

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

Tender Ref. : AFCD/SPT/09/21

**TENDER FORM**

Contract No. : \_\_\_\_\_

**LODGING OF TENDER**

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked "Tender for Provision of Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island"

and addressed to the Chairman, Tender Opening Committee,

must be deposited in the Government Logistics Department

Tender Box situated on Ground Floor, North Point Government Offices,

333 Java Road, North Point, Hong Kong

before 12:00 noon (time) on 6 May 2021 (date) (Hong Kong time). Late Tenders will not be accepted.

**INTERPRETATION**


**PART 1 — TERMS OF TENDER**

**PART 2 — CONDITIONS OF CONTRACT**

**PART 3A — SERVICE SPECIFICATIONS**

**PART 3B — CONTRACT SCHEDULES**

Dated this 26<sup>th</sup> day of March 2021

  
Y. M. LEE

Government Representative

**PART 4 — OFFER TO BE BOUND**

1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.
2. I/We, the Tenderer mentioned below, do hereby agree to carry out all and any of the Services at the Unit Price(s) quoted by me/us in the Price Schedule free of all other charges, subject to and in accordance with the terms and conditions of the Tender Documents.

Signed by the Tenderer / Signed by an authorised signatory for and on behalf of the Tenderer :

\_\_\_\_\_

Name of the Tenderer :

\_\_\_\_\_

Name and title of the authorised signatory (where applicable) :

\_\_\_\_\_

Date :

\_\_\_\_\_

**PART 5  
MEMORANDUM OF ACCEPTANCE**

On behalf of the Government of the Hong Kong Special Administrative Region,

I \_\_\_\_\_  
*(name and position of officer)*

accept your Tender for the Contract relating to the following Item(s). A copy of each document constituting the Contract is hereby attached for identification purposes.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed by the said \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

in the presence of : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

香港特別行政區政府  
漁農自然護理署  
招標承投提供服務

招標編號： AFCD/SPT/09/21

投標表格

合約編號： \_\_\_\_\_

投遞標書

投遞標書，必須填妥此表格，一式三份密封於無標記的信封內，信封面註明

「

\_\_\_\_\_ 投標書」，

致 \_\_\_\_\_ 主席收，並  
於 \_\_\_\_\_ 年 \_\_\_\_\_ 月 \_\_\_\_\_ 日  
\_\_\_\_\_ (香港時間)前投入設於 \_\_\_\_\_

\_\_\_\_\_ 的投標箱內。逾期投標概不受理。

釋義

- 第 1 部分 — 招標條款
- 第 2 部分 — 一般合約條款
- 第 3 甲部分 — 服務規格
- 第 3 乙部分 — 附表及附件

日期： 二〇 \_\_\_\_\_ 年 \_\_\_\_\_ 月 \_\_\_\_\_ 日

\_\_\_\_\_ 政府代表

### 第 4 部分 — 應約履行

1. 我／我們，下述投標者，經參閱本招標文件後，同意受當中訂定的所有條款及條件約束。
2. 我／我們，下述投標者，同意按照本招標文件的招標條款及條件，以我／我們在價格附表呈報的單價，依約提供全部及任何服務，不再收取其他任何費用。

由投標者簽署／獲授權簽署人為及  
代表投標者簽署 :

投標者名稱／姓名 :

獲授權簽署人姓名及職位（如適  
用） :

日期 :

### 第 5 部分 接受投標備忘錄

本人 \_\_\_\_\_  
(姓名及職位)

現代表香港特別行政區政府，接納你就以下項目的合約遞交的標書。現付上構成合約的每份文件的副本，以供識別之用：

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

日期：二〇 \_\_\_\_\_ 年 \_\_\_\_\_ 月 \_\_\_\_\_ 日

簽署人： \_\_\_\_\_ 見證人： \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Important Reminders for Tenderers**

Tenderers shall go through the entire Tender Document and submit all the required documents together with their Tenders in accordance with the tender requirements before the Tender Closing Time.

### **Checklist of documents to be completed and submitted**

Tenderers should refer to Clauses 3, 5 and 6 of the Terms of Tender. **Please tick “✓” in the boxes** below to indicate you have completed and submitted the documents required.

