
 - (ii) have an aggregate of more than six (6) years' full-time working experience in wetland habitat management in the twelve (12)-year period immediately preceding the Tender Closing Date; and
- 2 – The proposed Supervisor possessing an aggregate of more than four (4) to six (6) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above.
- 1 – The proposed Supervisor possessing an aggregate of more than two (2) to four (4) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above.

- 0 – The proposed Supervisor possessing an aggregate of not less than two (2) years' full-time experience in the twelve (12)-year period immediately preceding the Tender Closing Date for each of the two (2) working experience requirements listed in (i) and (ii) of this Note above.
- (c) The principles of counting experience of a proposed Contract Manager at para. (c) to (d) of Note 8 are applicable to this Note.

Note 10: for Assessment Criterion (7) – Employment of Long Valley Farmers

- (a) Assessment will be based on the proportion of Long Valley Farmers to be employed by the Tenderer against the total number of Farming Workers required in the Contract. Long Valley farmers refer to those who had genuinely farmed at Long Valley¹, i.e. farmers who have registered with the AFCD as farmers at Long Valley, or farmers who can provide supporting document(s) including sales receipt of farm produce, delivery receipt of farming related products/ equipment or rental agreement of farmland that showed the address/ location of the farm at an area that within the boundary of the Long Valley Nature Park.
- (b) Standard scores will be given to Assessment Criterion (7) in accordance with the following rule:
- 3 – 70% to 100% of the Farming Workers to be employed by the Tenderer will be Long Valley farmers.
- 2 – 40% to 69% of the Farming Workers to be employed by the Tenderer will be Long Valley farmers.
- 1 – 20% to 39% of the Farming Workers to be employed by the Tenderer will be Long Valley farmers.
- 0 – Less than 20% of the Farming Workers to be employed by the Tenderer will be Long Valley farmers.
- (c) All suggestions on employment of Long Valley farmers submitted by the successful Tenderer under Assessment Criterion (7) shall form part of the Contract to the extent as accepted by the Government.
- (d) The percentage of Long Valley farmers employed of each Tender will be rounded to the nearest integer. Figures with the value at the first decimal place larger than or equal to 0.5 will be rounded up by adding 1 to the figures and curtailing the first decimal place onward whereas figures with the value at the first decimal place below 0.5 will be rounded down by curtailing the first decimal place onward without changing the value of the integer.

Note 11: for Assessment Criterion (8) – Proposed Monthly Wages for Farming Workers

¹ For reference, there were around 70 Long Valley farmers as at December 2019 according to AFCD's record.

(a) Marks will be given to Assessment Criterion (8) in accordance with the following rule –

Zero mark will be given to wage offered equivalent to the SMW plus paid rest days. Additional marks might be given for wage offered more than the SMW plus paid rest days. Tenderers are advised to refer to the mark calculation method with the following illustrative example. The marks scored of each Tender will be rounded to the nearest 2 decimal places.

The marks scored by each Tender passing criterion 1 of the technical assessment will be determined by the following formula –

W = Proposed monthly wage for Farming Workers of the Tender being considered

H = Highest proposed monthly wage for Farming Workers among all conforming Tenders

S = **\$9,300**, i.e. the prevailing monthly wage rate of SMW plus paid rest days for Farming Workers derived on the basis of 31 days (i.e. eight (8) hours of work per day and 27 working days plus four (4) paid rest days per month)

$$\text{Marks scored} = 25 \times \frac{W - S}{H - S}$$

Illustrative Example for Tender's Proposed
Monthly Wage for Farm workers

$$\begin{aligned} \text{Marks scored} &= 25 \times \frac{10,500 - 9,300}{11,500 - 9,300} \\ &= 13.64 \end{aligned}$$

(b) The marks scored will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under Clause 2.5 above.

Note 12: for Assessment Criterion (9) – Proposed Daily Maximum Working Hours for Farming Workers

(a) Standard scores will be given to Assessment Criterion (9) in accordance with the following rule –

- 1 – Proposed daily maximum working hours for all Farming Workers are **ten (10) hours** excluding meal break (i.e. net total) **or less**.
- 0 – Proposed daily maximum working hours for all Farming Workers are **more than ten (10) hours** excluding meal break (i.e. net total).

(b) If a Tenderer fails to indicate any daily maximum working hours, the Tender will be evaluated but the respective working hours proposed will be deemed to be more than ten (10) hours excluding meal break for the purpose of tender evaluation. If the Tenderer offers the daily maximum working hours of ten (10) hours or less in a subsequent clarification in writing upon request by the Government Representative at any time before the tender exercise is completed,

the Tender will only be assessed on the basis that the daily maximum working hours offered by the Tenderer is more than ten (10) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

3. *Price Assessment*

- 3.1 The price assessment is based on the Estimated Contract Price of a Tender which has passed the technical assessment.
- 3.2 A maximum weighted price score of 30 will be allocated to the conforming Tender with the lowest estimated Contract Price, while the weighted price score for other conforming Tenders will be calculated by the following formula –

$$\text{Weighted Price Score} = 30 \times \frac{\text{The lowest estimated Contract Price among the conforming tenders}}{\text{Estimated Contract Price of the conforming tender being assessed}}$$

[Note: The weighted price score of each Tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under Clause 2.5 above.]

4. *Combined Score*

- 4.1 The combined score of a conforming tender will be determined by the following formula –

$$\text{Combined Score} = \text{Weighted Technical Score} + \text{Weighted Price Score}$$

- 4.2 Normally, the Tender with the highest combined score will be recommended for acceptance subject to the requirement that the Government is satisfied that the recommended tender is fully (including technically, commercially and financially) capable of undertaking the Contract, and that the recommended Tender is the most advantageous to the Government in accordance with the tender provisions. If two or more Tenders obtain the same highest combined score, the Tender which obtains the highest weighted technical score will be recommended for acceptance.

Annex C**Reply Slip for Site Visit cum Tender Briefing**

To : Director of Agriculture, Fisheries and Conservation
 (Attn: Nature Park Officer (Planning and Administration))
 (Fax: 2631 9162)
 (Email: ho_yin_chow@afcd.gov.hk)

Tender Ref : AFCD/NP/01/21
Provision of Habitat Management Services for
the Biodiversity Zone of the Long Valley Nature Park

To facilitate your tender preparation, a site visit to the Long Valley Nature Park cum tender briefing will be arranged as follows. Please complete this reply slip and return by fax (Fax No.: 2631 9162) or email (Email Address: ho_yin_chow@afcd.gov.hk) **on or before 3 p.m. on 2 August 2021 (Monday)**.

Date : 3 August 2021
Time : 2 p.m.
Assembly Place : Conference Room, Hong Kong Wetland Park
Wetland Park Road, Tin Shui Wai,
New Territories

* I will attend the site visit as scheduled.

* I will NOT attend the site visit as scheduled.

* Remarks: Please put a tick (✓) in the box as appropriate

	Full name of Attendee(s)	Post Title
Mr./Mrs./Miss/Dr.	_____	_____
Mr./Mrs./Miss/Dr.	_____	_____
Name of Company	_____	_____
Telephone No.	_____	
Fax No.	_____	

Annex D**Form of Banker's Guarantee for the Performance of a Contract**

THIS GUARANTEE is made on the day of
 BETWEEN
 of, a bank within the meaning of the Banking Ordinance
 (Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor") of the one part and the
 Government of the Hong Kong Special Administrative Region (hereinafter called the "Government")
 of the other part.

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the <day> of <month year>
 made between <Name of Contractor> of <Address of Contractor> (hereinafter called the "Contractor")
 of the one part and the Government of the other part (designated as the Agriculture, Fisheries and
 Conservation Department Contract No. AFCD/NP/01/21), the Contractor agreed and undertook to
 provide the Services upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions
 hereinafter appearing, the due and faithful performance of the Contract by the Contractor.

Now the Guarantor HEREBY AGREES with the Government as follows:

- (1) Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them under the Contract.
- (2) In consideration of the Government entering into the Contract with the Contractor:
 - (a) The Guarantor hereby irrevocably and unconditionally guarantees the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract.
 - (b) The Guarantor, as a primary obligor and as a separate and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.

- (c) The Guarantor further agrees that all dividends, compositions and payments which the Government may at any time receive from the Contractor or from his, her or their estate or estates, whether in liquidation, bankruptcy or otherwise, in respect of all such losses, damages, costs, charges and expenses shall be taken and applied by the Government as payments in gross, and that this Guarantee shall stand good in respect of the balance to the full amount of _____.

(3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Contractor" or where "the Contractor" is a partnership, any change in the partners or in its constitution.

(4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

(5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:

- (a) the date falling three (3) months after the expiry of the Contract; or
- (b) the date on which all the obligations and liabilities of the Contractor under the Contract have been duly carried out, completed and discharged in accordance with the Contract,

whichever is the later.

(8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.

(9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

(10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

(11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

(12) All documents arising out of or in connection with this Guarantee shall be served :

- (a) upon the Government, at the Agriculture, Fisheries and Conservation Department of 5/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Hong Kong marked for the attention of Director of Agriculture, Fisheries and Conservation, facsimile number (852) 2631 9162;
- (b) upon the Guarantor, at _____, Hong Kong, marked for the attention of _____, facsimile number _____.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of

delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

- (15) The Guarantor hereby acknowledges that
 - (a) the Guarantor should read and fully understand, with the benefit of independent legal advice if necessary, the terms and conditions of this Guarantee before entering into this Guarantee.; and
 - (b) no Government officer is authorised to advise on, make representations regarding or amend (other than by a written instrument signed by both the Guarantor and the Government) the terms and conditions of this Guarantee.

IN WITNESS whereof the said Guarantor has caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

* The [Common Seal/Seal*] of the said)
 Guarantor was hereunto affixed and)
 signed by)
)
 [Name & Title])
 duly authorised by its board of)
 directors.....)
)
 in the presence of)
)
 [Name & Title]

@ Signed Sealed and Delivered)
 for and on behalf of and as)
 lawful attorney of the Guarantor)
 under power of attorney dated)
 and deed of delegation)
 dated)
 by)
 [Name & Title])
 and in the presence of)
)
 [Name & Title]

* Please delete as appropriate

@ See Powers of Attorney Ordinance (Chapter 31 of the Laws of Hong Kong)

Note : When banker's guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.

Revised on 11.10.2019

**Standard Employment Contract
for Employees of Contractors of Government Service Contract (Note 1)
Government Service Contract No.: _____ (Note 2)**

This employment contract is made between _____
 (“the Employer”) at the address of _____
 _____ and Mr/Ms* _____
 (Hong Kong Identity Card No. _____) (“the Employee”) at the address
 of _____. The Employer and
 the Employee understand and agree to observe the terms of employment set out below. Both parties
 understand that this employment contract is governed by the laws of Hong Kong, in particular, the
 Employment Ordinance, Chapter 57, the Employees’ Compensation Ordinance, Chapter 282 and the
 Minimum Wage Ordinance, Chapter 608. Both parties acknowledge that they have read the
 attached Guidance Notes on Signing of Standard Employment Contract (“the Guidance Notes”).

1. This employment contract shall commence on _____ (day/month/year).
 (Note 3)
2. The Employee’s first day of employment under his/her previous employment contract in respect
 of the government service contract specified in Clause 3 below
 was _____ (day/month/year). (Note 4)
3. The Employee shall be employed by the Employer as _____ (post title)
 to work under the government service contract (contract no.: _____ (Note 2) ,
 date of award of contract: _____ (day/month/year)). Pursuant to the
 aforesaid government service contract, the new entitlements under Clauses 26 to 28 of this
 employment contract **shall apply/shall not apply***. The place of work as specified in the
 aforesaid government service contract is _____. If
 necessary, the Employer shall be allowed to deploy the Employee to work
 within _____ region (Note 5) under an urgent
 situation or on an ad hoc and limited basis in the course of this employment contract. (Note 6)
4. (a) The Employee shall work _____ days a week, and his/her daily working hours shall
 be: (Note 7)

_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*

on shift

_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*;

_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*; or

_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*

(b) The meal time of the Employee shall be from _____ a.m./p.m.* to _____ a.m./p.m.* / _____ hour(s)/minutes* per day and is (Note 8):

counted as hours worked and its pay has been included in the monthly wages payable under 7(a). (Note 9)

not counted as hours worked and shall be paid at the rate of HK\$ _____ per day on top of the monthly wages payable under Clause 7(a).

not counted as hours worked and no payment will be made in this respect.

Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above working hours, provided that such adjustment should be on an ad hoc basis and it should not affect the original number of working hours in a day of the Employee.

5. The Employee is entitled to 1 paid rest day in every period of 7 days. The paid rest day for the Employee shall be on every _____ / granted on an irregular basis* (in which case the Employer must inform the Employee in writing of the appointed paid rest days, or exhibit the Employee’s roster of paid rest days in a conspicuous place in the place of employment, before the beginning of each month). The rest day pay of the Employee shall be a sum equivalent to the pay for the Employee’s work on a normal working day (excluding overtime pay).

6. Contractual day-off other than paid rest days as specified in Clause 5 shall be (if applicable):
 paid at the rate of HK\$ _____ per day/a sum equivalent to the pay for the Employee’s work on a normal working day* on top of the monthly wages payable under Clause 7(a).

unpaid.

7. If the Employee works in accordance with the working hours as specified in Clause 4(a) of this employment contract, he/she shall receive:
- (a) monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 5. (Note 9)
- Irrespective of the number of days in a particular month, the Employee shall be paid monthly wages equivalent to the wages specified in this employment contract. The Employee's deductions for absence from work shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month.
- wages for working in each workplace calculated pro-rata according to the monthly wages specified in the Tables under Clause 2 of the Schedule if he/she is employed to work for the Employer under different government service contracts undertaken by the Employer in the same region. (The Schedule to this employment contract must also be completed.)
- Any allowance shall be paid on top of the above wages.
- (b) the overtime pay and pay for work on rest day/contractual day-off shall be _____% (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in Clause 4(a) of this employment contract or on a rest day/contractual day-off. (Note 10)
- (c) the pay for meal time if the periods of meal time as specified in Clause 4(b) are not counted as hours worked and are payable.
- (d) the pay for contractual day-off, if any, as specified in Clause 6.
- (e) the pay for working under typhoon signal no. 8 or above, if any, as specified in Clause 27 below or Clause 5 of the Schedule.
- (f) additional remuneration, if any, in accordance with the Minimum Wage Ordinance. (Note 11)
- (g) any other sums payable to the Employee under the provisions of this employment contract or the laws of Hong Kong.
8. The wage period shall be one month. Wages (including overtime pay and other sums payable under Clause 7, if any) shall be paid in any case not later than 7 days after the expiry of the wage period. Similarly, wages and any sum due to the Employee (including the gratuity under Clause 28 and any other sums due in respect of this employment contract, if any) must be paid not later than 7 days after the expiry or termination of this employment contract. If the Employee is employed by the Employer to work for more than one Post (as defined in the Schedule) and a gratuity is payable to the Employee under Clause 6 of the Schedule upon the expiry or termination of the Post that he/she has worked, the gratuity shall be paid not later than 7 days after the expiry or termination of the relevant Post.
9. The Employer and the Employee agree that all wages (including overtime pay and other sums payable under Clause 7 but excluding the gratuity and any sum payable upon expiry or termination of this employment contract or a Post) shall be paid directly by way of automatic

payment into a bank account in the Employee's name with a bank licensed under the Banking Ordinance, Chapter 155. The Employer shall also provide a wage record (pay slip) setting out the breakdown of wages for each wage period to the Employee for reference. If the Employee agrees, the Employer may pay the gratuity (if any) and any sum payable upon expiry or termination of this employment contract or a Post (including wages) by cheque not later than 7 days after the expiry or termination of this employment contract or the Post.

10. No deductions shall be made by the Employer from the wages of the Employee other than permitted deductions made in accordance with the Employment Ordinance and the Employee's contribution in accordance with the Mandatory Provident Fund Schemes Ordinance, Chapter 485, and the sum to be deducted shall not exceed the limit stipulated therein. Subject to the provisions of the law, any operating and/or administrative costs due to wear and tear of fixed assets and equipment including expenses on uniforms (clothing, shoes, socks, etc.), training fees, administrative costs, cleaning fees, tool charges, travelling expenses, deposits, etc, and any sum and/or deductions imposed on the Employer by the procuring department pursuant to the terms of the relevant government service contract shall be borne by the Employer and not be charged to the Employee or recovered by deductions from the Employee's wages.
11. The Employee shall be entitled to statutory rights and benefits and the relevant protection such as rest days, statutory holidays, paid annual leave, maternity leave, paternity leave and sickness allowance in accordance with the Employment Ordinance.
12. The Employer shall arrange the Employee to take rest days, statutory holidays and paid annual leave on separate dates in accordance with the Employment Ordinance. These holidays must not be substituted by each other.
13. The Employer shall comply with the provisions of the Employees' Compensation Ordinance. The Employee shall be entitled to the rights, benefits and protection provided under the Employees' Compensation Ordinance.
14. The Employer shall comply with the provisions on safety and health under the Occupational Safety and Health Ordinance, Chapter 509 and the Factories and Industrial Undertakings Ordinance, Chapter 59.
15. The Employee **is/is not*** required to obtain a security personnel permit according to the requirements of the Security and Guarding Services Ordinance, Chapter 460. (Note 12)
16. The Employer shall arrange the Employee to enrol as a member of a mandatory provident fund scheme and pay the contribution to the relevant registered scheme each month in accordance with the Mandatory Provident Fund Schemes Ordinance. The Employer shall issue to the Employee a record of mandatory provident fund contribution within 7 working days after each monthly contribution.
17. When typhoon signal no. 8 or above is hoisted,
 the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if typhoon signal no. 8 is lowered not less than _____ hours before close of working hours.

- the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
- the Employee is required to work and is entitled to a typhoon allowance of HK\$_____.

For the avoidance of doubt, the benefits conferred under this Clause are in addition to the pay for working under typhoon signal no. 8 or above (if applicable) as specified in Clause 27 below or Clause 5 of the Schedule.

18. When black rainstorm warning is hoisted,
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if the black rainstorm warning is lowered not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to a rainstorm allowance of HK\$_____.
- 18A. When “extreme conditions” as announced by the Government before typhoon signal no. 8 is replaced with typhoon signal no. 3 are in force (Note 16):
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if the “extreme conditions” are cancelled not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to an “extreme conditions” allowance of HK\$_____. The Employee **is / is not** * entitled to this “extreme conditions” allowance if he/she has been paid typhoon allowance as specified in Clause 17.
- 19*. The probation period of the Employee shall be _____ day(s)/month(s) *. (Note 13)
20. Either party may terminate this employment contract under the following circumstances (Note 13):
- During the first month of the probation period, both parties are not required to give notice or payment in lieu of notice. During the rest of the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
After the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
 - There is no probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
21. Should there be any legislative amendment to the relevant legislation subsequent to the signing of this employment contract which in effect confers more favourable terms on the Employee than what he/she is entitled to under this employment contract, the provision of the legislation shall prevail and the employment contract shall be taken to be varied accordingly. Should the rights and benefits conferred on the Employee after the legislative amendment be still less

favourable than the terms of this employment contract, the terms of this employment contract shall prevail.

22. The Employer shall provide a copy of this employment contract signed by both parties (including the Schedule to this employment contract, if any, and the attached Guidance Notes on Signing of Standard Employment Contract) to the Employee for his/her retention.
23. Any variation, amendment, cancellation or addition to any terms of this employment contract (including the Schedule) must not extinguish or reduce any right, benefit or protection conferred upon the Employee by this employment contract, and must be duly signed by both parties, otherwise it shall be void. The Employer shall provide a copy of the amendments duly signed by both parties to the Employee for retention.
24. The Employee consents to the Employer providing his/her wage records, attendance records and other relevant information to _____ [name(s) of procuring department(s)] (Note 14) for the purpose of monitoring the Employer's fulfillment of employment-related obligations under the government service contract(s).
25. The Employee consents to the Employer providing copies of this signed employment contract together with the amendments, if any, to _____ [name(s) of procuring department(s)](Note 14) for record and for the purpose of monitoring the Employer's compliance with the government service contract(s). The Employee also consents to the procuring department(s) providing copies of this signed employment contract together with any amendments, and any other relevant information to other government departments and enforcement agencies for the purpose of monitoring the Employer's compliance with the relevant legislation.

Clauses 26 to 28 below are applicable with effect from 1 April 2019 provided that the government service contract under which the Employee is engaged stipulates that such new entitlements shall apply. If the Employee is employed by the Employer to work for more than one Post under this employment contract, details of such new entitlements are set out in Clauses 4 to 6 of the Schedule.

26. (a) The Employee is entitled to the holiday pay provided that the Employee has been employed by the Employer under a continuous contract as defined in the Employment Ordinance ("continuous contract") in respect of the government service contract specified in Clause 3 above for not less than one month (including, for the avoidance of doubt, any period of employment immediately prior to the commencement date of this employment contract) immediately preceding a statutory holiday. Holiday pay shall be calculated according to the relevant provisions under the Employment Ordinance and shall be paid to the Employee not later than the day on which he/she is next paid his/her wages after that statutory holiday. For the avoidance of doubt, this Clause 26 shall not prejudice the Employee's entitlements to holiday pay under the Employment Ordinance.
- (b) If the Employee is employed by the Employer to work for more than one Post, details of the holiday pay payable is set out in Clause 4 of the Schedule.

27. (a) If typhoon signal no. 8 or above is hoisted anytime (regardless of the duration) during the working hours of a day or a shift in which the Employee has worked, the pay for that day/shift shall be _____ % (the entered figure must not be less than 150) of the Employee's original pay for the hours worked in that day/shift. The Employee's original pay for the hours worked in that day/shift shall include the pay for all the hours worked in that day/shift calculated on a pro-rata basis according to the Employee's monthly wages, the overtime pay at the specified percentage under Clause 7(b) (if applicable), and any sum for the meal time payable under Clause 4(b) (if applicable).
- (b) If the Employee is employed by the Employer to work for more than one Post, details of the pay that he/she is entitled to when working under typhoon signal no. 8 or above is set out in Clause 5 of the Schedule.
28. (a) The Employer shall pay a gratuity to the Employee upon the expiry or termination of this employment contract for reason(s) other than in accordance with section 9 of the Employment Ordinance (Note 15), provided that the Employee has been employed by the Employer under a continuous contract in respect of the government service contract specified in Clause 3 above for a period of not less than 12 months immediately before its expiry or termination. For the avoidance of doubt, any period of employment in respect of the government service contract immediately prior to the commencement date of this employment contract shall be taken into account.
- (b) If the Employee is entitled to the gratuity in Clause 28(a) above, the amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Employee during the period for which the gratuity is payable. The period for which the gratuity is payable is a continuous period of time immediately before the expiry or termination of the employment contract during which the Employee has been employed by the Employer under a continuous contract in respect of the government service contract, but in any case the commencement date of such period shall not be earlier than 1 April 2019.
- (c) The gratuity is a sum of money payable to the Employee based on his/her length of service. If any severance payment or long service payment is payable to the Employee under the Employment Ordinance, the Employer shall pay the gratuity prior to the payment of the severance payment or long service payment (as the case may be), and may, pursuant to the Employment Ordinance, reduce any severance payment or long service payment payable to the Employee under the Employment Ordinance by the amount of gratuity paid to the Employee to the extent that the gratuity is attributable to the same period of service for which the severance payment or long service payment is payable. The Employer may only reduce the relevant occupational retirement scheme benefit or mandatory provident fund scheme benefit in respect of the Employee by the remainder of severance payment or long service payment payable to the Employee.
- (d) If the Employee is employed by the Employer to work for more than one Post, details of the gratuity payable is set out in Clause 6 of the Schedule.

Signature of Employee

Signature of Employer or Employer's representative

 Name: _____
 HK Identity Card No.: _____
 Date: _____

 Name: _____
 Post: _____
 Date: _____

 Company Chop

- * Delete whichever is inapplicable
- Please mark a “✓” at the appropriate box

Notes:

- Note 1: In accordance with the relevant mandatory requirements specified in government service contracts, government service contractors are required to enter into this Standard Employment Contract with each and every employee who is employed to work under government service contracts for more than 7 days in posts which signing of Standard Employment Contract is specified in the relevant government service contracts.
- Note 2: If the Employee is employed by the Employer to work under more than one government service contract undertaken by the Employer in the same region, the parties must also complete the Schedule but are not required to fill in the government service contract no., Clause 2, Clause 3, Clause 4, Clause 7(b) and Clause 27(a) of this employment contract.
- Note 3: (i) If the Employee was being employed by the Employer under the government service contract specified in Clause 3 or under any Post as defined in the Schedule immediately prior to the signing of this employment contract and this employment contract is signed as a result of the Employee's entitlements under Clauses 26 to 28, this date refers to the effective date of the new terms and conditions of employment.
 (ii) In other situations, this date refers to the commencement date of the employment and it is not necessary to fill in Clause 2.
- Note 4: (i) If the Employee was being employed by the Employer under the government service contract specified in Clause 3 immediately prior to the signing of this employment contract and this employment contract is signed as a result of the Employee's entitlements under Clauses 26 to 28, this Clause must be filled in and the date to be filled-in should be the first day of employment under his/her previous employment contract in respect of the government service contract specified in Clause 3. The continuity of employment with the Employer shall not be treated as broken.
 (ii) In other situations, it is not necessary to fill in this Clause.
- Note 5: “Region” refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2011, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West,

Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 3.

- Note 6: Clause 3 of this employment contract only provides for deployment of the Employee to work within the region specified in Clause 3 of this employment contract under an urgent situation or on an ad hoc and limited basis in the course of this employment contract and is not applicable to any redeployment of the Employee to other posts or work places as a result of the termination of this employment contract or expiry of the government service contract specified in Clause 3 of this employment contract, which shall be subject to the mutual agreement between the Employer and the Employee and relevant provisions of the Employment Ordinance.
- Note 7: The Employer has committed in the relevant government service contract that the Employee's maximum number of working hours in a day shall be _____ hours.
- Note 8: If the Employee's meal time falls under the definition of "hours worked" in the Minimum Wage Ordinance (including the Employee being in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the Employer, irrespective of whether the Employee is provided with work or not), or where the meal time is regarded as hours worked in this employment contract or pursuant to any agreement with the Employer, such time must be taken into account in computing the minimum wage.
- Note 9: (i) The wage rate of the monthly wages specified in Clause 7(a) of this employment contract shall not be less than the wage rate of the monthly wages committed by the Employer in the relevant government service contract or with reference to paragraph 2 of the Guidance Notes any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance, whichever is higher. Employees with disabilities are entitled to the same monthly wage rate committed by the employer in the relevant government service contract.
- (ii) The wage rate of the monthly wages specified in Clause 7(a) of this employment contract shall be calculated based on the maximum number of _____ normal working days plus paid rest days per month and the average number of _____ normal hours of work per day. If the period of meal time as specified in Clause 4(b) of this employment contract is counted as hours worked, such period shall be included in the above average number of normal hours of work per day for derivation of the monthly wages.
- (iii) The wage rate of the monthly wages of HK\$ _____ committed by the Employer in the relevant government service contract is calculated on the basis of 31 days (27 normal working days plus 4 paid rest days) per month and the average number of _____ normal hours of work per day. For the avoidance of doubt, the Employee is entitled to 1 paid rest day in every period of 7 days in accordance with Clause 5 of this employment contract.
- Note 10: The wage rates of overtime pay and pay for work on rest day/contractual day-off specified in Clause 7(b) of this employment contract shall not be less than 100% of the wage rates calculated using the monthly wages specified in Clause 7(a) of this employment contract and the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day specified in Note 9(ii).
- Note 11: Under the Minimum Wage Ordinance, the minimum wage for an employee for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the minimum hourly wage rate for the employee provided by the Ordinance. A payment made to an employee in any wage period for any time that is not hours worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period. If the wages payable to an employee in respect of any wage period are less than the minimum wage for the employee for that period, the employee is entitled to additional remuneration in respect of that period of the amount derived by subtracting from that minimum wage the amount of wages that is payable in respect of that period.
- Note 12: All employees employed to perform security work are required to obtain a permit in accordance with the Security and Guarding Services Ordinance.
- Note 13: (i) If the Employee was being employed by the Employer under the government service contract

specified in Clause 3 or under any Post in the Schedule immediately prior to the signing of this employment contract and this employment contract is signed as a result of the Employee's entitlements under Clauses 26 to 28, the probation period (if any) shall count from the Employee's first day of employment in Clause 2 or the earliest first day of work of all Posts in the Schedule, as appropriate.

(ii) In other situations, the probation period (if any) shall count from the commencement date of the employment in Clause 1.

Note 14: If the Employee is employed by the Employer to work under more than one government service contract in the same region, the names of all relevant procuring departments have to be filled in Clause 24 and Clause 25 of this employment contract.

Note 15: Under section 9 of the Employment Ordinance, an employer may summarily dismiss an employee without notice or payment in lieu of notice: (i) if the employee, in relation to his/her employment, (a) wilfully disobeys a lawful and reasonable order; (b) misconducts himself/herself, such conduct being inconsistent with the due and faithful discharge of his/her duties; (c) is guilty of fraud or dishonesty; or (d) is habitually neglectful in his/her duties; or (ii) on any other ground on which he/she would be entitled to terminate the contract without notice at common law.

Note 16: Under "extreme conditions" caused by typhoon, such as serious disruption of public transport services, extensive flooding, major landslides or large-scale power outage, the Government will review the situation and decide whether to issue "extreme conditions" announcement before typhoon signal no. 8 is replaced with typhoon signal no. 3. Upon the announcement of "extreme conditions", apart from employees who have an agreement with their employers to be on duty when the "extreme conditions" are in force, other employees are advised to stay in the place they are currently in or safe places for 2 hours after cancellation of typhoon signal no. 8. When "extreme conditions" are in force, the Government will review the situation and consider whether to extend "extreme conditions". Once "extreme conditions" are cancelled, employees should follow the work arrangements they have agreed with employers and resume work. "Extreme conditions" are applicable territory-wide.

**Standard Employment Contract
for Employees of Contractors of Government Service Contracts
Schedule**

(If the Employee is employed by the Employer to work under more than one government service contract in the same region (Note 16), this Schedule should also be completed. Clause 2, Clause 3, Clause 4, Clause 7(b) and Clause 27(a) of the Standard Employment Contract are not applicable and shall be left blank.)

1. The Employee shall be employed by the Employer for the posts in more than one government service contract with details stated in the Table(s) below (collectively “the Posts”). If necessary, the Employer shall be allowed to deploy the Employee to work within _____ region (Note 16) under an urgent situation or on an ad hoc and limited basis in the course of this employment contract. (Note 17)
2. The Employee shall work _____ days a week. The daily working hours shall accord with that specified in the relevant government service contracts awarded to the Employer. Information on relevant government service contracts is listed in the Table(s) below. The actual monthly wages to be received by the Employee shall be calculated in accordance with the monthly wages listed in the following Tables in respect of different government service contracts under which the Employee has worked during a particular month and on the basis of the number of normal working days plus paid rest days in that particular month (if the number of government service contracts is more than two, please continue to list out after Table (2)):

Table (1)	(a)	Government service contract no.		Procuring department	
		Employee’s first day of work for this government service contract (Note 18)	____ / ____ / ____ (day/month/year)	Date of award of this government service contract	____ / ____ / ____ (day/month/year)
		Pursuant to this government service contract, the new entitlements under Clauses 26 to 28 of the Standard Employment Contract shall apply/shall not apply* .			
		Post title		Place of work	
		Number of working hours in a day		Maximum number of working hours in a day	
	(b)	Daily working hours	<input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* The meal time of the Employee shall be from ____ a.m./p.m.* to ____ a.m./p.m.* / hour(s)/minutes* per day and is (Note 19): <input type="checkbox"/> counted as hours worked and its pay has been included in the monthly wages payable under item (c) of this Table. (Note 20) <input type="checkbox"/> not counted as hours worked and shall be paid at the rate of HK\$ ____ per day on top of the monthly wages payable under item (c) of this Table. <input type="checkbox"/> not counted as hours worked and no payment will be made in this respect. Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee.		

(c)	If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 5 of the Standard Employment Contract. (Note 20)
(d)	The wage rate for overtime pay and pay for work on rest day/contractual day-off shall be ____ % (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day/contractual day-off. (Note 21)

Table (2)	(a)	Government service contract no.		Procuring department	
		Employee's first day of work for this government service contract (Note 18)	____ / ____ / ____ (day/month/year)	Date of award of this government service contract	____ / ____ / ____ (day/month/year)
	Pursuant to this government service contract, the new entitlements under Clauses 26 to 28 of the Standard Employment Contract shall apply/shall not apply* .				
		Post title		Place of work	
		Number of working hours in a day		Maximum number of working hours in a day	
(b)	Daily working hours	<input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* The meal time of the Employee shall be from ____ a.m./p.m.* to ____ a.m./p.m.* / hour(s)/minutes* per day and is (Note 19): <input type="checkbox"/> counted as hours worked and its pay has been included in the monthly wages payable under item (c) of this Table. (Note 20) <input type="checkbox"/> not counted as hours worked and shall be paid at the rate of HK\$ ____ per day on top of the monthly wages payable under item (c) of this Table. <input type="checkbox"/> not counted as hours worked and no payment will be made in this respect. Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee.			
(c)	If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 5 of the Standard Employment Contract. (Note 20)				
(d)	The wage rate for overtime pay and pay for work on rest day/contractual day-off shall be ____ % (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day/contractual day-off. (Note 21)				

3. If the Employee works under different government service contracts awarded to the Employer:

- (a) The statutory benefits of the Employee including holiday pay, annual leave pay and sickness allowance shall be calculated in accordance with the Employment Ordinance.

If it is not possible to ascertain the amount of holiday pay, annual leave pay, sickness allowance and other statutory benefits to which the Employee is entitled, the sum shall be calculated in

accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- (b) The rest day pay of the Employee shall be the average daily wages of the Employee for work on a normal working day (excluding overtime pay) in the month. The Employer shall pay the Employee such rest day pay not later than the day on which the Employee is next paid his/her wages after the rest day.
- (c) If the Employee is not provided with any work for a period, the Employee shall still receive wages equivalent to the wages which he/she would have earned if he/she had worked for that period during which work is not provided.

If it is not possible to ascertain the wages which the Employee would have earned for the period during which work is not provided, the sum shall be calculated in accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- The Employer and the Employee may choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of this Schedule for calculating the monthly wages of the Employee. If this is the case, the Employee shall work in accordance with the number of working days as specified in Clause 2 of this Schedule and the working hours as specified in the relevant government service contracts, and he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 5 of the Standard Employment Contract. The overtime pay and pay for work on rest day/contractual day-off shall be _____% (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of this Schedule or on a rest day/contractual day-off. (Note 22)

Clauses 4 to 6 below are applicable with effect from 1 April 2019 provided that the government service contract under which the Employee is engaged stipulates that the new entitlements under Clauses 26 to 28 of the Standard Employment Contract shall apply. For the avoidance of doubt, if the Employee is engaged to work for more than one Post, the new entitlements under Clauses 4 to 6 below shall only be applicable to the Post(s) in relation to which the relevant government service contract(s) stipulate(s) that such new entitlements apply.

- 4. If the Employee is employed by the Employer to work for more than one Post in this employment contract, the Employee is entitled to the holiday pay provided that the Employee has been employed for not less than one month immediately preceding a statutory holiday under a continuous contract taking into account all the Posts as a whole. For the avoidance of doubt, a period of employment in respect of any of the Posts immediately prior to the commencement date of this employment contracts shall count. Holiday pay shall be calculated according to the relevant provisions under the Employment Ordinance and shall be paid to the Employee not later than the day on which he/she is next paid his/her wages after that statutory holiday. For the avoidance of doubt, this Clause 4 shall not prejudice the Employee's entitlements to holiday pay under the Employment Ordinance.
- 5. If the Employee is employed by the Employer to work for more than one Post in this employment contract and typhoon signal no. 8 or above is hoisted anytime (regardless of the duration) during the working hours of a day or a shift of the Post in which the Employee has worked, the pay for that day/shift of the relevant Post shall be _____ % (the entered figure must not be less than 150) of the Employee's original pay of the relevant Post for the hours worked in that day/shift. The Employee's

original pay of the relevant Post for the hours worked in that day/shift shall include the pay of the relevant Post for all the hours worked in that day/shift calculated on a pro-rata basis according to the Employee's monthly wages, the overtime pay at the specified percentage under Clause 2 or Clause 3 of this Schedule (if applicable), and any sum for the meal time payable under Clause 2 of this Schedule (if applicable).

6. (a) The Employer shall pay a gratuity to the Employee upon the expiry or termination of a Post for reason(s) other than in accordance with section 9 of the Employment Ordinance (Note 23), provided that:
- (i) the Employee has been employed by the Employer in that Post for a period of not less than 12 months immediately before its expiry or termination; and
 - (ii) he/she has been employed by the Employer under a continuous contract (taking into account all the Posts as a whole) for a period of not less than 12 months immediately before the expiry or termination of that Post.

For the avoidance of doubt, in determining whether sub-clause (i) or sub-clause (ii) is satisfied, a period of employment in respect of that Post or in respect of any of the Posts immediately prior to the commencement date of this employment contract shall respectively count.

- (b) If the Employee is entitled to the gratuity for a Post in Clause 6(a) above, the amount of gratuity shall be a sum equivalent to 6% of the total wages in relation to that Post earned by the Employee during the period for which the gratuity is payable. The period for which the gratuity is payable is a continuous period of time immediately before the expiry or termination of the Post during which the Employee has been employed by the Employer under a continuous contract taking into account all the Posts as a whole, but in any case the commencement date of such period shall not be earlier than 1 April 2019.
- (c) The gratuity is a sum of money payable to the Employee based on his/her length of service. If any severance payment or long service payment is payable to the Employee under the Employment Ordinance, the Employer shall pay the gratuity prior to the payment of the severance payment or long service payment (as the case may be), and may, pursuant to the Employment Ordinance, reduce any severance payment or long service payment payable to the Employee under the Employment Ordinance by the amount of gratuity paid to the Employee to the extent that the gratuity is attributable to the same period of service for which the severance payment or long service payment is payable. The Employer may only reduce the relevant occupational retirement scheme benefit or mandatory provident fund scheme benefit in respect of the Employee by the remainder of severance payment or long service payment payable to the Employee.

Signature of Employee**Signature of Employer or Employer's
representative**

 Name: _____
 HK Identity Card No.: _____
 Date: _____

 Name: _____
 Post: _____
 Date: _____

 Company Chop

- * Delete whichever is inapplicable
 Please mark a "✓" at the appropriate box

Notes:

- Note 16: "Region" refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2011, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 1 of this Schedule.
- Note 17: Clause 1 of this Schedule only provides for deployment of the Employee to work within the region specified in Clause 1 of this Schedule under an urgent situation or on an ad hoc and limited basis in the course of this employment contract and is not applicable to any redeployment of the Employee to other posts or work places as a result of the termination of this employment contract or expiry of the government service contracts specified in the Table(s) in Clause 2 of this Schedule, which shall be subject to the mutual agreement between the Employer and the Employee and relevant provisions of the Employment Ordinance.
- Note 18: If the Employee was being employed by the Employer under a Post immediately prior to the signing of this employment contract and this employment contract is signed as a result of the Employee's entitlements under Clauses 26 to 28, the date to be filled-in should be the first day of work for the government service contract under his/her previous employment contract. The continuity of employment in the Posts shall not be treated as broken.
- Note 19: If the Employee's meal time falls under the definition of "hours worked" in the Minimum Wage Ordinance (including the Employee being in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the Employer, irrespective of whether the Employee is provided with work or not), or where the meal time is regarded as hours worked in this employment contract or pursuant to any agreement with the Employer, such time must be taken into account in computing the minimum wage.

- Note 20: (i) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule shall not be less than the wage rates of the monthly wages committed by the Employer in the relevant government service contracts or with reference to paragraph 2 of the Guidance Notes any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance, whichever is higher. Employees with disabilities are entitled to the same monthly wage rate committed by the employer in the relevant government service contract.
- (ii) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule are calculated based on the following maximum number of normal working days plus paid rest days per month and average number of normal hours of work per day. If the periods of meal time as specified in the Tables under Clause 2 of this Schedule are counted as hours worked, such periods shall be included in the average number of normal hours of work per day for derivation of the monthly wages.

	<u>Table (1)</u>	<u>Table (2)</u>
Maximum number of normal working days plus paid rest days per month	days	days
Average number of normal hours of work per day	hours	hours

- (iii) The wage rates of the monthly wages committed by the Employer in the relevant government service contracts specified in the Tables under Clause 2 of this Schedule are calculated on the basis of 31 days (27 normal working days plus 4 paid rest days) per month and the following average number of normal hours of work per day:

	<u>Table (1)</u>	<u>Table (2)</u>
Monthly wages committed in government service contract	HK\$	HK\$
Average number of normal hours of work per day	hours	hours

For the avoidance of doubt, the Employee is entitled to 1 paid rest day in every period of 7 days in accordance with Clause 5 of the Standard Employment Contract.

- Note 21: The wage rates of overtime pay and pay for work on rest day/contractual day-off specified in the Tables under Clause 2 of this Schedule shall not be less than 100% of the wage rates calculated using the monthly wages specified in item (c) of the Tables under Clause 2 of this Schedule and the relevant number of normal working days plus paid rest days in the month and the average number of normal hours of work per day as specified in Note 20(ii).
- Note 22: The wage rates of overtime pay and pay for work on rest day/contractual day-off shall not be less than 100% of the wage rates calculated based on the chosen monthly wages specified in the second box of Clause 3 of this Schedule, the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day.
- Note 23: Under section 9 of the Employment Ordinance, an employer may summarily dismiss an employee without notice or payment in lieu of notice: (i) if the employee, in relation to his/her employment, (a) wilfully disobeys a lawful and reasonable order; (b) misconducts himself/herself, such conduct being inconsistent with the due and faithful discharge of his/her duties; (c) is guilty of fraud or dishonesty; or (d) is habitually neglectful in his/her duties; or (b) on any other ground on which he/she would be entitled to terminate the contract without notice at common law.