- Part 1 Appendix B –Working Background and Status of the Tenderer
  - Section 1 Information of Tenderer
  - Section 2 Tenderer's Experience in Provision of relevant Cleansing Services
  - Section 3 Statement of Compliance
  - Section 4 Statement of Convictions
  - Section 5 Tenderer’s Accreditation to ISO/OHSAS Standard
  - Section 6 Election of method of payment of Contract Deposit
  - Section 7 Innovative Suggestions
- Part 1 Appendix C – Supporting Documents to be Submitted by the Tenderer
- Part 1 Appendix F – Non-Collusive Tendering Certificate
- Part 3B Contract Schedule 1 – Price Proposal with the price information duly completed **\*\***
- Part 3B Contract Schedule 2 – Wages Proposal and Working Conditions for Cleaners
- Part 3B Contract Schedule 3 – Technical Proposal **\*\***
- Part 4 Offer to be bound duly signed **\*\***
- A two-envelope system will be adopted for this tender exercise. All documents in Triplicate shall be placed into two (2) envelopes which contains:  
**Envelope A** – Price Information; and **Envelope B** – Technical information  
The tender comprising both Envelope A and Envelope B should be enclosed in a single sealed **Envelope C** for submission.

Failure to submit the documents with “**\*\***” by the Tender Closing Date and time shall render the tender disqualified and the tender will not be considered further.

This reminder is by no means exhaustive and is provided for Tenderers’ reference only. It shall not be deemed to form part of the Tender Document. Nothing in this checklist shall limit the Government’s absolute right to request any other information/supporting documents in connection with or arising out of this Invitation to Tender.

## TABLE OF CONTENT

### LODGING OF TENDER

### IMPORTANT REMINDERS FOR TENDERERS

<b>INTERPRETATION.....</b>	<b>1</b>
<b>PART 1 – TERMS OF TENDER.....</b>	<b>7</b>
Appendix A      Tender Evaluation Procedures, Criteria and Marking Scheme	41
Appendix B      Working Background and Status of the Tenderer	49
Appendix C      Supporting Documents to be submitted by the Tenderer	54
Appendix D      Sample Form of Banker’s Guarantee for the Performance of a Contract	55
Appendix E      Registration Form for Attending Tender Briefing Session	60
Appendix F      Non-collusive Tendering Certificate	61
<b>PART 2 – CONDITIONS OF CONTRACT.....</b>	<b>64</b>
Annex A          Sample of Accountant’s Certificate for Payment Application	101
<b>PART 3A – SERVICE SPECIFICATIONS.....</b>	<b>103</b>
Section 1        Services Requirement	104
Section 2        Location Plan	118
<b>PART 3B – CONTRACT SCHEDULES.....</b>	<b>120</b>
Contract Schedule 1   Price Proposal	121
Contract Schedule 2   Wage Proposal and Working Conditions for Cleaners	122
Contract Schedule 3   Technical Proposal - Management Plan and Work Plan	124
Contract Schedule 4   Code of Conduct for the Contractor’s Employees	126
Contract Schedule 5   Green Guidelines for Cleansing Services	127
<b>PART 4 – OFFER TO BE BOUND</b>	
<b>PART 5 – MEMORANDUM OF ACCEPTANCE</b>	

## INTERPRETATION

1. In the Tender Document and the Contract, the following words and expressions have the meaning hereby assigned to them except when the context otherwise requires –

“Accepted Innovative Suggestion”	Means an Innovative Suggestion and its specifications, subject to negotiations if any, accepted by the Government;
“AFCD”	means the Agriculture, Fisheries and Conservation Department;
“Appendix”	means an appendix attached to the Tender Form;
“Cleansing Attendant”	means the non-skilled workers deployed by the Contractor pursuant to Part 3A Service Specifications for performing Portable toilets attendant duties under Service Requirement in the Provision of the Services;
“Commencement Date”	means 1 August 2021, or such other date as may be specified in writing / in the Letter of Conditional Acceptance by the Government Representative;
“Contract”	means the contract made between the Contractor and the Government for the provision of the Services on the terms set out in the Tender Documents and, where applicable, in the documents submitted by the Contractor to the Government as part of its tender, and accepted by the Government;
“Contract Area”	means Country Parks areas stipulated in Clause 1(e) and Location map of Part 3A – Service Specifications and in which are, for identification only;
“Contract Deposit”	means the deposit as more particularly described in Clause 11 of the Terms of Tender and Clause 24 of the Conditions of Contract;
“Contract Period”	means, subject to early termination or extension provided for in the Contract, the period during which the Contract shall subsist and as specified in Clause 1 of the Conditions of Contract;
“Contract Schedule”	means the schedules for the Contract hereto attached to the Tender Document;
“Contractor”	means the Tenderer whose Tender is accepted by the Government;