Guidance Notes on Signing of Standard Employment Contract (SEC) for Employees of Contractors of Government Service Contracts

The Guidance Notes explain the points to note when filling in the SEC and the Schedule. Before signing the SEC, the employer and the employee should read the contents of the SEC and these Guidance Notes thoroughly to ensure that both parties understand all the contents. The employer and the employee should refer to the Employment Ordinance (Cap. 57) for statutory provisions on employees' rights and benefits. Please note that the Employment Ordinance only lays down the minimum requirements of employment terms. Employers and employees may enter into employment terms more favourable than those provided in the Employment Ordinance. They may also refer to the booklet "A Concise Guide to the Employment Ordinance" published by the Labour Department for reference.

Points to note when filling in the SEC and the Schedule

2. The monthly wages committed by the employer in the government service contract shall not be less than the amount derived by multiplying the maximum number of normal working days plus paid rest days per month (i.e. 27 normal working days plus 4 paid rest days) and the average number of normal hours of work per day of the employee by the prescribed minimum hourly wage rate under the Minimum Wage Ordinance ("statutory minimum wage plus rest day pay rate"). Besides, the employee's wages shall not be less than any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance. Employees with disabilities are entitled to the same monthly wage rate committed by the employer in the relevant government service contract. Please refer to Schedule 3 of the Minimum Wage Ordinance for details of the prescribed minimum hourly wage rate. For the avoidance of doubt, the employee is entitled to 1 paid rest day in every period of 7 days in accordance with Clause 5 of the SEC.
3. The employer and the employee can make reference to the examples listed in the last part of these Guidance Notes in determining the employee's monthly wages, adjusting the employee's monthly wages upon revision of the statutory minimum wage rate and calculating deductions for absence from work, overtime pay, pay for work on rest day/contractual day-off/under typhoon signal no. 8 or above, gratuity and statutory benefits.
4. If the employee is employed to work under a single government service contract, Clause 2 (where applicable), Clause 3, Clause 4, Clause 7(b) and Clause 27(a) of the SEC on the first day of employment, workplace, working hours as well as the wage rates of overtime pay and pay for work on rest day/contractual day-off/under typhoon signal no. 8 or above, have to be filled in. It is not necessary to fill in the Schedule. However, if the employee is employed by the employer to work under more than one government service contract in the same region, then the parties have to complete the Schedule, but not Clause 2, Clause 3, Clause 4, Clause 7(b) and Clause 27(a) of the SEC. The completed Schedule is an integral part of the SEC.
5. When filling in Clause 4 of the SEC on the working hours of the employee, the employer should also fill in Note 7 regarding the employee's maximum number of working hours in a day. This maximum number of working hours in a day must be the same as that specified in the relevant government service contract.
6. When filling in the monthly wages of the employee in Clause 7(a) of the SEC, the wage rate of the monthly wages shall not be less than the wage rate of the monthly wages committed by the employer in the relevant government service contract or with reference to paragraph 2 above any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance, whichever is higher. Besides, the employer should also fill in Note 9(ii) regarding the information on the maximum number of normal working days plus paid rest days per month and the average number of normal hours of work per day of the employee which form the basis for working out the monthly wages specified in Clause 7(a) of the SEC, and in Note 9(iii) the information on the monthly wages committed by the employer in the relevant government service contract (such information must be the same as that specified in the relevant

government service contract). When filling in Note 9(ii), the employer should derive the maximum number of normal working days plus a paid rest day for every 7 days in a month of 31 days as follows: (number of normal working days per week + 1 paid rest day) x 4 (weeks) + maximum number of working days/paid rest day for the remaining week. The maximum number of working days/paid rest day for the remaining week shall be equal to the number of normal working days per week of the employee + 1 paid rest day or 3 days, whichever is lower. (Please refer to Examples 1 and 2.)

7. When filling in the monthly wages, if the employee is employed to work under more than one government service contract in the same region, please mark a “✓” at the second box of Clause 7(a) of the SEC and fill in information such as the relevant government service contract numbers, places of work, working hours and monthly wages in the Schedule. The monthly wages of the employee should be derived with reference to paragraph 6 above. If the employee works under different government service contracts, the actual monthly wages to be received by the employee shall be calculated in accordance with the monthly wages specified in the Tables under Clause 2 of the Schedule in respect of different government service contracts under which he/she has worked on the basis of the number of normal working days plus paid rest days in a particular month. If, in the future, there is a change in the number of government service contracts (including those pursuant to which the new entitlements under Clauses 26 to 28 of the SEC shall apply) listed in the Schedule, the employer should comply with Clause 23 of the SEC and amend the Schedule.

8. To avoid confusion, the “monthly wages” under SEC do not include any overtime pay and allowances. Except for deductions of wages made in accordance with the Employment Ordinance and the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the wages provided by the employer shall not be less than the monthly wages specified in the employment contract. The monthly wages shall not be broken down into different items, but they may include other wage items on top of the monthly wages. (For example, if the monthly wages are HK\$10,000, and the employer pays an additional allowance of HK\$500, the total monthly wages of the employee shall be HK\$10,500.) The employee’s monthly wages and other income should not be labelled as housing allowance.

9. The employee employed under the SEC is monthly-rated. Deductions for absence from work and the wage rate for overtime pay and pay for work on rest day/contractual day-off/under typhoon signal no. 8 or above shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month. (Please refer to Examples 3 to 5.) The statutory benefits of the employee such as holiday pay, annual leave pay, sickness allowance, maternity leave pay and paternity leave pay, shall be calculated in accordance with the provisions of the Employment Ordinance. (Please refer to Examples 8 to 12.)

10. When filling in the monthly wages in the Tables under Clause 2 of the Schedule for the employee working under different government service contracts, the wage rate shall not be less than the wage rates of the monthly wages committed by the employer in the relevant government service contracts or with reference to paragraph 2 above any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance, whichever is higher. Besides, the employer should also fill in Note 20 regarding the information on the maximum number of normal working days plus paid rest days per month and the average number of normal hours of work per day which form the basis for working out the monthly wages specified in the Tables under Clause 2 of the Schedule, and also information on the monthly wages committed by the employer in the relevant government service contracts (such information must be the same as that specified in the relevant government service contracts).

11. The rest day pay for an employee who is employed to work under more than one government service contract shall be the average daily wages of the employee for work on a normal working day (excluding overtime pay). (Please refer to Example 6.)

12. For the calculation of the monthly wages in the second box of Clause 3 of the Schedule for an employee who is employed to work under more than one government service contract, the employer and the employee

may choose an amount calculated at a wage rate no less than the highest wage rate worked out from among those monthly wages listed in the Tables under Clause 2 of the Schedule. If the employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of the Schedule or on a rest day/contractual day-off, he/she shall be paid overtime pay or pay for work on a rest day/contractual day-off. The relevant wage rates should not be less than 100% of the wage rates calculated based on the chosen monthly wages and the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day based on which the chosen monthly wages are worked out. (Please refer to Example 7.)

13. If a gratuity is payable to the employee under the SEC, the amount of gratuity payable shall be a sum equivalent to 6% of the total wages earned by the employee under the relevant employment period (as detailed in Clause 28(b) of the SEC). Such total wages shall be all sums earned by the employee under Clause 7 of the SEC, plus holiday pay, annual leave pay, sickness allowance and other statutory benefits payable to the employee during the relevant employment period. For the avoidance of doubt, payment(s) in respect of the termination including severance payment or long service payment payable under the Employment Ordinance are to be excluded from the calculation of the gratuity. (Please refer to Example 13.)

14. If the employee is employed by the employer to work for more than one Post and a gratuity is payable to the employee upon the expiry or termination of a Post under the SEC, the amount of gratuity payable shall be a sum equivalent to 6% of the total wages in relation to that Post earned by the employee under the relevant employment period (as detailed in Clause 6(b) of the Schedule). Such total wages shall be the wages for hours worked earned by the employee in that Post, plus other employment benefits attributed to that Post calculated in the same proportion as wages for hours worked in that Post bear to the wages for hours worked in all Posts. For the avoidance of doubt, payment(s) in respect of the termination including severance payment or long service payment payable under the Employment Ordinance are to be excluded from the calculation of the gratuity. (Please refer to Examples 14 to 15 which cover examples of employment benefits.)

15. If any severance payment or long service payment is payable to the Employee under the Employment Ordinance, the Employer shall pay the gratuity prior to the payment of the severance payment or long service payment (as the case may be), and may, pursuant to the Employment Ordinance, reduce any severance payment or long service payment payable to the Employee under the Employment Ordinance by the amount of gratuity paid to the Employee to the extent that the gratuity is attributable to the same period of service for which the severance payment or long service payment is payable. The Employer may only reduce the relevant occupational retirement scheme benefit or mandatory provident fund scheme benefit in respect of the Employee by the remainder of severance payment or long service payment payable to the Employee. (Please refer to Example 16.)

16. If an employee is on leave or absent from work, whatever the circumstances may be, the employer shall make staffing arrangements as appropriate and pay wages to the substitute worker. The employer shall not ask the employee to hire his/her own substitute or pay wages to the substitute.

17. For details of the employment terms, employers and employees are advised to refer to the employment contract and the Employment Ordinance. Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon an employee by the Employment Ordinance shall be void.

Contributions to Mandatory Provident Fund

18. An employer is obliged to enrol his/her employee aged between 18 and 65 in a mandatory provident fund scheme if the employee is employed for 60 days or more. The employer shall make the monthly contribution for the employee to the relevant registered scheme from his/her own funds. For details, please

refer to the Mandatory Provident Fund Schemes Ordinance.

Examples for illustration

19. Examples listed below are for employers' reference for calculating employees' monthly wages, deductions for absence from work, overtime pay, pay for work on rest day/contractual day-off/under typhoon signal no. 8 or above, gratuity and statutory benefits.

Determining the monthly wages

Example 1

According to the relevant government service contract, the committed monthly wages for a cleaner are \$9,920.0 (calculated based on the normal working days plus paid rest days per month of 31 days and the average number of normal hours of work per day of 8). As per Clause 4 of SEC, if the cleaner:

- works 6 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **31 days**
 $[6 \text{ (days)} + 1 \text{ (day)}] \times 4 + 3 \text{ normal working days/paid rest day} = 31 \text{ days}$
 and his/her monthly wages shall not be less than **\$9,920.0**;
- works 5.5 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **29 days**
 $[5.5 \text{ (days)} + 1 \text{ (day)}] \times 4 + 3 \text{ normal working days/paid rest day} = 29 \text{ days}$
 and his/her monthly wages shall not be less than **\$9,280.0**
 $[\$9,920.0 \div 31(\text{days}) \times 29(\text{days}) = \$9,280.0]$;
- works 5 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **27 days**
 $[5 \text{ (days)} + 1 \text{ (day)}] \times 4 + 3 \text{ normal working days/paid rest day} = 27 \text{ days}$
 and his/her monthly wages shall not be less than **\$8,640.0**
 $[\$9,920.0 \div 31(\text{days}) \times 27(\text{days}) = \$8,640.0]$;
- works 6 days per week and 6 hours per day, his/her monthly wages shall not be less than **\$7,440.0**
 $[\$9,920.0 \div 8(\text{hours}) \times 6(\text{hours}) = \$7,440.0]$; or
- works 6 days per week, 8 hours per day plus 1-hour paid meal time which is counted as hours worked, his/her monthly wages shall not be less than **\$11,160.0**
 $[\$9,920.0 \div 8(\text{hours}) \times 9(\text{hours}) = \$11,160.0]$.

Adjusting the monthly wages upon revision of the statutory minimum wage rate

Example 2

According to the relevant government service contract, the committed monthly wages for a cleaner are \$8,556.0 (calculated based on the normal working days plus paid rest days per month of 31 days, the average number of normal hours of work per day of 8). With reference to paragraph 2 of the Guidance Notes, the adjusted wage level of the cleaner brought about by revision of the prescribed minimum hourly wage rate from \$34.5 to \$37.5 shall be \$9,300.0 ($\$37.5 \times 31 \text{ days} \times 8 \text{ hours} = \$9,300.0$). As per Clause 4 and Note 9(i) of the SEC, if the cleaner:

- works 6 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **31 days**
 $[6 \text{ (days)} + 1 \text{ (day)}] \times 4 + 3 \text{ normal working days/paid rest day} = 31 \text{ days}$
 and his/her monthly wages shall not be less than **\$9,300.0**;
- works 5.5 days per week and 8 hours per day, his/her maximum number of normal working days plus

paid rest days per month shall be **29 days**

$[5.5 \text{ (days)} + 1 \text{ (day)}] \times 4 + 3 \text{ normal working days/paid rest day} = 29 \text{ days}$

and his/her monthly wages shall not be less than **\$8,700.0**

$[\$9,300.0 \div 31(\text{days}) \times 29(\text{days}) = \$8,700.0]$;

- works 5 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **27 days**
 $[5(\text{days}) + 1(\text{day})] \times 4 + 3 \text{ normal working days/paid rest day} = 27 \text{ days}$
 and his/her monthly wages shall not be less than **\$8,100.0**
 $[\$9,300.0 \div 31(\text{days}) \times 27(\text{days}) = \$8,100.0]$;
- works 6 days per week and 6 hours per day, his/her monthly wages shall not be less than **\$6,975.0**
 $[\$9,300.0 \div 8(\text{hours}) \times 6(\text{hours}) = \$6,975.0]$; or
- works 6 days per week, 8 hours per day plus 1-hour paid meal time which is counted as hours worked, his/her monthly wages shall not be less than **\$10,462.5**
 $[\$9,300.0 \div 8(\text{hours}) \times 9(\text{hours}) = \$10,462.5]$.

Calculating deductions for absence from work

Example 3

An employee's deductions for absence from work shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month:

- (1) If an employee works 6 days per week and 8 hours per day, he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0, and he/she:
 - is absent from work on any one day in February, and there are 28 calendar days in February, the deduction for absence from work shall be **\$354.3**
 $[\$9,920.0 \div 28(\text{days}) = \$354.3]$;
 - is absent from work on any one day in March, and there are 31 calendar days in March, the deduction for absence from work shall be **\$320.0**
 $[\$9,920.0 \div 31(\text{days}) = \$320.0]$; or
 - is absent from work on any one day in April, and there are 30 calendar days in April, the deduction for absence from work shall be **\$330.7**
 $[\$9,920.0 \div 30(\text{days}) = \$330.7]$.
- (2) If an employee works 5 days per week and 8 hours per day, he/she has one contractual day-off per week apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$8,640.0, and he/she:
 - is absent from work on any one day in February and there are 28 calendar days in February, and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$360.0**
 $[\$8,640.0 \div (28 - 4(\text{days})) = \$360.0]$;
 - is absent from work on any one day in March, there are 31 calendar days in March, and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$320.0**
 $[\$8,640.0 \div (31 - 4(\text{days})) = \$320.0]$; or
 - is absent from work on any one day in April, there are 30 calendar days in April, and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$332.3**
 $[\$8,640.0 \div (30 - 4(\text{days})) = \$332.3]$.
- (3) If an employee works 6 days per week and 8 hours per day, he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0, and if he/she has taken 5 days of annual leave in March, and there are 31 calendar days in March, the deduction for absence from

work for any one day in March shall be **\$320.0**.

$[\$9,920.0 \div 31(\text{days})^{\#} = \$320.0]$

([#]In calculating the deduction for absence from work in March, the number of the employee's normal working days (which includes the 5 days of annual leave falling on his/her normal working days) plus paid rest days shall remain as 31 days.)

Calculating overtime pay and pay for work on rest day/contractual day-off

Example 4

- (1) If an employee works 6 days per week and 8 hours per day, he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0,
- the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in February (there are 28 calendar days in February) shall not be less than:
 - daily: **\$354.3** [$\$9,920.0 \div 28(\text{days}) = \354.3]; and
 - hourly: **\$44.3** [$\$9,920.0 \div 28(\text{days}) \div 8(\text{hours}) = \44.3].
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in March (there are 31 calendar days in March) shall not be less than:
 - daily: **\$320.0** [$\$9,920.0 \div 31(\text{days}) = \320.0]; and
 - hourly: **\$40.0** [$\$9,920.0 \div 31(\text{days}) \div 8(\text{hours}) = \40.0].
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in April (there are 30 calendar days in April) shall not be less than:
 - daily: **\$330.7** [$\$9,920.0 \div 30(\text{days}) = \330.7]; and
 - hourly: **\$41.3** [$\$9,920.0 \div 30(\text{days}) \div 8(\text{hours}) = \41.3].
- (2) If an employee works 5 days per week and 8 hours per day, he/she has one contractual day off per week apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$8,640.0,
- the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in February (there are 28 calendar days in February and 4 contractual day-off in the month) shall not be less than:
 - daily: **\$360.0** { $\$8,640.0 \div [28 - 4(\text{days})] = \360.0 }; and
 - hourly: **\$45.0** { $\$8,640.0 \div [28 - 4(\text{days})] \div 8(\text{hours}) = \45.0 }.
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in March (there are 31 calendar days in March and 4 contractual day-off in the month) shall not be less than:
 - daily: **\$320.0** { $\$8,640.0 \div [31 - 4(\text{days})] = \320.0 }; and
 - hourly: **\$40.0** { $\$8,640.0 \div (31 - 4(\text{days})) \div 8(\text{hours}) = \40.0 } .
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in April (there are 30 calendar days in April and 4 contractual day-off in the month) shall not be less than:
 - daily: **\$332.3** { $\$8,640.0 \div [(30 - 4(\text{days}))] = \332.3 }; and
 - hourly: **\$41.5** { $\$8,640.0 \div [(30 - 4(\text{days}))] \div 8(\text{hours}) = \41.5 }.
- (3) If an employee works 6 days per week and 8 hours per day, he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0, and if he/she has taken one statutory holiday in January, and there are 31 calendar days in January, the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in January shall not be less than:
- daily: **\$320.0** [$\$9,920.0 \div 31(\text{days})^{\#} = \320.0]; and
 - hourly: **\$40.0** [$\$9,920.0 \div 31(\text{days})^{\#} \div 8(\text{hours}) = \40.0].

([#]In calculating the overtime pay and pay for work on rest day/contractual day-off in January, the number of the employee's normal working days (which includes the statutory holiday falling on his/her normal working days) plus paid rest days shall remain as 31 days.)

Calculating pay for work under typhoon signal no. 8 or above**Example 5**

An employee's pay when typhoon signal no. 8 or above is hoisted during his/her hours worked in a day/shift shall be at least 150% of the Employee's original pay for the hours worked in that day/shift calculated on a pro-rata basis according to the Employee's monthly wages:

- (1) If an employee works 6 days per week and 8 hours per day/shift, he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0. If typhoon signal no. 8 is hoisted anytime during the 8 hours' work in that day/shift:
 - the pay for work for that day/shift in February (there are 28 calendar days in February) shall not be less than:
 - **\$531.4** [$\$9,920.0 \div 28 \text{ (days)} \times 150\% = \531.4]
 - the pay for work for that day/shift in June (there are 30 calendar days in June) shall not be less than:
 - **\$496.0** [$\$9,920.0 \div 30 \text{ (days)} \times 150\% = \496.0]
 - the pay for work for that day/shift in July (there are 31 calendar days in July) shall not be less than:
 - **\$480.0** [$\$9,920.0 \div 31 \text{ (days)} \times 150\% = \480.0]

- (2) If an employee works 6 days per week and 8 hours per day (from 8 a.m. to 5 p.m. with 1 hour meal time in between which is not counted as hours worked but shall be paid at the rate of \$50 per day as per Clause 4(b) of the SEC), he/she has no contractual day-off apart from rest days and his/her monthly wages as per Clause 7(a) of the SEC are \$9,920.0. The overtime pay is 150% of the wage rate for the employee's work on his/her normal working days as per Clause 7(b). On a certain normal working day in June, the employee has worked 8 hours in accordance with the aforesaid working hours and then performed one hour overtime work (i.e. finished work at 6 p.m.) and typhoon signal no. 8 was hoisted from 1 a.m. to 11 a.m.
 - the pay for work for that day/shift in June (there are 30 calendar days in June) shall not be less than:
 - **\$664.0** [$[\$9,920.0 \div 30 \text{ (days)}] + [\$9,920.0 \div 30 \text{ (days)} \div 8 \text{ (hours)} \times 150\%] + \$50 \times 150\% = \$664.0$]

Calculating rest day pay and monthly wages for the employee who is employed to work for more than one government service contract**Example 6**

- (1) An employee is employed to work for two government service contracts, and the monthly wages in the Tables under Clause 2 of the Schedule are \$9,920.0 [Table (1)] and \$10,168.0 [Table (2)] respectively. The employee is required to work 6 days per week and 8 hours per day with 1 paid rest day every 7 days.
 - If the employee has 4 paid rest days in a month of 30 days, the employee works 10 days for the contract in Table (1) and 16 days for the contract in Table (2),
 - his/her wages for the 26 days' work is: **\$8,729.6**;
[$\$9,920.0 \div 30 \text{ (days)} \times 10 \text{ (days)} + \$10,168.0 \div 30 \text{ (days)} \times 16 \text{ (days)} = \$8,729.6$]
 - his/her rest day pay shall not be less than **\$335.8** per rest day ; and
[$\$8,729.6 \div 26 \text{ (days)} = \335.8]
 - his/her monthly wages for the month shall not be less than **\$10,072.8**.
[$\$8,729.6 + \$335.8 \times 4 \text{ (days)} = \$10,072.8$]
 - If the employee has 5 paid rest days in a month of 31 days, the employee works 14 days for the contract in Table (1) and 12 days for the contract in Table (2),
 - his/her wages for the 26 days' work is: **\$8,416.0**;

$$[\$9,920.0 \div 31(\text{days}) \times 14(\text{days}) + \$10,168.0 \div 31(\text{days}) \times 12(\text{days}) = \$8,416.0]$$

- his/her rest day pay shall not be less than **\$323.7** per rest day; and
 $[\$8,416.0 \div 26(\text{days}) = \$323.7]$
- his/her monthly wages for the month shall not be less than **\$10,034.5**.
 $[\$8,416.0 + \$323.7 \times 5(\text{days})] = \$10,034.5]$

(2) An employee is employed to work for two government service contracts, and the monthly wages in the Tables under Clause 2 of the Schedule are \$8,640.0 [Table (1)] and \$8,856.0 [Table (2)] respectively. The employee is required to work 5 days per week and 8 hours per day with 1 paid rest day every 7 days.

- If the employee has 4 paid rest days and 4 contractual day-off in a month of 30 days, the employee works 10 days for the contract in Table (1) and 12 days for the contract in Table (2),
 - his/her wages for the 22 days' work: **\$7,410.5**;
 $\{\$8,640.0 \div [30 - 4(\text{days})] \times 10(\text{days}) + \$8,856.0 \div [30 - 4(\text{days})] \times 12(\text{days}) = \$7,410.5\}$
 - his/her rest day pay shall not be less than **\$336.8** per rest day; and
 $[\$7,410.5 \div 22(\text{days}) = \$336.8]$
 - his/her monthly wages for the month shall not be less than **\$8,757.7**.
 $\{\$7,410.5 + [\$336.8 \times 4(\text{days})] = \$8,757.7\}$
- If the employee has 5 paid rest days and 4 contractual day-off in a month of 31 days, the employee works 11 days for the contract in Table (1) and 11 days for the contract in Table (2),
 - his/her wages for the 22 days' work: **\$7,128.0**;
 $\{\$8,640.0 \div [31 - 4(\text{days})] \times 11(\text{days}) + \$8,856.0 \div [31 - 4(\text{days})] \times 11(\text{days}) = \$7,128.0\}$
 - his/her rest day pay shall not be less than **\$324.0** per rest day; and
 $[\$7,128.0 \div 22(\text{days}) = \$324.0]$
 - his/her monthly wages for the month shall not be less than **\$8,748.0**.
 $\{\$7,128.0 + [\$324.0 \times 5(\text{days})] = \$8,748.0\}$

Calculating the highest monthly wages chosen for the employee who is employed to work for more than one government service contract and the employee's overtime pay and pay for work on rest day/contractual day-off

Example 7

An employee is employed to work for two government service contracts and he/she agrees with his/her employer to choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of the Schedule for calculating his/her monthly wages, overtime pay and pay for work on rest day/contractual day-off. If the employee is required to work 6 days a week and:

- (1) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
 - \$9,920.0 [working 6 days a week and 8 hours a day in Table (1)]; and
 - \$10,168.0 [working 6 days a week and 8 hours a day in Table (2)],
 the monthly wages chosen shall not be less than **\$10,168.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$10,168.0.
- (2) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
 - \$8,640.0 [working 5 days a week and 8 hours a day in Table (1)]; if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$9,920.0
 $[\$8,640.0 \div 27(\text{days}) \times 31(\text{days}) = \$9,920.0]$; and
 - \$9,512.0 [working 5.5 days a week and 8 hours a day in Table (2)]; if the employee is required to

work 6 days a week and 8 hours a day, then the monthly wages shall be \$10,168.0
 $[\$9,512.0 \div 29(\text{days}) \times 31(\text{days}) = \$10,168.0]$,

then the monthly wages chosen shall not be less than **\$10,168.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$10,168.0.

(3) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:

- \$8,640.0 [working 5 days a week and 8 hours a day in Table (1)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$9,920.0
 $[\$8,640.0 \div 27(\text{days}) \times 31(\text{days}) = \$9,920.0]$; and
- \$6,642.0 [working 5 days a week and 6 hours a day in Table (2)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$10,168.0
 $[\$6,642.0 \div 27(\text{days}) \times 31(\text{days}) \div 6(\text{hours}) \times 8(\text{hours}) = \$10,168.0]$,

then the monthly wages chosen shall not be less than **\$10,168.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$10,168.0.

Calculating holiday pay

Example 8

According to Clause 7(a) of the SEC, the monthly wages of an employee are \$9,920.0 (working 6 days per week and 8 hours per day). The holiday pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the holiday: \$118,720.0, including wages of 301 days of work, 52 paid rest days and 11 paid statutory holidays. No overtime work is performed during the period.
- Leave taken with less than full wages in the 12-month period: 1 statutory holiday without pay (statutory holidays falling within the first month of employment are without pay).
- Periods and the sum to be disregarded: 1 day of statutory holiday without pay (as that day is a statutory holiday without pay, the amount to be disregarded will be \$0).
- Holiday pay: $[(\$118,720.0 - 0) \div (365 - 1) (\text{days})] = \326.2

Calculating annual leave pay

Example 9

According to Clause 7(a) of the SEC, the monthly wages of an employee are \$9,280.0 (working 5.5 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave: \$111,360.0, including wages for 275 days of work and the following leaves (no overtime work is performed during the period):
 - 52 paid rest days
 - 12 paid statutory holidays
 - 26 unpaid contractual day-off.
- Periods and the sum to be disregarded: 26 unpaid contractual day-off (as the 26 contractual day-off are unpaid, the amount to be disregarded will be \$0).
- 5-day annual leave pay: $[(\$111,360.0 - 0) \div (365 - 26) (\text{days}) \times 5(\text{days})] = \$1,642.5$.

Example 10

According to Clause 7(a) of the SEC, the monthly wages of an employee are \$9,920.0 (working 6 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave: \$146,040.0 including
 - \$119,040.0 for 301 days of work, 52 paid rest days and 12 paid statutory holidays
 - Overtime pay of \$27,000.0 (where the monthly average over the past 12 months is not less

than 20% of the average monthly wages of the employee during the same period).

- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employee is not paid less than his/her full wages for the leave taken in the 12-month period.
- 5-day annual leave pay: $[(\$146,040.0 - 0) \div (365 - 0) (\text{days}) \times 5(\text{days})] = \$2,000.5$.

Calculating sickness allowance

Example 11

According to Clause 7(a) of the SEC, the monthly wages of an employee are \$8,640 (working 5 days per week and 8 hours per day). If the employee is granted 4 consecutive days of sick leave, the sickness allowance of the 4 days (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the first sickness day: \$103,040.0, including wages of 240 days of work and the following leaves (no overtime work is performed during the period):
 - 52 paid rest days
 - 12 paid statutory holidays
 - 7 days of paid annual leave
 - 52 unpaid contractual day-off
 - 1 day no-pay leave in May (leave taken with the agreement of the Employer)
 - 1 day no-pay leave in July (leave taken with the agreement of the Employer).
- Periods and the sum to be disregarded: 52 unpaid contractual day-off and 2 days of no-pay leave (as the 54 days are unpaid, the amount to be disregarded will be \$0).
- 4-day sickness allowance:

$$[(\$103,040.0 - 0) \div (365 - 54) (\text{days})] \times 4(\text{days}) \times 4/5 = \$1,060.2$$

Calculating wages in lieu of notice

Example 12

According to Clause 7(a) of the SEC, the monthly wages of an employee are \$9,920.0 (working 6 days per week and 8 hours per day). Clause 19 of the SEC specifies that there is no probation period, and a notice period of 7 days or payment in lieu of notice is required. If the employer terminates the employment, the employee's wages in lieu of notice shall be:

- 12-month wages earned immediately preceding the date of notification: \$119,040.0, including wages of 301 days of work, 52 paid rest days and 12 paid statutory holidays. No overtime work is performed during the period.
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employee is not paid less than his/her full wages for the leave taken in the 12-month period.
- Amount of 7 days' wages in lieu of notice:

$$[(\$119,040.0 - 0) \div (365 - 0) (\text{days})] \times 7(\text{days}) = \$2,283.0$$

Calculating gratuity upon expiry of the government service contract for an employee who is employed by the employer to work under one government service contract

Example 13

An employee has worked for 12 months under the government service contract upon its expiry. During the period, the employee's total wages are \$126,289.0.

- The gratuity for the contract is: \$7,577.3;
 $[\$126,289.0 \times 6\% = \$7,577.3]$.

Calculating gratuity upon expiry of one of the Posts for an employee who is employed by the employer to work for two Posts

Example 14

An employee is employed to work for two posts under two government service contracts. The employee has worked for 24 months under the post in [Table (1)] under Clause 2 of the Schedule upon its expiry. The employee's total wages are \$259,825.0, including wages for hours worked earned by the employee of \$78,080.0 and \$131,174.0 for the posts in [Table (1)] and [Table (2)] respectively, and the total amount of other employment benefits (e.g. rest day pay, annual leave pay, holiday pay and sickness allowance, etc.) being \$50,571.0

- The total amount of wages for hours worked earned under the posts in Table (1) and Table (2) is: \$209,254.0;
[\$78,080.0 + \$131,174.0 = \$209,254.0]
- The total wages earned under the post in Table (1) are: \$96,949.8;
[\$78,080.0 + \$50,571.0 x (\$78,080.0 ÷ \$209,254.0) = \$96,949.8]
- The gratuity for the post in Table (1) is: \$5,817.0.
[\$96,949.8 x 6% = \$5,817.0].

Example 15

After expiry of the post in [Table (1)], the employee continues to work for the post in [Table (2)] and is also deployed to work under another post [Table 3]. The employee has worked for 36 months when the post in [Table (2)] expires. As shown in Example 14, the employee's total wages for the first 24 months (from the posts in [Table (1)] and [Table (2)]) is \$259,825.0, including wages for hours worked earned by the employee of \$78,080.0 and \$131,174.0 for the posts in [Table (1)] and [Table (2)] respectively, and the total amount of other employment benefits (e.g. rest day pay, annual leave pay, holiday pay and sickness allowance, etc.) being \$50,571.0. The total wages for the following 12 months is \$134,410.0, including wages for hours worked of \$65,587.0 and \$41,968.0 for the posts in [Table (2)] and [Table 3] respectively, and the total amount of other employment benefits being \$26,855.0

- The total wages earned under the post in Table (2) for the first 24 months: \$162,875.2;
 - The total amount of wages for hours worked earned under the posts in Table (1) and Table (2) is: \$209,254.0
[\$78,080.0 + \$131,174.0 = \$209,254.0]
 - The total wages earned under the post in Table (2) for the first 24 months are: \$162,875.2
[\$131,174.0 + \$50,571.0 x (\$131,174.0 ÷ \$209,254.0) = \$162,875.2]
- The total wages earned under the post in Table (2) for the last 12 months: \$81,963.2;
 - The total amount of wages for hours worked earned under the posts in Table (2) and Table (3) is: \$107,555.0
[\$65,587.0 + \$41,968.0 = \$107,555.0]
 - The total wages earned under the post in Table (2) for the last 12 months are: \$81,963.2
[\$65,587.0 + \$26,855.0 x (\$65,587.0 ÷ \$107,555.0) = \$81,963.2]
- The total wages earned under the post in Table (2) for 36 months are: \$244,838.4;
[\$162,875.2 + \$81,963.2 = \$244,838.4]
- The gratuity for the post in Table (2) is: \$14,690.3.
[\$244,838.4 x 6% = \$14,690.3].

Reduction of severance payment payable to an employee by the amount of gratuity paid

Example 16

- (1) An employee is employed by an employer to work for a government service contract for 36 months, and then entered into another government service contract with the same employer immediately

following the expiry/termination of the previous contract. The second contract has stipulated that gratuity under Clause 28 of the SEC shall apply. The employee works for another 12 months under the second contract since 1 January 2019, and is dismissed by reason of redundancy on 31 December 2019. The employee's last month wages are \$9,920.0 and he/she is thus entitled to a severance payment of \$26,453.0 for his/her service of 48 months in total.

In respect of the 12 months' service under the second contract, a gratuity is payable to the employee for the period from 1 April 2019 to 31 December 2019 according to Clause 28(b) of the SEC. Based on his/her total wages for the 9 months from 1 April 2019 to 31 December 2019, the employer is required to pay him/her a gratuity of \$5,357.0 prior to the payment of the severance payment. Upon payment of the gratuity, the employer may reduce the severance payment by the gratuity paid to the employee that is attributable to the employee's 9 months' service under the second contract.

- Severance payment for the employee's 9 months' service under the second contract is: \$4,960.0
[\$9,920.0 x 2/3 x 9/12 (year) = \$4,960.0]
The gratuity paid to the employee is higher than the severance payment in respect of the same period, and the whole amount of severance payment in respect of the period, that is \$4,960.0, may be reduced.
- Remainder of severance payment payable to the employee is: \$21,493.0
[\$26,453.0 - \$4,960.0 = \$21,493.0]
- The employer may reduce the relevant occupational retirement scheme benefit or mandatory provident fund scheme benefit in respect of the employee by the remainder of severance payment to the employee, i.e. \$21,493.0.

- (2) An employee is employed by an employer to work for a government service contract for 36 months, and then entered into another government service contract with the same employer immediately following the expiry/termination of the previous contract. The second contract has stipulated that gratuity under Clause 28 of the SEC shall apply. The employee works for another 12 months under the second contract since 1 April 2019, and is dismissed by reason of redundancy on 31 March 2020. The employee's last month wages are \$9,920.0 and he/she is thus entitled to a severance payment of \$26,453.0 for his/her service of 48 months in total.

The employer is required to pay him/her a gratuity of \$7,142.0 for his/her 12 months' service under the second contract prior to the payment of the severance payment. Upon payment of the gratuity, the employer may reduce the severance payment by the gratuity paid to the employee that is attributable to the employee's 12 months' service under the second contract.

- Severance payment for the employee's 12 months' service under the second contract is: \$6,613.3
[\$9,920.0 x 2/3 x 1 (year) = \$6,613.3]
The gratuity paid to the employee is higher than the severance payment in respect of the same period, and the whole amount of severance payment in respect of the period, that is \$6,613.3, may be reduced.
- Remainder of severance payment payable to the employee is: \$19,839.7
[\$26,453.0 - \$6,613.3 = \$19,839.7]
- The employer may reduce the relevant occupational retirement scheme benefit or mandatory provident fund scheme benefit in respect of the employee by the remainder of severance payment to the employee, i.e. \$19,839.7.

October 2019

PART 2**CONDITIONS OF CONTRACT****CONTENTS**

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CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 The Contractor must provide the Services to the Government for a period of **24 months commencing from 1 January 2022**, or a date to be specified by the Government, whichever is later, subject to early termination or extension provided for in the Contract.
- 1.2 The Government may, by serving on the Contractor not less than 1 month's advance notice in writing extend the Contract for a period up to an aggregate maximum of 6 months on the same terms and conditions contained in the Contract. The extended Contract Period commences immediately upon the expiry of the current Contract Period.
- 1.3 The Contractor must agree to the extension of the Contract made under Clause 1.2 hereof when the Government exercises its right to extend the Contract.

2. Services to be Provided and Variation of Services

- 2.1 The Contractor must provide the Services with Contractor's Employees in accordance with the terms and conditions of the Contract (including but not limited to the Service Specifications, the Conditions of Contract and the Contract Schedules) at such time and in such manner as the Government Representative may specify from time to time and to the satisfaction of the Government Representative.
- 2.2 The Contractor must observe and comply with any directions or instructions given by the Government Representative.
- 2.3 Each Contractor's Employee must devote all of his or her respective time, attention and energy to carrying out of the Services and subject to any directions as may be given by the Government from time to time.
- 2.4 The Contractor's Employees may be required to work over-time or in places other than the Contract Venue as may be directed by the Government Representative or as driven by the demands of work, urgency of task or operational needs.
- 2.5 The Contractor must not extend the Services beyond the requirements specified in the Contract except as directed in writing by the Government Representative. However, the Government Representative may at any time during the Contract Period by notice in writing require the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor must carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Contract.
- 2.6 Where a variation has been made to the Contract, the amount to be added to or deducted from the Monthly Service Fee in accordance with that variation is determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable. Where rates are not contained in the Price Schedule, or are not applicable, such amount will be such sum as is reasonable in the circumstances.
- 2.7 The Government may at any time during the Contract Period, on giving fourteen (14) days prior written notice to the Contractor ("Service Order"), require the Contractor to add any new areas, sites, premises or facilities to the original Contract Venue or to delete any areas,

sites, premises or facilities from the original Contract Venue.

2.8 If the Government makes a requirement under Clause 2.7, subject to the Contractor's performance of the Services to the Government's satisfaction, the Government must adjust the Monthly Service Fee to the Contractor for the Contract Venue according to the following formulae and principle:

(a) where a deletion is made to the Contract Venue, the Monthly Service Fee for the concerned item of work must be adjusted by deducting a sum calculated on the following basis –

$$\frac{A \times B}{C}$$

(b) where an addition is made to the Contract Venue, the Monthly Service Fee for concerned item of work must be adjusted by adding a sum calculated on the following basis –

$$\frac{A \times B'}{C}$$

A means the Monthly Rate of the concerned item of work as specified in Section 1 of the Price Schedule.

B means the total area in square meter deleted from the concerned item of work as specified in Section 3 of Service Specifications (round up to the nearest two decimal places).

B' means the total area in square meter added to the concerned item of work as specified in Section 3 of Service Specifications (round up to the nearest two decimal places).

C means the total area of the Contract Venue in square meter for the concerned item of work as specified in Section 3 of Service Specifications.

2.9 The Government may, on giving the Contractor not less than fourteen (14) days' prior written notice, require the Contractor to suspend the performance of all or part of the Services and/or to reduce the number of Farming Staff deployed for the Services for such time or times and in such manner and for such period or periods as the Government may specify in the notice.

2.10 In the event that the Services are suspended under Clause 2.9 or the number of Farming Staff deployed to perform the Services are reduced under Clause 2.9, the Monthly Service Fee payable to the Contractor by the Government must be calculated as follows:

(a) where an suspension of service for a consecutive period of one Month, there will be **no** Monthly Service Fee for that month.

(b) where an suspension of service in whole for a period of less than one Month, the Monthly Service Fee must be calculated according to the following basis:-

$$A \times \frac{B}{\text{the no. of days for the month}}$$

- (c) Where an suspension of service in part for a period of less than one Month, the Monthly Payment must be calculated according to the following basis:-

$$A \times \frac{B'}{\text{the no. of days for the month}} \times \frac{C}{D}$$

- A means the Monthly Rate specified in Section I of the Price Schedule
 B means the number of days when the Services have been rendered in whole by the Contractor
 B' means the number of days when the Services have been rendered in part by the Contractor
 C means the total area in square meter rendered from the concerned item of work as specified in Section 3 of Service Specifications during the period when the Services are only rendered in part
 D means the total area of the Contract Venue in square meter for the concerned item of work as specified in Section 3 of Service Specifications

2.11 Without prejudice to Clauses 2.5 and 2.6, the Government may at any time during the Contract Period by giving:

- (a) 3 days' notice in writing require the Contractor to provide additional Supervisor or Farming Worker at such places, in such manner and at such times as the Government Representative may specify;
- (b) not less than 2 hours' verbal notice (to be properly documented subsequently) require the Contractor to provide additional Supervisor or Farming Workers to carry out emergency or other special services at any locations in the Contract Venue.

2.12 The Government will pay for the services provided by the Contractor under Clause 2.11 above in accordance with the rate specified in the Section 2 of the Price Schedule.

3. **Non-exclusive Contract**

Nothing in the Contract will preclude the Government from procuring all or any of the Services from any other person.

4. **Service Level and Service Specifications**

- 4.1 The Contractor must provide the Services in a timely and professional manner and must conform to the standards generally observed in the industry for similar services and the specific requirements as set out in this Contract.
- 4.2 The Contractor must comply with all the provisions in the Service Specifications during the continuance of the Contract.
- 4.3 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to provide the Services. The Contractor will not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter or fact relating to the Service

Specifications or any other provisions of the Contract.

- 4.4 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract.
- 4.5 The Contractor must perform its obligations under the Contract:
 - (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
 - (b) in accordance with Good Industry Practice.
- 4.6 Time will be of the essence as regards each provision of the Services.
- 4.7 Notwithstanding any provision of the Contract, due provision of any Services to the Government will not be regarded to have taken place unless and until such Services are accepted by the Government.

5. **Regulations of Contractor and the Contractor's Employees**

- 5.1 The Contractor must be responsible for the efficient performance of the Contract and for the good conduct of the Contractor's Employees while they are performing duties for the Government.
- 5.2 The Contractor must: -
 - (a) ensure that all Contractor's Employees are efficient, honest and acceptable to the Government in terms of ability, working attitude and personal behaviour;
 - (b) ensure that all Contractor's Employees satisfy the qualification and experience requirements and possess any skills and expertise set out in the Service Specifications;
 - (c) ensure that all Contractor's Employees perform competently and behave to the satisfaction of the Government Representative;
 - (d) ensure that all Contractor's Employees abide by the Government's instructions and any law and regulations applicable to the provision of Services;
 - (e) immediately notify in writing the Government Representative of any acceptance of advantage, bankruptcy or disclosure of confidential information affecting the Contractor's Employees.
- 5.3 The Contractor must assign one of its employees as the Contractor Representative to liaise and attend meetings with the Government from time to time for the Services under the Contract. The Contractor must not replace or substitute the Contractor Representative without obtaining prior consent from the Government.
- 5.4 The appointment or replacement of any Contractor's Employee to undertake any part of the Services will not relieve the Contractor from any liability or obligation under this Contract and the Contractor will be responsible for the acts, omissions, defaults and neglects of any Contractor's Employee as if they were the acts, omissions, defaults or neglects of the

Contractor.

- 5.5 The Contractor must provide proper training and instructions from time to time for all Farming Staff on all matters concerned with the Services.
- 5.6 The Contractor must comply with all applicable laws and regulations. In particular, the Contractor must:
- (a) comply with the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong). The Contractor must not employ any persons who are forbidden by the laws of Hong Kong or are not entitled to undertake any employment in Hong Kong;
 - (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong); and
 - (c) comply with the requirements of the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.
- 5.7 The Government Representative will from time to time during the term of this Contract carry out security checks on any of the Contractor's Employees.
- 5.8 The Contractor must secure, obtain and maintain at its own cost throughout the Contract Period all governmental authorisations, approvals, permits or licences which may be required or necessary in connection with the performance of the Contract.
- 5.9 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract will be provided by the Government free of charge but must be returned to the Government in good order on completion of the Contract.
- 5.10 If at the request of the Contractor assistance of any Government staff is provided after normal business hours, the Contractor must be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

6. Subsequent Employment

The Contractor must not restrain any Contractor's Employee from the employment by the Government or any other company to provide services for the Government upon the completion or termination of the contract between the Contractor's Employee and the Contractor. If the Government Representative has reason to believe that the Contractor is in breach of this clause, the Government Representative may at its absolute discretion demand the Contractor to remove such restraint within 7 working days. Otherwise, the Government may exercise the right to forthwith terminate this Contract.

7. Liabilities and Indemnities

- 7.1 Neither the Government nor any of its employees or agents will be liable for:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents (whether or not caused by any Negligence of the Government or its employees or agents); or
 - (b) any injury to or death of any of the Contractor's employees or agents, except where such injury or death was caused by the Negligence of the Government or any of its employees or agents.
- 7.2 Without prejudice to any other provision of the Contract, the Contractor must indemnify each of the Government and its employees and agents (each an "Indemnified Person") against:
- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("Claims"); and
 - (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,
- which in any case arise directly or indirectly in connection with or out of:
- (i) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractor if any;
 - (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractor if any;
 - (iii) any default, unauthorised act or wilful misconduct of the Contractor, its employees, agents or sub-contractor if any;
 - (iv) any claim that the use or possession of the Materials infringes the Intellectual Property Rights of any person; or
 - (v) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority.
- 7.3 The indemnity under Clause 7.2 does not apply to any injury or death caused by the Negligence of an Indemnified Person.
- 7.4 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor must verbally inform the Government Representative as early as practicable and deliver to the Government a written report within 7 working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- 7.5 For the purposes of this Clause, "Negligence" has the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of

Hong Kong).

7.6 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor will not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

8. **Replacement of Contractor's Employees**

8.1 The Government has the right to require the Contractor to immediately replace any of the Contractor's Employees if:

(a) the Government, in its reasonable opinion, finds the Contractor's Employee unsuitable on grounds including but not limited to dishonesty, habitual neglect in the discharge of his duties, unbecoming behaviour, suspected commission of crime or other misconduct, mental or physical incapacity, and/or failure to comply with Government directive regarding performance of the Contract; or

(b) the Government, in its opinion, finds the Contractor's Employee incompetent or incapable of performing the Services.

8.2 Upon receipt of the notice from the Government, the Contractor must nominate the substitutes or replacements for the Government's consideration (the number of nominated substitutes or replacements should be twice the number of Contractor's Employees removed or to be replaced). The Contractor must be solely responsible for all direct, indirect and consequential costs or losses that may arise from such substitution or replacement.

8.3 The Contractor must ensure that each of the nominated substitutes or replacements referred to in Clause 8.2 hereof satisfies the requirements on qualification, skills and experience specified in the Service Specifications and will be available immediately. In the event that the Government Representative, in its judgment, is not satisfied with any of the nominated substitutes or replacements, the Contractor must forthwith provide other candidates to the Government Representative until a suitable replacement is selected.

9. **Personnel Records**

9.1 The Contractor must seek consent from the Contractor's Employees to disclose their personal data, records and photographs to the Government Representative.

9.2 The Contractor must sign an employment agreement with each of the Contractor's Employees (other than Farming Staff) containing at least the employment period, rest day arrangements, maximum working hours for each day of work and wages. The parties to the employment agreement must consent to the production of the employment agreement and all documents relating to the employment to the Government upon request.

9.3 The Contractor must on or before the commencement date of employment enter into a written Standard Employment Contract with each of its Farming Staff (except a temporary relief worker whose period of engagement does not exceed 7 days). The Contractor must refer to the latest version of the Standard Employment Contract and its guidance notes when signing the Standard Employment Contract with all its Farming Staff.

9.4 The Contractor must keep proper record of the written employment agreements including any amendments or deletion and the payments to each of the Contractor's Employees.

Payments must be made by way of autopay for proper record keeping purpose.

- 9.5 The Government reserves the right to, at any time, request the Contractor to produce evidence that such written employment agreements mentioned in Clauses 9.2 and 9.3 hereof have been entered into and that the employment conditions have been complied with, including production of employment agreements for inspection. All records stated in this Clause must be readily available for inspection by the Government Representative.

10. **Contractor's Obligations Relating to the Employment of Contractor's Employees**

- 10.1 The Contractor must pay each Contractor's Employee engaged in the carrying out of the Services in accordance with the Employment Ordinance (Cap. 57).
- 10.2 The proposed monthly wage specified in Section 3 of Contract Schedule 1 will not include the Contractor's contribution under the Mandatory Provident Fund in respect of the Farming Staff and any other benefits which the Contractor will or intend to provide to the Farming Staff.
- 10.3 The monthly wage payable by the Contractor to each **Farming Worker must not be less than the higher of** (i) the corresponding proposed monthly wage quoted by the Contractor in Contract Schedule 1; and (ii) the "SMW plus rest day pay rate".
- 10.4 The monthly wage payable by the Contractor to each **Supervisor must not be less than the higher of** (i) the corresponding proposed monthly wage quoted by the Contractor in Contract Schedule 1; and (ii) the "SMW plus rest day pay rate".
- 10.5 All Farming Workers must not work for more than 10 hours in any 24 hours period unless with the prior written consent of the Government Representative.
- 10.6 All Supervisors must not work for more than 10 hours in any 24 hours period unless with the prior written consent of the Government Representative.
- 10.7 A failure to observe or comply with any requirement in Clause 10 will be construed as a material breach of the Contract and the Government will have the right to seek appropriate remedies including termination of the Contract forthwith.
- 10.8 The Contractor must strictly observe its contractual obligations under the Standard Employment Contract, the breach of which would attract a Demerit Point.
- 10.9 Without prejudice to the generality of Clause 10.8 above, the Contractor must, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:
- (a) paying wages;
 - (b) paying holiday pay payable to the Farming Workers having been employed under a continuous contract for not less than one month;
 - (c) paying wages at a rate of at least 150% for the Farming Workers who are required to work when the typhoon signal no. 8 or above is hoisted;
 - (d) paying wages by means of autopay to the Farming Workers (payment by cheque is only allowed upon termination of employment contract and is made at the request of the

worker concerned);

- (e) paying the gratuity to the Farming Workers with no less than 12 months of service under a continuous contract as defined in the Employment Ordinance (Cap. 57); and
- (f) not allowing the Farming Workers to work beyond the committed daily maximum working hours under the Contract.

10.10 The Contractor must pay a gratuity to a Farming Worker upon the expiry or termination of the Standard Employment Contract for reason(s) other than in accordance with Section 9 of the Employment Ordinance (Cap. 57), provided that the Farming Worker has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for a period of not less than 12 months immediately before the expiry of termination of the Standard Employment Contract. The amount of gratuity must be a sum equivalent to 6% of the total wages earned by the Farming Worker during the above period. The gratuity must be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance (Cap. 57) and may be offset against the severance payment or long service payment in accordance with the Standard Employment Contract. Detailed requirements on the gratuity payable are set out in the Standard Employment Contract and the Contractor must comply with the relevant clauses and follow the examples of illustration therein.

10.11 The Contractor must provide the holiday pay to a Farming Worker provided that the Farming Worker has been employed by the Contractor under a continuous contract as defined in the Employment Ordinance (Cap. 57) in respect of this Contract for not less than one month immediately preceding a statutory holiday. The holiday pay must be calculated according to the relevant provisions under the Employment Ordinance (Cap. 57). Detailed requirements on the holiday pay payable are set out in the Standard Employment Contract and the Contractor must comply with the relevant clauses and follow the examples of illustration therein.

10.12 If typhoon signal no. 8 or above is hoisted anytime (regardless of the duration) during the working hours of a day or a shift in which the Farming Worker has worked, the Contractor must pay the Farming Worker for that day/shift at least 150% of the Farming Worker's original pay for the hours worked in that day/shift. Detailed requirements on the extra wages payable for working under typhoon signal no. 8 or above are set out in the Standard Employment Contract and the Contractor must comply with the relevant clauses and follow the examples of illustration therein. For the avoidance of doubt, the extra wages stipulated in this Clause must also apply to a Farming Worker with whom the Contractor is not required to enter into the Standard Employment Contract.

10.13 If the Contractor or the sub-contractor fails to comply with any of its obligations in Clauses 9.3, 10.8 to 10.12 above, without prejudice to any other rights, actions or remedies available to the Government including but not limited to the issuance of one or more Demerit Points to the Contractor and/or the sub-contractor, the Government may terminate the Contract immediately.

11. **Payment for Services**

11.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract to the satisfaction of the Government, the Government will pay the Contractor the Monthly Service Fees in accordance with the Price Schedule and as calculated in the following manner:

$$\begin{array}{r}
 \text{(Monthly Rate)} \\
 + \\
 \text{(Total charges for additional services or additional Supervisor/} \\
 \text{Farming Worker provided by the Contractor under Clause 2 of} \\
 \text{the Conditions of Contract, calculated on the basis of the} \\
 \text{applicable rates of charges as set out in Section 2 of the Price} \\
 \text{Schedule)} \\
 - \\
 \text{Monthly Service Fees} \\
 \text{payable to the Contractor} = \text{(Total deductions calculated under Clause 12 of the Conditions of} \\
 \text{Contract)} \\
 - \\
 \text{(Such other sums the Government is entitled to deduct pursuant} \\
 \text{to other provisions of the Contract)} \\
 - \\
 \text{(Total deductions for deleted/ suspended item of work under} \\
 \text{Clause 2 of the Conditions of Contract, calculated on the basis of} \\
 \text{the applicable rates of charges as set out in Section 2 of the Price} \\
 \text{Schedule)}
 \end{array}$$

- 11.2 Payment will be made direct to the Contractor's bank account in Hong Kong.
- 11.3 The Contractor must submit a monthly invoice within 7 working days after the end of each month to the Government Representative or as otherwise directed. Unless otherwise provided, payment will be made after the receipt of invoices and only upon certification by the Government Representative that the Services have, in all respects, been performed in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative.
- 11.4 Unless the Government Representative otherwise notifies in writing, all invoices and correspondence concerning payment must be addressed to the Director of Agriculture, Fisheries and Conservation in the manner described below:

Address - Agriculture, Fisheries and Conservation Department
 5/F Cheung Sha Wan Government Offices,
 303 Cheung Sha Wan Road,
 Cheung Sha Wan,
 Kowloon
 (Attn: Nature Park Officer (Planning and Administration))

Fax No. - 2631 9162

The Government will not be liable for any delay in payment if invoices and correspondence are not so addressed.

- 11.5 The Monthly Service Fees will be inclusive of all fees, costs, charges, expenses and disbursements incurred by the Contractor for provision of the Services. Apart from the Monthly Service Fees, under no circumstances whatsoever will the Government be liable to pay to the Contractor or any other person any money. All Services must be performed by the Contractor at its sole cost, subject to the payment of the Monthly Service Fees only.
- 11.6 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Monthly Service Fees and any other sum payable by the Government to the Contractor under the Contract if:

- (a) the Contractor fails to observe or perform any provision of the Contract;
- (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
- (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
- (d) withholding of payment is required by any applicable law.

11.7 No payment made by the Government under the Contract will prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.

12. Deduction in Monthly Service Fees

12.1 The Contractor must ensure that the number of Farming Staff deployed to perform the Services is not less than that stipulated in the Service Specifications. In the event of resignation, dismissal or absence of any such Farming Staff as set out in the Service Specifications, the Contractor must promptly provide adequate and competent replacements.

12.2 If any Farming Staff is absent from duty, or any Farming Staff has not performed the Services to the satisfaction of the Government Representative, without prejudice to any rights, actions or remedies that the Government has or may have against the Contractor, the Monthly Service Fees will be deducted by the sum calculated as follows:

For Farming Worker:

$$\begin{array}{l} \text{Duration of the total} \\ \text{period of absence from} \\ \text{duty or unsatisfactory} \\ \text{performance (in minutes)} \\ \text{of the Farming Worker(s)} \\ \text{in a month} \end{array} \times \frac{\begin{array}{l} \text{[Monthly Charge for Farming Worker(s) as} \\ \text{set out in Section 2 of Contract Schedule 1]} \\ \hline \text{Number of days in the concerned month in which the Farming} \\ \text{Workers are required to provide the Services (days)} \\ \text{x 8 (hours) x 60 (minutes)} \end{array}}$$

For Supervisor:

$$\begin{array}{l} \text{Duration of the total} \\ \text{period of absence from} \\ \text{duty or unsatisfactory} \\ \text{performance (in minutes)} \\ \text{of the Supervisor(s) in a} \\ \text{month} \end{array} \times \frac{\begin{array}{l} \text{[Monthly Charge for Supervisor as} \\ \text{set out in Section 2 of Contract Schedule 1]} \\ \hline \text{Number of days in the concerned month in which the} \\ \text{Supervisor(s) are required to provide the Services (days)} \\ \text{x 8 (hours) x 60 (minutes)} \end{array}}$$

In determining the amount of deduction under this Clause, a period of less than a minute in which a Contractor's Employee is absent will be regarded as one (1) minute.

13. **Contract Deposit**

- 13.1 If the Contractor fails to comply with any provision of the Contract or any amount is due or payable by the Contractor to the Government, the Government may deduct from the Contract Deposit or call on the banker's guarantee (as the case may be) to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government relating to such failure, or to recover the amount due or payable, in each case irrespective of whether or not a demand for payment has been made against the Contractor.
- 13.2 The Contract Deposit (whether paid in cheque or cashier's order or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owed by the Contractor to the Government.
- 13.3 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor must, within 21 days after the date of the written demand by the Government, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum will be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Clause 10.4(a) and (b) of the Terms of Tender and will come into operation on the date of its execution.
- 13.4 If the Contractor fails to comply with Clause 13.3, the Government may terminate the Contract immediately.
- 13.5 Upon the expiry or termination of the Contract:
- (a) if the Contract Deposit is paid by cheque or cashier's order, the Government will, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit in cheque and without interest to the Contractor 3 months after completion of all the obligations under the Contract by the Contractor to the Government's satisfaction, or the expiry or termination of the Contract, whichever is the later;
 - (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee will be discharged and released in accordance with its terms.

14. **Insurance Policy**

- 14.1 The Contractor must effect and maintain throughout the Contract Period a policy or policies of insurance exclusively for the Contract in respect of a site in the joint names of the Government and the Contractor providing an adequate level or to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000, whichever is higher, of cover in respect of all risks which may be incurred by the Contractor or the Government or their respective employees, agents in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. The insurance policy must provide that the insurance company will waive all claims of subrogation which it may otherwise

have against the Government as a co-insured. Such insurances must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. The insurance company or companies must be authorised under the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong).

- 14.2 Without prejudice to Clause 14.1, the Contractor must effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 14.3 If required by the Government, the Contractor must deliver to the Government copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 14.4 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 14.5 No provision in any insurance and no amount of insurance covered will relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.
- 14.6 In the occurrence of any event which gives rise to liability under which an insurer of any of insurance policies referred to in the Contract, and regardless of whether there be a claim against the Contractor for compensation or not, the Contractor must within seven (7) clear working days give notice in writing of such event to Government Representative.

15. **Termination and Effects of Termination**

- 15.1 Without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government will be entitled to forthwith terminate the Contract if any of the following events occurs –
 - (a) the Contractor fails to observe or perform any of the terms and conditions of the Contract or pay any of the sums payable by the Contractor under the Contract, or (in the case of a breach capable of being remedied but not otherwise) the Contractor has failed to remedy the breach to the satisfaction of the Government Representative within 7 days (or such longer period as the Government Representative may, in its sole discretion, allow) after the issuance by the Government Representative to the Contractor of a request in writing (such request to contain a warning of the Government's intention to terminate the Contract) requiring it to do so; or
 - (b) any warranties, undertakings, representations or information made or given by the Contractor to the Government in connection with the Tender or the Contract is incomplete, false or misleading; or
 - (c) the Contractor abandons the Contract in part or in whole; or
 - (d) the Contractor is found to have employed illegal workers in the execution of this Contract; or

- (e) the Contractor is convicted of any offences under the relevant Ordinances (as defined in Clause 1.1 of Annex A to the Terms of Tender) or the Minimum Wage Ordinance (Cap. 608); or
- (f) the Contractor obtains 3 or more Demerit Points under this Contract; or
- (g) the Contractor has made any false declaration or untruthful revelation in regard to the record of convictions of offences under any of the relevant Ordinances in its tender submission made during the tendering process of this Contract; or
- (h) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government; or

15.2 The Government may also by written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is a body corporate, a shareholders' or members' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding-up of the Contractor, which is not dismissed within 14 days after the petition is presented;
- (d) the Contractor is or becomes insolvent;
- (e) a receiver is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (g) the Government reasonably apprehends that any of the events mentioned above is about to occur.

15.3 Notwithstanding anything herein to the contrary, the Government may at any time during the Contract Period, at its option and without cause, terminate the Contract by giving the Contractor 1 month's prior written notice of such termination.

15.4 Where the Government at its sole discretion removes or closes the Contract Venue, the Government will not be liable to pay the Monthly Service Fees for the Contract Venue removed or closed as from the date of removal or closure.

15.5 On termination of the Contract for any reason, the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract.

- 15.6 The expiry or termination of the Contract will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.
- 15.7 If the Contract is terminated by the Government (other than pursuant to Clause 15.3) and the Government makes other arrangements for the provision of any Services, the Government may recover from the Contractor: (a) any amount in excess of the Estimated Contract Price (which would have been payable to the Contractor had the Contract not been terminated) incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 15.1. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments will be made by the Government to the Contractor for the Services provided by the Contractor prior to termination.
- 15.8 On the expiry or termination of the Contract for any reason, the Contractor must:
- (a) immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Services;
 - (b) assist and co-operate with the Government to ensure an orderly transition of the provision of the Services to such person specified by the Government Representative and/or the completion of any work-in-progress;
 - (c) within 28 days of the date of termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of termination; and
 - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Services have been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence.
- 15.9 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) will be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.

16. **Government Property**

When Government property is issued to the Contractor under the Contract, the Contractor will be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor must pay an amount equal to its acquisition costs (subject to normal depreciation on such basis as determined by the Government) plus all administrative costs incurred by the Government for replacing such lost or damaged property. A count of the articles

or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor must render such assistance as is necessary.

17. **Publicity**

- 17.1 The Contractor must not during or after the expiry or termination of the Contract use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 17.2 Subject to Clause 17.1, the Contractor must submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract wherein the Government's name is mentioned or from which a connection with the Government can reasonably be inferred or implied.
- 17.3 Notwithstanding any consent or approval given under Clause 17.1 or 17.2, whenever required by the Government, the Contractor must cease using any advertisement or publicity material relating to the Contract wherein the Government is mentioned or from which a connection with the Government can reasonably be inferred or implied.

18. **Force Majeure**

- 18.1 Within 3 days after the occurrence of a Force Majeure Event, the Contractor must notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the event of an occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this Clause is hereinafter referred to as the "Suspension Notice".
- 18.2 Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor must keep the Government informed at reasonable intervals, and upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor's ability to perform its obligations under the Contract;
 - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
 - (c) any other matters relevant to that Force Majeure Event or the Contractor's performance affected by that Force Majeure Event.
- 18.3 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 18.4, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("Cessation Date"). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor must forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

18.4 During the suspension of any obligations under Clause 18.3:

- (a) the Contractor must use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor's performance of the obligations under the Contract;
- (b) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
- (c) the Contractor will not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.

18.5 As soon as the relevant Force Majeure Event has ended, the Contractor must forthwith notify the Government of the Cessation Date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor must immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Cessation Date, the Government's decision will be final in the absence of manifest error.

18.6 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the Government will be entitled to terminate the Contract forthwith.

19. Confidentiality and Protection of Personal Data

19.1 The Contractor must treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor's knowledge or be accessible by the Contractor in the course of carrying out the Services and all advices, recommendations, documents, materials and data given by the Contractor to the Government under the Contract ("Confidential Information").

19.2 Without prejudice to any other provision of the Contract, the Contractor must indemnify and keep the Government and its authorised users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
- (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and

(c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).

- 19.3 The Contractor must use the Confidential Information solely for the purposes of the Contract. The Contractor must not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent.
- 19.4 The Contractor must not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of the Contract.
- 19.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- 19.6 The Contractor must comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- 19.7 The Contractor must ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 19 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 19.8 The provisions of this Clause 19 will survive the expiry or termination of the Contract and will continue in full force and effect notwithstanding such expiry or termination.

20. **Relationship of the Parties**

The Contractor enters into the Contract with the Government as an independent contractor only and nothing in the Contract will create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

21. **Assignment and Sub-Contracting**

- 21.1 Unless otherwise provided for in the Contract, the Contractor must not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract.
- 21.2 If the Contractor proposes to appoint any sub-contractor, it must submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A certified copy of the sub-contract must be deposited with the Government within 7 days after the effective date of the sub-contract.
- 21.3 The Contractor must remain fully liable and must not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Contractor must be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

22. Entire Contract

22.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government.

22.2 All of the provisions of the Contract must remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

23. Severability

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability must not affect the other provisions of the Contract, all of which must remain in full force and effect.

24. Waiver

24.1 No failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity must operate as a waiver thereof; nor must any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract will be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof will be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

24.2 Without prejudice to the generality of Clause 24.1, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract will be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, will not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination will constitute a waiver by the Government of any other right, power or remedy.

25. Contracts (Right of Third Parties) Ordinance

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).

26. Notices

26.1 Each notice, demand, correspondence or other communication given or made under the Contract by a party must be in writing and delivered or sent to the other party at its postal address, facsimile number or email address set out below (or such other postal address, facsimile number or email address as the addressee has by not less than 7 working days' prior written notice specified to the other party).

To the Contractor: At the address, facsimile number or email address as specified in the “Offer to be Bound”.

To the Government: Nature Park Division
Agriculture, Fisheries and Conservation Department
5/F Cheung Sha Wan Government Offices
303 Cheung Sha Wan Road
Cheung Sha Wan, Kowloon
Facsimile number: 2631 9162
Email: aidia_sw_chan@afcd.gov.hk
Attention: Senior Nature Park Officer

26.2 Such notices, demands, invoices, correspondence or other communications must be addressed as provided in Clause 26.1 and, if so addressed, will be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post, 4 days (for any place in Hong Kong) and 7 days (for any place outside Hong Kong) after the date of posting;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission;
- (d) if sent by email, when actually received in a form readable by an individual.

27. **Governing Law**

The Contract will be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

28. **Occupational Safety and Health**

28.1 The Contractor must comply with the Government Representative’s prevailing policies, guidelines and procedures safeguarding occupational safety and health of Farming Staff deployed at the Contract Venue. The Contractor must ensure that whenever it is so required, comprehensive assessment and management of risks to occupational safety and health of the Farming Staff deployed at the Contract Venue will be undertaken. Based on such assessment, adequate measures must be taken to guard against such risks. The Contractor must only provide experienced supervisory staff to give proper training, supervision and instructions to its Farming Staff. The Contractor must ensure that all Farming Staff provided by it to execute the Services:-

- (a) are properly trained, competent and efficient in carrying out the duties as stipulated in the Service Specifications;
- (b) must be fully aware of any potential risks that may exist through the undertaking of their duties and to follow policies and guidelines that may be in force from time to time concerning occupational safety and health;

- (c) take all reasonable steps to ensure their safety, and the safety of others, in the discharge of their duties; and
 - (d) must report all incidents and dangerous occurrences to the Government Representative.
- 28.2 If the Contractor fails to comply with Clause 28.1 or with the reasonable requests of the Government Representative, it may be asked to vacate the Contract Venue and other government premises pending an inquiry to be conducted by the Government Representative.
- 28.3 If the Contractor fails comply with Clause 28.1 or fails to achieve any applicable safety standards, it may be debarred from participating in future tender/quotation exercises of the Government.

29. **Warranties and Representations**

29.1 The Contractor warrants, represents and undertakes that:

- (a) the Contractor and its sub-contractors, their employees and agents must 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 must carry out the Services with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
- (c) the Services must conform in all respects to the Service Specifications and conditions under the Contract;
- (d) it must not employ any illegal workers or to allow the Farming Staff to bring unauthorised workers, e.g. family members, especially children, to carry out its obligations under the Contract;
- (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
- (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (g) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect and the use of the Services by the Government will not contravene any applicable laws;
- (h) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete;
- (i) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse

effect on its ability to perform its obligations under the Contract;

- (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (k) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, liquidator, manager or similar office in relation to any of the Contractor's assets or revenue;
- (l) it owns, has obtained and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (m) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract; and
- (n) it is not allowed to deduct wages unlawfully, e.g. fees/costs for name badges, uniform, tools, training and consumables etc. or to deduct any Farming Staff's wages to recover any Contract sum deducted by Government for unsatisfactory contract performance.

29.2 The warranties, representations and undertakings, expressed or implied, contained in this Clause and other provisions of the Contract (collectively, "Warranties" and each, a "Warranty") are true without limitation in time.

29.3 Each of the Warranties is separate and independent and without prejudice to any other Warranty, and is not limited by reference to or inference from any other Warranty or any other provision of the Contract.

29.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) apply to bind the Contractor and the Government respectively.

30. **Variations**

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract will be valid unless made by an instrument in writing and duly signed by the Contractor and the Government.

31. **Government Premises**

31.1 The Contractor must ensure that all persons engaged by him in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

31.2 Without prejudice to Clause 31.1, the Government Representative may at its sole discretion provide to the Contractor storage space, in form of storage sheds, free of charge in the Contract Venue for storage of materials provided by the Contractor if such space is available.

31.3 The storage space is provided to the Contractor, the Contractor's Employees or agents solely

for the purpose of facilitating the Contractor's performance of this Contract during the Contract Period. Such permission must cease at the end or sooner termination of the Contract, or at such earlier time as may be specified by the Government Representative by 14 days' notice in writing to the Contractor.

- 31.4 The Contractor must not use any space provided to it for conducting any fee-charging activities, without the prior written consent of the Government Representative. The Government Representative reserves its right to terminate the Contract if any fee-charging activities are conducted by the Contractor without prior written consent of the Government Representative and the Contractor is not entitled to claim any compensation.
- 31.5 Nothing in this Contract must create a tenancy or licence of whatsoever nature in favour of the Contractor and the Contractor Personnel or agent and that no such tenancy or licence has or must come into being and the Government retains the right to enter and use the storage space at any time without the need to obtain the consent of the Contractor.
- 31.6 The Contractor must keep the said storage space clean, tidy, in reasonably good state of repairs and properly secured, as appropriate. The storage space can neither be used for storage of plant debris nor dangerous goods unless exempted under the Dangerous Goods (General) Regulations, Cap. 295B. The Contractor must not erect or install any fixtures or fittings at the storage space except with the Government's prior written consent.
- 31.7 The Contractor undertakes at the expiry or sooner termination of the Contract to remove at its own expense within such time as specified by the Government Representative all fixtures or fittings erected in the Contract Venue by the Contractor and to make good any damages to the Government's properties which are caused by such removal. If the Contractor fails to do so, the Government must be entitled to remove and dispose of any properties, chattels, fixtures or fittings left in the Contract Venue in any manner as deemed appropriate by the Government Representative (including sale and abandonment) without incurring any liability by the Government towards the Contractor (including the payment of any compensation to the Contractor). All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the breach of this Clause must be recoverable as a debt due from the Contractor.
- 31.8 The safety of any facilities, tools, materials, equipment, vehicles and other vessels used by the Contractor and brought alongside or onto Government premises must be the responsibility of the Contractor who must indemnify the Government in respect of any losses or damages to any Government premises caused by such facilities, tools, materials, equipment, vehicles and other vessels.
- 31.9 In the provision of the Services, the Contractor may be required to use machines and equipment, such as tracked trolley and fork-lift truck, to be provided by the Government. The Contractor must ensure that only properly trained, qualified and licensed Farming Staff can operate such machines and equipment and must provide safety measures to the Farming Staff during operation. Upon request, the Contractor must present documentary proof of the said qualification of the Farming Staff, such as certificates or licences, to the satisfaction of the Government Representative prior to commencement of the Services.

32. **Water Supply**

- 32.1 The Contractor, if so permitted by the Government Representative, may use water supplies which may be available at the Contract Venue to perform the Services provided that the

Government may at its sole discretion to charge the Contractor for water consumed by the Contractor from such available supplies at the rate to be determined solely by the Government. If water supplies are not available at the Contract Venue or permission to use available supplies is not granted, the Contractor must at its own expense obtain water supplies for performing the Services and pay all fees and charges in connection therewith. The Contractor must not install any piping or water supplies fittings, or carry out any other waterworks (be they permanent or temporary) without the prior written approval of the Government Representative. If approved by the Government Representative, the installations (be it permanent or temporary) must be carried out by qualified person registered under the Waterworks Ordinance (Cap. 102). The Contractor must be responsible for maintaining, repairing and removing such installation at its own expense should the Government Representative so direct. The ownership of any such installations must be vested in the Government if it deems necessary upon the termination of the Contract free of any costs or charges.

- 32.2 The water source of the Contract Venue comprises an irrigation channel in the Long Valley Nature Park from southwest to east with water originated from Sheung Yue River (River Beas), water wells in the Long Valley Nature Park and rainfall. The water supply is subject to seasonal variation.
- 32.3 The Contractor must ensure that all Contractor's Employees, sub-contractor and agents exercise their utmost care in the use of water supplies to avoid wastage and damage to Government property.
- 32.4 Permission to use the said water supplies must cease at the end or sooner termination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.
- 32.5 Wrongful use of water supplied by the Government must entitle the Government Representative to revoke the permission granted under Clause 38.1 above. Where such permission is revoked under this Clause, the Contractor must at its own expense procure water for the Services.
- 32.6 Wrongful use of water supplied by the Government hereunder must be a breach of a fundamental term entitling the Government to terminate the Contract under Clause 15 above.

33. **Electricity Supply**

- 33.1 The Contractor, if so permitted by the Government Representative, may consume electricity for lighting, power and testing installations from supply points which may be available at the Contract Venue to perform the Services provided that the Government may at its sole discretion to charge the Contractor for any electricity consumed by the Contractor from such available supply points at the rate to be determined solely by the Government. If electricity supply points are not available, or permission to use available supply points is not granted, the Contractor must at its own expense provide its own source of supply of all electricity needed and pay all fees and charges in connection therewith. The Contractor must not install any wiring and lighting fittings, or other electrical works (be they permanent or temporary) without the prior written approval of the Government Representative. If approved by the Government Representative, the installations (be it permanent or temporary) must be carried out by qualified person registered under the Electricity (Registration) Regulations (Cap. 406). The Contractor must be responsible for maintaining, repairing and removing such installation at its own expense, should the Government Representative so direct. The ownership of any

such installations must be vested in the Government if it deems necessary upon the termination of the Contract free of any costs or charges.

- 33.2 The Contractor must ensure that all its employees, sub-contractor and agents exercise their utmost care in the use of electricity supplies to avoid wastage and damage to Government property.
- 33.3 Permission to use the said electricity supplies must cease at the end or sooner termination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.
- 33.4 Wrongful use of electricity supplied by the Government must entitle the Government Representative to revoke the permission granted under Clause 39.1 above. Where such permission is revoked under this Clause, the Contractor must at its own expense procure power source for the Services.
- 33.5 Wrongful use of electricity supplied by the Government hereunder must be a breach of a fundamental term entitling the Government to terminate the Contract under Clause 15 above.

34. Contractor's Equipment, Materials and Tools

- 34.1 The Contractor must during the Contract Period provide, install and maintain in good working order at its own expense all farming and watering equipment, materials and tools for Farming Staff, including but not limited to those mentioned in the Service Specifications and Execution Plan for the safe, proper and efficient performance of the Services. All equipment, materials and tools must be clean, safe, of good working condition, free of excessive noise, odour or emission, and properly maintained. All equipment, materials and tools must be available for inspection and trial use by the Government Representative at any time and in such manner as the Government Representative may specify.
- 34.2 If the Government Representative is of the opinion that the equipment is inadequate or obsolete, the Contractor must repair or replace the equipment within a reasonable time, or the Government Representative may effect such repair or replacement and deduct any amount as paid by the Government Representative from any money due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 34.3 All equipment, materials and tools used in the performance of the Services must be properly stored in locations assigned by the Government Representative after use so that they will not be unsightly or cause obstruction to the visitors of the Contract Venue or affect the wildlife.
- 34.4 The Government must not be liable for any loss of or damage howsoever caused to such equipment, materials, tools or vehicles used by the Contractor and brought alongside or into the Contract Venue or any part thereof as the case may be.
- 34.5 All chemicals and fertilisers used by the Contractor must be ecologically friendly. The Contractor must not use any chemical of corrosive or harmful nature which may cause any personal injury, injury to wildlife or property damage to the Long Valley Nature Park.
- 34.6 The Contractor must not use any electrical equipment in such manner that will overload the fuses in the Contract Venue. Particular attention must be given to the maintenance of equipment in order that it does not run below rated speed and draw excessive electricity

current. Double adaptors will not be permitted.

- 34.7 The Contractor must not introduce any exotic species to the Contract Venue without prior written approval from the Government Representative or otherwise as specified in the Service Specifications.
- 34.8 The Contractor must ensure that all its Farming Staff, agents and sub-contractors exercise their utmost care to avoid contamination to the electrical fittings, farmland and water with chemical or agent during performance of the Services.
- 34.9 The Contractor must provide and display at its own expense warning signs and cordon off the area as appropriate, including but not limited to those bearing the words “Habitat Maintenance in Progress (生境保養進行中)”, in connection with the performance of the Services. The Contractor must take all associated safety measures to ensure the prevention of damage to Government property or property from any persons and injury to any persons.

35. **Probity**

35.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong);
- (b) the soliciting or accepting or offering any form of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

35.2 The Contractor must inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting or offering any form of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Contractor must also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to this Contract.

35.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

35.4 The Contractor must within 2 weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any) and the Contractor’s Employees from soliciting or accepting or offering any form of advantages in discharging his duties under the Contract. It must ensure that its sub-contractor (if any) and Contractor’s Employees are well aware of the prohibited acts explicitly stated in Clause 32.2 and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the Contractor’s Employees.

35.5 The Contractor must inform its officers, employees (whether permanent or temporary), agents and sub-contractors to avoid and declare any actual or perceived conflict of interest when performing the Services.

36. Disclosure of Information

The Contractor hereby irrevocably authorises, consents and agrees that the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the Government considers fit:

- (a) the Services provided or to be provided by the Contractor;
- (b) the Estimated Contract Price, the Monthly Service Fees and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the price proposal submitted prior to the date of the Contract by the Contractor to the Government in relation to the Services; and
- (d) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor and persons appointed or engaged by the Contractor to assist in the performance of the Contract.

37. Retention of Records

The Contractor must keep and maintain until 7 years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor must afford the Government or its representative access to the records as may be requested by the Government.

38. Assistance in Legal Proceedings

38.1 If and whenever requested to do so by the Government Representative, the Contractor must provide to the Government all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may become involved or any internal disciplinary hearing of the Government that arises out of or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government, the Contractor must arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

38.2 Where the Contractor or any employees, agents or contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it must notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

39. Recovery of Sums Due

Where the Contractor has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the Government to the Contractor under the Contract or any other

contract made between the Government and the Contractor.

40. **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 with a view to stamping out the same. The Contractor shall comply with any instructions issued by the Government regarding measures to be adopted to prevent or control diseases of any kind.

41. **Order of Precedence**

41.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence must be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) the Conditions of Contract;
- (b) the Service Specifications;
- (c) the Terms of Tender;
- (d) the Interpretation;
- (e) the Contract Schedules;
- (f) other Tender Documents which forms part of the Contract; and
- (g) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

41.2 The Materials are items to be prepared and/or supplied by the Contractor pursuant to requirements of the Contract. They must form part of the Contract. Notwithstanding, unless the Parties agree in writing in the manner specified in Clause 30 of the Conditions of Contract, no Materials must seek to waive, alter, cancel or amend any provisions of any documents listed in Clause 41.1 above. No general approval of, or signature by, the Government of any such Material must be taken as agreement or approval of any such waiver, cancellation, alteration or amendment, unless the Government expressly acknowledges and agrees on a case-by-case basis to this effect. This must apply even if any such Material is signed or given approval after the Date of Tender Acceptance.

PART 3

SERVICE SPECIFICATIONS

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SERVICE SPECIFICATIONS

Section 1 Background and Objective

1. Background

1.1 Long Valley is the largest contiguous freshwater wetland in Hong Kong and has high ecological value. The core part of Long Valley (37 hectare) has been designated as the Long Valley Nature Park (LVNP), under the development of the Kwu Tung North and Fanling North New Development Areas (NDAs), to mitigate the ecological impacts arising from the development of the NDAs as well as to conserve and enhance the ecological value of the wetland. The LVNP mostly consists of a mixture of wet and dry agricultural land in a mosaic pattern. Other wetland habitats include ponds, marshes and mitigation wetlands. The fallow and dry agricultural fields there are often rotated with wet agricultural fields spatially and temporally. The open field and mosaic pattern of wetland and non-wetland habitats are intrinsic to the ecological value of the LVNP supporting a huge diversity of wildlife, including various species of conservation importance. For details, please refer to the Habitat Creation and Management Plan (HCMP) for the LVNP at the website of the EIAO Register:

<https://www.epd.gov.hk/eia/register/english/permit/vep5232016/documents/hcmp/pdf/hcmp.pdf>

1.2 There are three management zones at the LVNP, i.e. Visitor Zone, Agriculture Zone and Biodiversity Zone (Figure 1 in Annex 1):

Visitor Zone (5 hectare) – located at the southwestern corner of the LVNP for visitors.

Agriculture Zone (12 hectare) – located mainly at the western side of the LVNP for ecologically friendly commercial farming.

Biodiversity Zone (21 hectare) – located at the northeastern side of the LVNP for biodiversity conservation.

2. Objective

2.1 The Contractor must ensure that 18.03 ha of habitats in the Biodiversity Zone of the LVNP are properly managed with a view to maintain and enhance the overall ecological value of Long Valley, and to provide foraging, roosting and breeding habitats for waterbirds, amphibians and other wetland-associated species.

Section 2 Staffing Requirements and Performance

1. The Contractor must assign not less than one full-time Contract Manager for the performance of the Contract during the Contract Period.
2. The Contractor must deploy at least the minimum number of Farming Staff as specified below to carry out the Services and the working hours and working period of such Farming Staff are as follows or otherwise as approved by the Government Representative:

Minimum No. of Farming Staff Required	Working Hours* (inclusive of an one-hour meal break)	Working Period (throughout the Contract Period)
1 Supervisor and 25 Farming Workers	From 7 am to 6 pm (Any 8 hours within the above timeframe)	Every day of the week from Mondays to Sundays <u>including</u> General Holidays (except the First, Second, Third and Fourth Days of Lunar New Year)

* The Government reserves the right to adjust the exact working hours of the Farming Staff whenever necessary without additional payment.

3. The Contractor must fulfill the following requirements in providing the Services:

- (a) The Contractor must at all times during the Contract Period comply with and implement the Execution Plan subject to any further modifications stipulated by the Government from time to time.
- (b) For the avoidance of doubt, the Contractor must provide the Services on each day during the Contract Period, including under inclement weather conditions. If the Government Representative directs any Contractor's Employee to suspend performing his duties during the period when tropical cyclone signal No. 8 or above is hoisted or when black rainstorm warning is issued or when "extreme conditions after super typhoons" is announced by the Government, such Contractor's Employee must resume duty within two hours after the lowering of tropical cyclone signal No. 8 or above, or after the black rainstorm warning or "extreme conditions after super typhoons" has been cancelled.
- (c) The Contractor must decide the appropriate number of Farming Workers and Supervisors which should be deployed to provide the Services as required, but not less than the minimum number of manpower specified above.
- (d) Owing to seasonality, typhoon, inclement weather and other special events, the amount of habitat management work may vary. The Contractor must make necessary allowance and provide adequate resources to cope with the amount of increased work. These must include but not be limited to an increase in effort in replanting, pumping in water to fields and ponds as well as pumping out water from fields and ponds, as the Government Representative may direct from time to time. The Contractor must not be entitled to any additional payment in respect of these services.
- (e) The Contractor must provide any other information and documentation as may be requested by the Government Representative relating to the provision of the Services.
- (f) The Contractor must not deploy any person other than the person approved by the Government Representative prior to the commencement of the Contract Period to discharge the duties of a Contract Manager as set out in this Contract. The Contract Manager must be in charge of the performance of the Services and must have the full authority to act on behalf of the Contractor, including the authority to make all decisions for the Contractor regarding the provision of the Services and to receive instructions from the Government Representative. The Contract Manager must be the sole contact point in all communications and exchanges with the Government and must be responsible for receiving instructions from the Government Representative. The Contract Manager must be contactable and available to receive the Government's instructions at all times during the Contract Period irrespective of any suspension of the Services in accordance with Clause 2.9 of Conditions of Contract. The Contract Manager

must at the expense of the Contractor be equipped with mobile phone communication system, and the Contract Manager must respond to all communication made by the Government Representative through such communication system within twenty (20) minutes. If the Contract Manager resigns or for whatever reasons that he could no longer execute his duties, the Contractor must immediately assign a replacement and inform the Government Representative for the Government's approval.

4. The Contract Manager and the Supervisor must:
 - (a) act and respond promptly to any instructions given or queries made by the Government Representative;
 - (b) be contactable by mobile phone at all times during the Contract Period;
 - (c) upon being requested by the Government Representative, accompany the Government Representative to the locations specified by the Government Representative to inspect the performance of the Services;
 - (d) give proper training, supervision and guidance, including but not limited to the spotting of nests in fields, to the Farming Workers in performing the Services;
 - (e) attend meetings convened by the Government Representative to which he may be summoned, including regular monthly meetings, and must advise on all matters relating to the provisions of the Services, including its performance, progress of work and any improvement/mitigation measure(s) taken, under this Contract at no extra cost.
 - (f) prepare and submit the notes of meeting within five (5) working days after each meeting to the Government Representative.
5. Without prejudice to any other provisions of this Contract, the Contract Manager must:
 - (a) conduct surprise checks at the Contract Venue at such frequency as agreed by the Government Representative and record the findings of his surprise checks in a record book;
 - (b) provide the record book for the Government Representative's inspection whenever requested by the Government Representative;
 - (c) if required by the Government Representative, attend and participate in meetings arranged by the Government Representative in relation to the Services (including meeting with any persons, groups or associations specified by the Government Representative to resolve complaints or discuss any aspect of the Services, including parameter set in Service Specifications) within four (4) hours of such a request having been made; and
 - (d) if required by the Government Representative, prepare a written report on any aspect of the Services within a timeframe as instructed by the Government Representative.
6. The Contractor must provide the Supervisor and Contract Manager with mobile phone at its own expense, and must provide the Government with the numbers of such mobile phones immediately on the commencement of the Contract Period to ensure that the Government can effectively contact the Supervisor and the Contract Manager at all times during the Contract Period.
7. The Government Representative may, by giving prior notice to the Contractor, vary the period for

which any Farming Staff must be on duty each day and the Contractor must comply with such variation. In such event, all references in this Contract to the period for which the Farming Staff must be on duty must be construed accordingly.

8. No touting must be allowed by the Contractor and his Contractor's Employees. Crop and seedlings collected under the Contract must become the property of the Government.
9. The Contractor must collect all litter and unwanted materials generated in an environmentally friendly manner as instructed by the Government Representative and remove and dispose properly in bags (to be supplied by the Contractor) or approved containers all litter and unwanted materials, except those recyclables collected, immediately. The bags for collecting the litter and unwanted materials that the Contractor used must be made of bio-degradable materials. The Contractor must sort/ place all recyclables properly into appropriate approved containers or bags.

Section 3 Contract Venue

1. Unless the Government directs in writing otherwise, the Contract Venue shall be the following areas for the respective phases during the Contract Period. The areas for the respective phases are shown in Figure 2 in Annex 1.

Phase	Contract Venue	Tentative Schedule	Size (in hectare)
1	Zone A and Shallow Water Habitat (Type 2) of the Biodiversity Zone of the LVNP	The first six (6) months of the Contract Period	10.33
2	Zone A, Zone B and Shallow Water Habitat (Type 2) of the Biodiversity Zone of the LVNP	The remaining eighteen (18) months of the Contract Period	18.03

Section 4 Habitat Management and Related Services

1. Habitat Management

1.1 The Contractor is required to adopt an adaptive approach in managing the habitats of the LVNP with a view to maintaining and enhancing the mosaic pattern of habitats which can be broadly categorised into dry and wet habitats. Among other obligations, the Contractor must maintain the habitats of the Biodiversity Zone in such a way that it contributes to the overall percentage of dry and wet habitats in the LVNP as 30% and 70% respectively, with a tolerance of 10% depending on season, weather and/or site conditions. Subject to the above obligations, the Contractor should maintain at least 0.65 ha of dry habitat in the Biodiversity Zone, and maintain the dry and wet habitats in mosaic pattern taken into account in the Biodiversity Zone.

1.2 At any time during the Contract Period, the habitat management work of the Contractor must be subject to inspection by the Government Representative. Based on the results of the inspection, the Government Representative may provide instructions to the Contractor on the management regime of specific plots or habitat types, irrespective to the Execution Plan and Work Plans. The Contractor must also closely monitor its performance and particular circumstances at each plot, including the presence of nesting birds, change of dry and wet habitats, and condition of adjacent plots, to meet the requirement of Services. In case irregularities are identified, such as pests and

diseases, damaged bunds, etc., the Contractor must take mitigation measures within five (5) working days or the timeframe as specified by the Government Representative.

- 1.3 Meanwhile, the Government would conduct on-going ecological monitoring at LVNP in accordance with the requirement of the HCMP. The Contractor must determine the appropriate course of action based on the advice of Government Representative, which may be related to, inter alia, species-diversity, abundance, distribution and behaviour of relevant taxa (especially species of conservation importance) and physical integrity of habitats.
- 1.4 The Contractor should change the dry and wet habitats spatially and temporally and allow agricultural fields to be left temporarily fallow at appropriate time intervals. The Contractor should maximise the heterogeneity of habitats by planting different but suitable crops/ plants, and adopt appropriate management approaches and maintain appropriate water levels for different growth stages of crops/ plants.
- 1.5 The LVNP is a natural floodplain where flooding may occur during heavy rain and typhoon. Apart from daily habitat management, the Contractor must also monitor and maintain the water level of each field and reinstate any damaged earth bunds, bund rows and furrows.
- 1.6 All existing bunds should be maintained in order to minimise any damages to the fields. If a bund is damaged or water leaches out from a bund, the Contractor must repair it within seven (7) working days. No external soil/ mud should be used unless supported by Laboratory Report on its content at Contractor's own expense and approved by the Government Representative.
- 1.7 Photos showing various habitats of the LVNP are provided in Figure 3 in Annex 1. A summary of the existing dry and wet habitats under the Services is tabulated in Table 1 with description of each habitat type given in the ensuing paragraphs.

Table 1 - Wet and Dry Habitats under the Services

Habitat Type		Area (in hectare)
Wet Habitat	Less Intensive Wet Agricultural Land (WAL) – Paddy Field	1.99
	Intensive WAL – Watercress/ Water Spinach	3.00
	Less Intensive WAL – Lotus/ Water Lily	1.42
	Less Intensive WAL – Water Chestnut/ Chinese Arrowhead	2.76
	Marsh	1.47
	Reedbed	0.07
	Shallow Water Habitat (Type 1)	4.07
	Shallow Water Habitat (Type 2)	0.78
	Water Flea Pond	0.71
	Deep Water Pond	0.92
	Irrigation Channel	0.19
	Sub-total	17.38
Dry Habitat	Dry Agricultural Land	0.65
		Sub-total

(a) Intensive Wet Agricultural Land - Paddy Field

Rice (*Oryza sativa*) provides important food resources for insectivorous and granivorous birds, including the migratory and critically endangered Yellow-breasted Bunting (*Emberiza aureola*). Paddy field also serves as foraging and nursery grounds for amphibians and other wetland-associated species.

In each calendar year, the Contractor must cultivate two (2) seasons of rice. The area of paddy field in the Biodiversity Zone of the LVNP must not be less than 1 ha during the first season, and must not be less than 2 ha during the second season. For the second season, grains must be available starting from early October or otherwise specified by the Government Representative. Appropriate water levels must be maintained at different rice growing stages. The rice must remain unharvested to provide feeding ground for birds, except for collecting seeds for the next rice planting season or as directed by the Government Representative.

(b) Intensive Wet Agricultural Land – Watercress/ Water Spinach

Watercress (*Nasturtium officinale*)/ Water Spinach (*Ipomoea aquatica*) field provides important food and shelter for birds. Eastern Yellow Wagtail (*Motacilla tschutschensis*), Citrine Wagtail (*Motacilla citreola*), pipits, ardeids and *Gallinago* species are the target species of this habitat. The field also serves as foraging and nursery grounds for amphibians and other wetland-associated species.

The Contractor must cultivate Water Spinach or Watercress in rotation depending on seasons, and must maintain the water level at around 100 mm in the field. The Contractor must ensure that no less than 10% of Water Spinach/ Watercress is kept as source of propagules throughout the year.

(c) Less Intensive Wet Agricultural Land – Lotus/ Water Lily

Lotus (*Nelumbo nucifera*)/ Water Lily (*Nymphaea* species) field provides food and shelter for birds, such as ducks and grebes. The field also serves as foraging and nursery grounds for amphibians and other wetland associated species.

The Contractor must cultivate Lotus/ Water Lily and maintain the water level at around 200 mm in the field.

(d) Less Intensive Wet Agricultural Land – Water Chestnut/ Chinese Arrowhead

Water Chestnut (*Eleocharis dulcis*)/ Chinese Arrowhead (*Sagittaria trifolia*) field provides food and shelter for birds, such as waterhen and snipes. The field also serves as foraging and nursery grounds for amphibians and other wetland associated species.

The Contractor must cultivate Water Chestnut/ Chinese Arrowhead and maintain the water level at around 100 mm in the field.

(e) Marsh

Marsh provides shelters for foraging, roosting and nesting of wildlife. Bird nests and eggs are commonly found in marsh during the breeding season, including that of Greater Painted-snipe (*Rostratula benghalensis*) (a species of local concern), crakes and rails. Marsh also serves as breeding site for butterflies, dragonflies and amphibians.

The Contractor must maintain or cultivate any mix of the species stated below and ensure that the total vegetation coverage will be at least 20% of each marsh. The Contractor must also maintain the water level at a minimum of 100 mm.

- *Alternanthera philoxeroides*
- *Ammannia baccifera*
- *Bacopa monnieri*
- *Blyxa aubertii*
- *Commelina diffusa*
- *Floscopa scandens*
- *Hygrophila salicifolia*
- *Impatiens chinensis*
- *Juncus effusus*
- *Leersia hexandra*
- *Ludwigia adscendens*
- *Ludwigia octovalvis*
- *Monochoria vaginalis*
- *Panicum repens*
- *Paspalum distichum*
- *Persicaria glabra*
- *Pogostemon auricularius*
- *Rotala rotundifolia*
- *Saururus chinensis*
- *Schoenoplectus triangulatus*
- *Sphenoclea zeylanica*
- *Vallisneria natans*

(f) Reedbed

Reedbed provides food, shelter and roosting sites for birds, such as reed warblers, prinias, munias and bitterns.

The Contractor must maintain the existing reedbed and cultivate reed, *Phragmites australis*, as and when instructed by the Government Representative. The Contractor must maintain the water level at at least 200 mm and regularly monitor the habitat condition, any sign of infestation by insect pest (e.g. *Dimorphopterus spinolae*) in particular.

(g) Shallow Water Habitat (Type 1)

Shallow water habitat (Type 1) serves as a foraging ground for birds, such as ardeids, sandpipers and stilts. Bird island may also be created in some of the shallow water habitats within the Biodiversity Zone for hiding, roosting and nesting of wildlife like crakes and rails.

The Contractor must maintain the water level at 50 to 100 mm. The Contractor must also maintain or create bird island(s) with any mix of the species stated below at appropriate location(s) and carry out weeding before the breeding season as and when necessary.

- *Alternanthera philoxeroides*
- *Paspalum distichum*
- *Persicaria glabra*
- *Pogostemon auricularius*
- *Sphenoclea zeylanica*

The Contractor must carry out rotation of shallow water habitat with other suitable habitat types at regular time interval.

(h) Shallow Water Habitat (Type 2)

Shallow water habitat (Type 2) as shown in Figure 2 serves as both shallow water habitat for wildlife and irrigation source for farmers in the Agriculture Zone. A trough of about 500 mm deep and 2000 mm wide must be maintained along the periphery of each field which allows farmers to put their water pumps there for obtaining irrigation water. The central part of the field is about 200 mm higher from the bottom of the trough which serves as a shallow water habitat for wildlife. The Contractor must maintain the water level at not less than 100 mm at the shallowest part of the field at all times. The Contractor must also maintain the profile of the fields such that the fields could serve the dual functions mentioned above.

(i) Water Flea Pond

Water flea pond is highly successful in attracting certain water bird species, especially Pied Avocet (*Recurvirostra avosetta*) and Black-winged Stilt (*Himantopus himantopus*).

The Contractor must maintain the water flea pond free of vegetation with a water level between 150 mm and 300 mm. In addition, the Contractor must culture water flea by applying a suitable amount of chicken manure to the pond at regular time interval.

(j) Deep Water Pond

Deep water pond provides foraging and resting ground for birds such as ducks, rails and coots. The Contractor must normally maintain the water level at a maximum of 1.5 m, but must drain the deep water pond at some times of the year to provide feeding ground for waterbirds. The Contractor must also cultivate fish by adding fish fry/ trash fish annually, and carry out vegetation control throughout the year, especially during the wet season.

(k) Irrigation Channel

Irrigation channel provides irrigation water supply to the habitats in Long Valley.

The Contractor must maintain the water flow of the irrigation channel within the Biodiversity

Zone and carry out vegetation control whenever necessary.

(I) Dry Agricultural Land

Dry agricultural land contributes to the mosaic pattern of wet and dry habitats supporting a diversity of bird species including pipits, buntings, starlings and Japanese Quail (*Coturnix japonica*).

The Contractor must cultivate any or a mix of the crops commonly found in Long Valley. Fruit trees and ornamental species should not be cultivated unless approved by the Government Representative.

2. Irregularities and Mitigation Measures

2.1 The Contractor must monitor the condition of plants and physical integrity of habitats in the Biodiversity Zone of the LVNP, and report the monitoring result to the Government Representative at the monthly meeting. In case any irregularities are identified, such as abnormal growth of plants due to pests, diseases or changes in environmental conditions and damage of the physical characteristics of habitats, the Contractor must immediately notify the Government Representative the irregularities identified. The Contractor must seek prior approval from the Government Representative on the mitigation measures to be undertaken within two (2) working days after identifying the irregularities. The Contractor must document the irregularities identified and mitigation measures taken, and report at the monthly meeting or Monthly Work Plan as appropriate. Upon approval of the mitigation proposal by the Government Representative, the Contractor must carry out the mitigation measures within five (5) working days or the timeframe as specified by the Government Representative.

3. Control of Invasive Alien Species

3.1 The Contractor must closely monitor the habitats for any invasive alien species/ or as instructed by the Government Representative. In case invasive alien species are found, the Contractor must take appropriate physical control as the first measure. If chemical control is necessary and unavoidable, the chemical(s) applied must be non-toxic to human and ecologically friendly. The Contractor must ensure its staff to wear proper personal protective gears throughout the action of control as necessary. Below are some commonly encountered invasive alien species in Long Valley:

(a) Mikania (*Mikania micrantha*)

Mikania must be cleared manually by slashing it with hand tools or mechanically by using a brushcutter. The stem should be cut off as close to the ground as possible and the aerial part should be removed, packed in bag and disposed of properly. The clearance of Mikania must

be performed before its fruiting period to prevent further spreading. The “Nature Conservation Practice Note No. 01 – Clearing Mikania” promulgated by the AFCD must be observed on the clearance of Mikania.

(b) **Water Lettuce (*Pistia stratiotes*)**

Water lettuce must be raked or seined by using a large fishing net or hand net once it is found.

(c) **White Popinac (*Leucaena leucocephala*)**

White Popinac must be removed once it is found. No part, including seed, of it should be left on the ground, but be packed in bag for proper disposal.

(d) **Apple Snail (*Pomacea canaliculata*)**

Apple Snail, be it adult or egg, must be removed by hand or with lime powder once it is found. Where necessary, tea seed powder must be applied in paddy field with all safety precautionary measures adopted. However, the use of tea seed powder must be refrained during the breeding season of amphibians.

(e) **Red Imported Fire Ant (*Solenopsis invicta*)**

Red Imported Fire Ant must be controlled by attractant bait. Nevertheless, the bait should be prevented from ingestion by birds and a warning signage keeping visitors away from the ant nest should be erected. The location of ant nests should also be properly recorded.

- 3.2 The Contractor must seek prior approval from the Government Representative for alternative or innovative measure against invasive alien species.

4. Equipment

4.1 The Government will provide storage space in the Biodiversity Zone of the LVNP as shown in Figure 1 in Annex 1 for storage of equipment by the Contractor. The Contractor must arrange and ensure, at its own expense, all necessary equipment in good conditions at all times during the Contract Period for discharging the Services. The Contractor will be allowed to use simple hand tools and powered tools, e.g. hoe, spade, rake, hand saw, sickle, augers and sprayer, etc., in the Biodiversity Zone of the LVNP. The Contractor must obtain prior approval from the Government Representative if it considers necessary to use machinery in the LVNP. The Contractor must be responsible for the training of its personnel and agent for operating all the equipment, and the provision of all safety equipment and measures required for its personnel and agent to perform the Services.

4.2 Notwithstanding any other provisions of the Contract, the Contractor must provide sufficient quantity of equipment, including but not limited to the items tabulated below, at its own expense for discharging the Services:

Item	Equipment	Minimum Number
1	Chipper/ Shredder	2
2	Cultivator/ Tiller	20
3	Grass Trimmer	10
4	Water Pump	30
5	Wheel Barrow	5

5. Fertilisation

5.1 Notwithstanding any other provisions of the Contract, the Contractor must provide sufficient manpower and quantity of fertiliser at its own expense for carrying out fertilisation to the dry and wet habitats as set out in this Contract during the Contract Period. The Contractor must observe the following requirements on fertilisation:

(a) Fertiliser Requirements:

- (i) Fertiliser adopted must comply with the latest version of the Organic Production, Aquaculture and Processing Standard (IFOAM Accredited Version) published by the Hong Kong Organic Resource Centre Certification Limited (HKORCCL) or otherwise be approved by the Government Representative;
- (ii) Fertiliser adopted should be stable and consistent;
- (iii) Fertiliser adopted should be supplied in sealed waterproof bag and stored above ground and away from water and direct sunlight; and
- (iv) The Contractor must keep the detailed record of fertiliser after each application and provide monthly return to the Government Representative for inspection.

6. Plant Debris and Unwanted Plant Materials

6.1 Notwithstanding any other provisions of the Contract, the Contractor must provide sufficient manpower and resources at its own expense for treating plant debris and unwanted plant materials during the Contract Period. The Contractor must consider the following treatment methods for debris and unwanted plant materials:

- (a) Green manure;
- (b) Composting; and
- (c) Mulching.

6.2 The Contractor must note that open burning of any plant debris and unwanted plant materials is prohibited under the Forests and Countryside Ordinance (Cap. 96).

7. Weed, Disease and Pest Control

7.1 Notwithstanding any other provisions of the Contract, the Contractor must provide sufficient manpower as well as any materials needed for weed, disease and pest control at its own expense for controlling weed, disease and pest in the dry and wet habitats as set out in this Contract during the Contract Period. The Contractor must observe the following requirements on weed, disease and pest control:

- (a) The Contractor must inspect all habitats for the purpose of weed, disease and pest control on a weekly basis;
- (b) The Contractor must ensure that the coverage of undesirable flora species (e.g. *Brachiaria mutica*) and/ or floating vegetation (e.g. *Pistia stratiotes* and *Eichhornia crassipes*) does not exceed 10% of each field, or as and when required by the Government Representative, or otherwise as specified in the Service Specification;
- (c) The Contractor must perform weed, disease and pest control by mechanical or physical measures as far as possible, e.g. use of insect vacuum, grass-trimmer, insect sticky tape, etc. Application of pesticide should be taken as the last resort when other mechanical and physical measures are shown ineffective;
- (d) Pesticide adopted must comply with the Pesticides Ordinance (Cap. 133), as well as the latest version of the Organic Production, Aquaculture and Processing Standard (IFOAM Accredited Version) published by the HKORCCL or otherwise as approved by the Government Representative;
- (e) The Contractor must apply the pesticide in accordance with the instruction of the manufacturer;
- (f) The Contractor must dispose any unwanted pesticides or associated wastes in accordance with the Waste Disposal Ordinance (Cap. 354);
- (g) The Contractor must ensure that the Contractor Personnel or agent applying the pesticide is well trained and equipped with and wear proper protective clothing and working gear during each operation as necessary; and
- (h) The Contractor must erect warning notice and keep the detailed record of pesticide after each application, including but not limited to its name, formulation, amount applied, and time and location of application, as well as the particulars of the personnel applying it, and provide monthly return to the Government Representative for inspection.

8. Prohibition

8.1 The Contractor must ensure the Contractor's Employees, sub-contractor and agent would not conduct any of the following activities in the Biodiversity Zone of the LVNP:

- (a) keeping or feeding any pets;
- (b) smoking;
- (c) causing any disturbances to wildlife;
- (d) planting any trees without approval by the Government Representative; or
- (e) erecting any temporary or permanent structures without approval by the Government Representative.

Section 5 Deliverables

1. Deliverable Schedule

1.1 The Contractor must prepare the following deliverables, for comments/agreement by the Government Representative in accordance with the timeframe set out in the following table. Detailed requirements of the deliverables are provided in the ensuing paragraphs.

Item	Deliverable	Submission Deadline
1.	Annual Habitat Management Plan	(i) Within ten (10) working days after the commencement of the Services; and (ii) Within ten (10) working days in the twelfth (12 th) month after the commencement of the Services
2.	Monthly Work Plan	(i) Within five (5) working days after the commencement of the Services; and subsequently (ii) at least five (5) working days prior to the beginning of the subsequent month
3.	Half-yearly Report	Within ten (10) working days in the seventh (7 th), thirteenth (13 th), nineteenth (19 th) and twenty-fourth (24 th) month upon the commencement of the Services
4.	Daily Attendance Record	No later than 10:00 a.m. on each day

Item	Deliverable	Submission Deadline
5.	Monthly Attendance Summary	Within 7 working days after the end of each month

2. Annual Habitat Management Plans

- 2.1 The Contractor must submit Annual Habitat Management Plans detailing, including but not limited to, the farming/ planting proposal, habitat management proposal and works schedule of the year. The Annual Habitat Management Plans must implement in full the specifications for the Services specified in the Contract including in particular, the Service Specifications and its commitments and proposals set out in the Execution Plan, for the Government Representative's approval.
- 2.2 The Annual Habitat Management Plans may be subject to periodic review of the Government Representative, and must be revised as may be directed by the Government Representative from time to time, without any additional cost to the Government.

3. Monthly Work Plans

- 3.1 The Contractor must submit Monthly Work Plans detailing, including but not limited to, the duties and responsibilities of all Farming Staff, farming/ planting plan, habitat management plan and work schedule of the month. The Monthly Work Plans must implement in full the specifications for the Services specified in the Contract including in particular, the Service Specifications and its commitments and proposals set out in the Execution Plan, for the Government Representative's approval.
- 3.2 The Monthly Work Plans may be subject to periodic review of the Government Representative, and must be revised as may be directed by the Government Representative from time to time, without any additional cost to the Government.

4. Half-yearly Reports

- 4.1 The Contractor must submit reports on its work detailing, including but not limited to its habitat management work, management of manpower, handling of complaint(s), improvement/ mitigation measure(s) taken and its work plan(s) for the coming six months except for the Half-yearly Report submitted in the twenty-fourth (24th) month.

5. Daily Attendance Records

- 5.1 The Contractor must deliver to the Long Valley Nature Park's Main Office a daily attendance record of his Farming Staff on each day not later than 10:00 a.m. showing in detail the number of Farming Staff who are on duty together with their names, posts, hours on duty, arrival time and departure time which information must 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. The record must also show the name of the Farming Staff who is absent on that day and his replacement, if any.

6. Monthly Attendance Summary

- 6.1 The Contractor must submit a monthly attendance summary every month in such form as the Government Representative may prescribe showing the number of Farming Staff categorised by their job titles, the details of attendance, any absentees and replacements.
- 6.2 The Daily Attendance Record and Monthly Attendance Summary must be readily available for the inspection of the Government Representative upon demand. The Contractor must, 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.

Annex 1 to Service Specifications

Figure 1 – Management Zones and Irrigation/ Storage Facilities at the LVNP

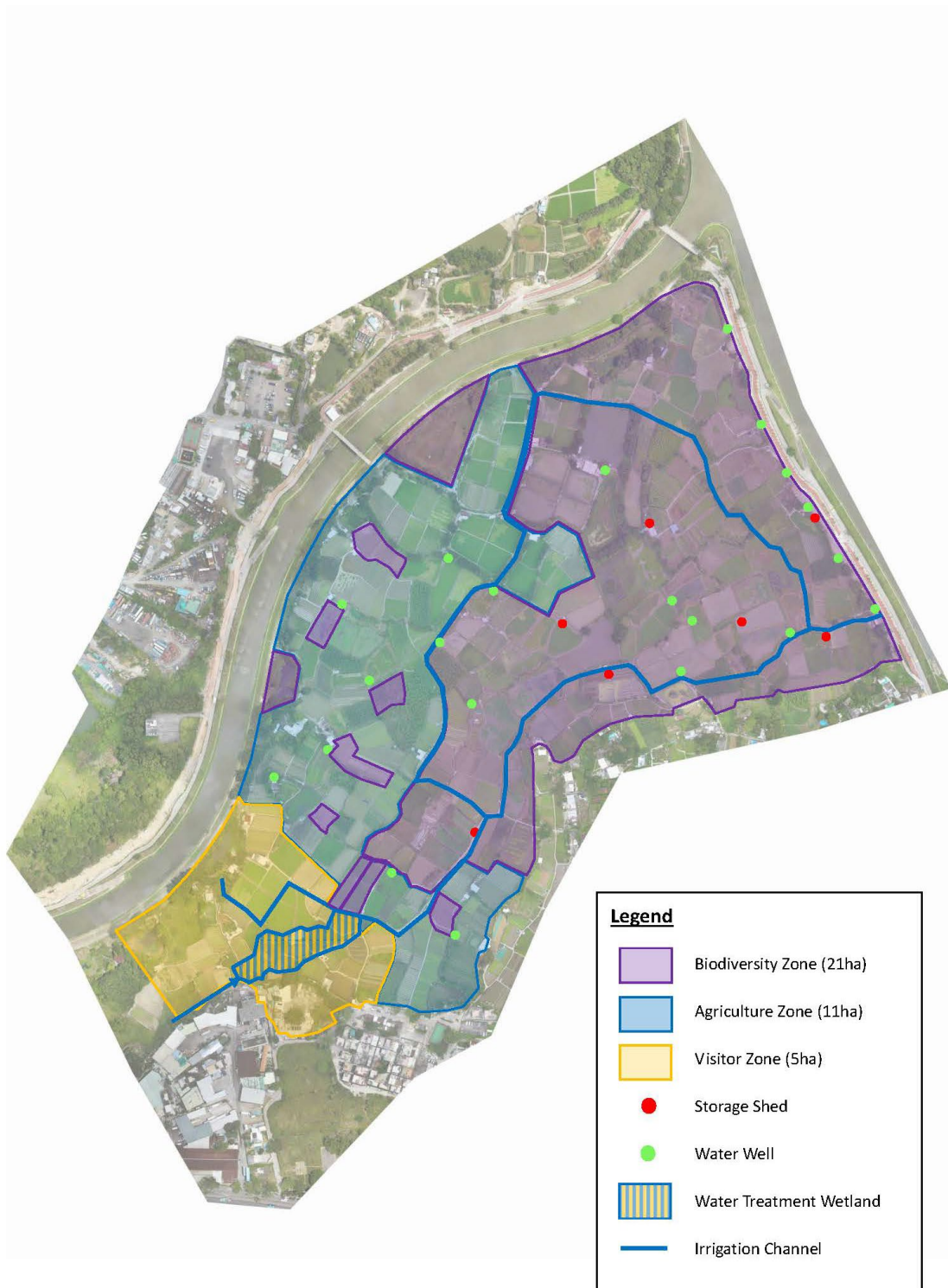











Figure 2 – Contract Venue of this Services



Figure 3 – Photographs of Major Habitats under this Services

Habitat Type		Photograph
Wet Habitat	Less Intensive Wet Agricultural Land – Paddy Field	
	Intensive Wet Agricultural Land – Watercress/ Water Spinach	
	Less Intensive Wet Agricultural Land – Lotus/ Water Lily	
	Less Intensive Wet Agricultural Land – Water Chestnut/ Chinese Arrowhead	
	Marsh	

	<p>Reedbed</p>	
	<p>Shallow Water Habitat (Type 1)</p>	
	<p>Shallow Water Habitat (Type 2)</p>	
	<p>Water Flea Pond</p>	
	<p>Deep Water Pond</p>	

	<p>Irrigation Channel</p>	
<p>Dry Habitat</p>	<p>Dry Agricultural Land</p>	

Annex 2 to Service Specifications

Guidance Note GN-1 (Environmental Protection)

Contractors are encouraged to minimise the impact of their activities on the environment and to observe the following requirements in particular:

- Comply with all applicable legal and other requirements on environmental protection.
- Control the use of materials and resources (e.g. electricity, fuel, chemicals, paper, etc.) to minimise their consumption and unnecessary wastage. Use environment-friendly alternatives where possible during your daily operations.
- Store properly all materials/chemicals to prevent any spillage and leakage.
- Minimise the production of solid waste and chemical waste.
- Ensure all solid waste is properly handled, stored and disposed of in an efficient and sensitive manner to avoid any spillage and leakage. In particular, all chemical waste should be handled, stored and disposed of in accordance with the applicable legal requirements.
- Ensure proper and regular maintenance of all vehicles used for the purpose of conducting business, including controlling their noise and emissions.
- Minimise all air emissions and noise generation where practicable.
- Ensure all waste water is discharged in accordance with the applicable legal requirements.
- Reuse and recycle waste wherever possible.

CONTRACT SCHEDULE 1
Rates for the Provision of Services, Wages and Working Hours

PART A – PRICE PROPOSAL AND BREAKDOWNS

Section 1 – Estimated Contract Price

Item 1 : Rates for Provision of Services for the First 6 Months of the Contract Period

<u>Description</u>	<u>Monthly Rate</u>
I. Staff cost (including provision of personal accoutrements)	HK\$ _____ (A1)
II. Cost of equipment and supply of fertiliser and other materials	HK\$ _____ (A2)

Monthly Rate for the Services (A3) = (A1) + (A2)	HK\$ _____ (A3)
Total rate for the Services (for first 6 months) (A4) = (A3) x 6	HK\$ _____ (A4)

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

Item 2 : Rates for Provision of Services for the Remaining 18 Months of the Contract Period (subject to any termination or extension provided for in the Contract)

<u>Description</u>	<u>Monthly Rate</u>
III. Staff cost (including provision of personal accoutrements)	HK\$ _____ (B1)
IV. Cost of equipment and supply of fertiliser and other materials	HK\$ _____ (B2)

Monthly Rate for the Services (B3) = (B1) + (B2)	HK\$ _____ (B3)
Total rate for the Services (for remaining 18 months) (B4) = (B3) x 18	HK\$ _____ (B4)

Item 3 : Estimated Contract Price

Estimated contract price (for 24 months) (A4) + (B4)	HK\$ _____
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Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

Section 2 – Rates for Provision of Additional Services on an “as-and-when-required” Basis

<u>Type of Staff</u>	<u>Monthly Charge (HK\$)</u>	<u>Hourly Charge (HK\$)</u>
Supervisor		
Farming Worker		

Section 3 – Proposal on Monthly Wages and Allowable Daily Maximum Working Hours

Type of Staff	Proposed Monthly Wage (See Note)	Allowable Daily Maximum Working Hours for Farming Staff
Farming Worker	HK\$	All Farming Workers must not work for more than 10 hours in any 24 hours period unless with the prior written consent of the Government Representative.
Supervisor	HK\$	All Supervisors must not work for more than 10 hours in any 24 hours period unless with the prior written consent of the Government Representative.

Note: Tenderer's attention is drawn to Clause 5 of the Terms of Tender.

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

PART B - CONTRACT DEPOSIT REPLY SLIP

In accordance with Clause 10 of the Terms of Tender,

I/We select to furnish the Contract Deposit by *Cheque / Cashier’s Order / Banker’s Guarantee.

* Delete whichever if not applicable.

PART C – PAYMENT DISCOUNTS

1. Tenderer is requested to indicate in the space provided below the discount which it would allow on the Monthly Rate if payment is made in full within:
 - (a) **14** clear working days from date of receipt of invoice or from date of acceptance of Services, whichever is the later: _____ % discount.
 - (b) **28** clear working days from date of receipt of invoice or from date of acceptance of Services, whichever is the later: _____ % discount.
2. Tenderer must insert the word ‘NIL’ in the space provided above if it does not offer any payment discount.
3. The 14 or 28 clear working days’ period for payment discount will be calculated from (excluding Saturday, Sunday or General Holiday) the date of receipt of invoice or from the date of acceptance of Services, whichever is the later.
4. Any payment discount offered by a Tenderer will not be taken into consideration in the tender price assessment, except when there is more than one Tenderer fully capable of undertaking the Contract and offering the same Estimated Contract Price.

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

CONTRACT SCHEDULE 2**Background and Experience of Tenderer's Employee and Its Execution Plan**

Tenderers shall refer to the requirements on the proposed Contract Manager and the proposed Supervisor set out in Annexes A and B.

1. Qualification of the Proposed Contract Manager

Please provide the qualification of the proposed Contract Manager and his related discipline obtained preceding the Tender Closing Date. Please provide documentary proof of qualification claimed (e.g. copy of graduation certificate etc.).

Qualification and Discipline	Full Name of Issuing Authority	Date Obtained
(Use separate sheets if required)		

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

2. Experience of the Proposed Contract Manager

Please provide details of the proposed Contract Manager's experience in providing the following services during the twelve (12)-year period immediately preceding the Tender Closing Date, including details of the contracts that he has performed (with client's name, contract period and size of fields involved). Please provide documentary proof of the experience claimed (e.g. copy of contract, invoice etc.).

Full-time Working Experience in Wetland Habitat Management

Details of Contract/ Project (with Client's name, if any)	Contract/ Project Period (DD/MM/YY)
(Use separate sheets if required)	
Total Relevant Years of Experience	

Full-time Working Experience at Managerial or Supervisory Level

Details of Contract/ Project (with Client's name, if any)	Contract/ Project Period (DD/MM/YY)
(Use separate sheets if required)	
Total Relevant Years of Experience	

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

3. Qualification of the Proposed Supervisor

Please provide the qualification of the proposed Supervisor and his related discipline obtained preceding the Tender Closing Date. Please provide documentary proof of qualification claimed (e.g. copy of graduation certificate etc.)

Qualification and Discipline	Full Name of Issuing Authority	Date Obtained
(Use separate sheets if required)		

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

4. Experience of the Proposed Supervisor

Please provide details of the proposed Supervisor's experience in providing the following services during the twelve (12)-year period immediately preceding the Tender Closing Date, including details of the contracts that he has performed (with client's name, contract period and size of fields involved). Please provide documentary proof of the experience claimed (e.g. copy of contract, invoice etc.).

Full-time Working Experience in Wetland Habitat Management

Details of Contract/ Project (with Client's name, if any)	Contract/ Project Period (DD/MM/YY)
(Use separate sheets if required)	
Total Relevant Years of Experience	

Full-time Working Experience at Supervisory Level

Details of Contract/ Project (with Client's name, if any)	Contract/ Project Period (DD/MM/YY)
(Use separate sheets if required)	
Total Relevant Years of Experience	

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

5. Execution Plan of Tenderer**Tenderers shall refer to the requirements on the Execution Plan set out in Annex B.**

1.	Operation Plan	Please attach
2.	Resource and Supervision Plan	Please attach
3.	Contingency and Transition Plan	Please attach
4.	Innovative Suggestions	Please attach

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: _____

Tel No.: _____ Fax No.: _____ Date : _____

CONTRACT SCHEDULE 3
Information and Status of Tenderer

Please submit the following information (please attach separate sheets if space is insufficient):

1. Name of Tenderer : _____

2. Address : _____

3. Present Business : _____

4. Tenderer's Response to the Government's Enquiries

Please fill in the name, telephone and fax number of its contact person in case that clarification of its Tender is required under Clause 3.7(a) of the Terms of Tender.

Name of Tenderer
 in English (in Block Letters) : _____
 Name of Contact Person : _____
 Tel. No. : _____
 Fax No. : _____
 Authorised Signature & : _____
 Company Chop of Tenderer _____

5. Please attach a photocopy of the company's valid Business Registration Certificate (if any).

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to : _____
 Sign Tender _____

Name of Tenderer in English: : _____

Tel No.: _____ Fax No.: _____ Date : _____

6. Number of Tenderer’s employees currently engaged in providing habitat management services:

7. Particulars of Company (e.g. year of establishment, shareholders, no. of workers employed, liability, annual turnover, etc.):

8. Bank Account Details for Payment of the Services

Banker’s Name : _____
Banker’s Address : _____
Bank Account No. : _____
Authorised Signature & Company Chop : _____
Name of Person Authorised to Sign (in block letters) : _____
Name of Tenderer in English (in block letters) : _____

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to Sign Tender : _____

Name of Tenderer in English: : _____

Tel No.: _____ Fax No.: _____ Date : _____

9. I/We confirm that none of the events as mentioned in Clause 19.1(a) to 19.1(h) of the Terms of Tender has ever occurred.*

I/We confirm that the following event(s) as mentioned in Clause 19.1(a) to 19.1(h) of the Terms of Tender has occurred:*

Note: * Please delete whichever is not applicable.

Date	Details of the Event

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
Sign Tender _____

Name of Tenderer in English: : _____

Tel No.: _____ Fax No.: _____ Date : _____

CONTRACT SCHEDULE 4
Statement of Past Convictions and Authorisation

PART A - DECLARATION

A Tenderer must declare if it has obtained any conviction of an offence under the relevant Ordinances (as defined in Clause 1.1 of Annex A to the Terms of Tender) during the five-year period immediately preceding the Tender Closing Date.

Yes / No (please delete as appropriate)

If yes, please complete the following table –

Date of Offence	Location of Offence	Date of Conviction	Ordinance and Sections Breached	Amount of Fine / Length of Imprisonment
(Use separate sheets if required)				

I/We hereby declare that all information given above and contained in any additional sheets attached hereto are correct. If any of the information is found to be incorrect, we understand that my/our Contract will be terminated in accordance with Clause 15.1 of the Conditions of Contract.

PART B - AUTHORISATION

I/We hereby authorise the Agriculture, Fisheries and Conservation Department to obtain information from all Government departments and give consent to the Government departments concerned to release and provide information of my/our record of conviction under the Employment Ordinance, Employees' Compensation Ordinance, Immigration Ordinance, Criminal Procedure Ordinance and Mandatory Provident Funds Schemes Ordinance relating to staff employment to the Agriculture, Fisheries and Conservation Department for the purposes of assessment of my/our Tender under this tender exercise and subsequent management of the Contract.

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to :
 Sign Tender _____

Name of Tenderer in English : _____

Tel No.: _____ Fax No.: _____ Date : _____

CONTRACT SCHEDULE 5
Non-collusive Tendering Certificate

To: Director of Agriculture, Fisheries and Conservation

1. (name of the Tenderer) _____ of
 I/We, _____
 (address(es) of the Tenderer(s)) _____

_____ refer to the Government's invitation to tender for the Contract ("Invitation to Tender") and my/our Tender in response to the Invitation to Tender.

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Tender:

- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
- (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Clause 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:

- (a) the Government;
- (b) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy

arrangement or sub-contract;

- (c) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
- (d) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
- (e) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
- (f) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 17.1 of the Terms of Tender, the Government may exercise any of the rights under Clause 17.2 to 17.4 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.
6. Under the Competition Ordinance (Cap. 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the "Commission") and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Authorised Signature & Company Chop : _____

Name and Title of Person Authorised to Sign :
Tender _____

Name of Tenderer in English : _____

Tel No.: _____ Fax No.: _____ Date : _____

**The Government of Hong Kong Special Administrative Region
Agriculture, Fisheries and Conservation Department**

**Tender for the Provision of Habitat Management Services for
the Biodiversity Zone of the Long Valley Nature Park**

OFFER TO BE BOUND

This Offer to be Bound is submitted by the undersigned in response to the Government’s Invitation to Tenders (Ref: AFCD/NP/01/21) for provision of the Services. Unless the context otherwise requires, terms and expressions appearing herein have the meanings given to them in the Tender Documents issued by the Government in connection with the Invitation to Tender.

To: The Government

1. I/We refer to the Invitation to Tenders issued by the Government to me/us. I/We hereby warrant that all information given in or attached to my/our Tender are true, complete and correct.
2. Having read and understood all terms and conditions of the Tender Documents, I/we HEREBY OFFER (a) to provide the whole of the Services on and subject to the terms and conditions set out in the Contract and (b) to be bound by all terms and conditions set out in the Contract.
3. We also certify that we have maintained a valid employees’ compensation insurance policy with policy number _____, which expires on _____; and the name of the insurance company is _____.
4. I am/We are duly authorised to bind the Tenderer hereafter mentioned by my/our signatures(s).

Authorised Signature & Company Chop (if :
any)

Name and Title of Person Authorised to
Sign Tender for and on behalf of the
Tenderer :

Name of Tenderer in English :

Name of Tenderer in Chinese :

Registered office of the Tenderer :

Tel No.: _____ Fax No.: _____ Date : _____

**The Government of Hong Kong Special Administrative Region
Agriculture, Fisheries and Conservation Department**

**Tender for the Provision of Habitat Management Services for
the Biodiversity Zone of Long Valley Nature Park**

Tender Reference: AFCD/NP/01/21

MEMORANDUM OF ACCEPTANCE

I
(name and position of officer)

accept your Tender for provision of habitat management services for the biodiversity zone of the Long Valley Nature Park under the Contract.

Date this day of 20

Signed by the said)
.....)
for and on behalf of the Government of the Hong Kong)
Special Administrative Region of the People's
Republic of China
.....