“Contractor’s Employees” or “Employees”	means the persons deployed by the Contractor to perform the Services, including the individuals who perform the duties of a Contract Manager, Cleansing Supervisor, and Cleaner;
“Demerit Point” or “Demerit Points”	means the demerit point as described in Clause 3(b)(vii) of the Terms of Tender and Clause 15 of the Conditions of Contract;
“General Holiday” or “Public Holiday”	means a Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong);
“Government”	means the Government of the Hong Kong Special Administrative Region of the People's Republic of China;
“Government Property”	means the tools, equipment, furniture and all other materials owned by the Government;
“Government Representative”	means the Director of Agriculture, Fisheries and Conservation of the Government or any officer from time to time authorised to act on his behalf for the purposes of the Contract;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Innovative Suggestion”	Means an innovative suggestion proposed by the Tenderer in its Tender to be assessed under Assessment Criteria No. 3 of the Marking Scheme;
“Interpretation”	means this Interpretation section;
“Inspecting Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract;
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on the terms and conditions set out in the Tender Document;
“Letter of Conditional Acceptance”	means the letter of conditional acceptance referred to in Clause 9 (a) of the Terms of Tender;
“Month”	means a calendar month;
“Monthly Fee”	means the monthly remuneration payable by the



Government to the Contractor for the Services provided in a particular month calculated in accordance with Clause 18 of the Conditions of Contract subject to and after any deductions in respect of that month;

- “Monthly Rate” means the monthly rate for calculating remuneration for the Services as set out in Contract Schedule 1 chargeable by the Contractor to the Government for the provision of the Services before deductions;
- “Notice of Default” means a notice issued under Clause 15 of the Conditions of Contract;
- “Non-collusive Tendering Certificate” means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 19(b) of the Terms of Tender;
- “Non-skilled Workers” means all unskilled workers employed or to be employed by the Contractor to work under the Contract, and for the present purpose, include the Cleansing Attendants and cleaners;
- “Non-skilled Worker Contract” means a non-works service contract of the Government that rely heavily on the deployment of Non-skilled Workers, and for the purpose of this Invitation of Tender, include this Contract;
- “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;
- “Person” means any individual, corporation, partnership or firm;

“Refuse”	means all kinds of non-infection refuses: <ul style="list-style-type: none"><li>(a) any dirt, dust, ashes or paper;</li><li>(b) any glass, glass fragments, china, earthenware or tin;</li><li>(c) used heavy duty paper carton container;</li><li>(d) any plaster, concrete, mortar, wood, timber, sawdust, plastic, construction material, or excavated material;</li><li>(e) any rubbish or debris, including domestic wastes (e.g. used take away boxes);</li><li>(f) any filth, manure, dung, excreta and any other offensive, noxious or obnoxious matter or liquid; and</li><li>(g) any substance likely to constitute a nuisance.</li></ul>
“Relevant Offences”	means the offences as defined in Clause 3(b)(i) of Terms of Tender;
“Services”	means the provision of Hiring and servicing of Portable Toilets at the Contract Area and includes all other obligations, tasks and duties ancillary or incidental thereto in accordance with Services Requirement of Part 3A - Service Specifications and subject to all the terms and conditions of the Contract;
“Service Order”	means any order issued by the Government Representative in writing for the provision the Services;
“Service Specifications”	means the specifications which set out the service requirements of the Government, a copy of which is attached to the Tender Documents, and which include any update and revision agreed with the Contractor;
“Standard Employment Contract”	means the written employment contracts to be entered into between the Contractor and the Cleaners (including the Cleansing Supervisor), a copy of such contracts and its guidance notes can be downloaded from the following hyperlinks: < <a href="https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html">https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html</a> > for Chinese version or < <a href="https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html">https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html</a> > for English version;
“Statement of Convictions”	means the Statement of Convictions in respect of the Relevant Offence in the form of Section 4 in Appendix B;

“Statutory Minimum Wage”	means the hourly wage rate as specified in Contract Schedule 2 to the Minimum Wage Ordinance (Cap. 608);
“Statutory Minimum Wage (SMW) plus rest day pay rate”	has the meaning given to in the Guidance Notes on Signing of Standard Employment Contract (SEC) for Employees of Contractors of Government Service Contracts, which may be downloaded at the hyperlink provided in Clause 9 of the Conditions of Contract;
“Tender Closing Date”	means the latest date by which tenders must be lodged and as specified in the “Lodging of Tender” section of the Tender Form which may be extended in accordance with Clause 6(b)(ii) and (iii) of the Terms of Tender;
“Tender Document”	means the documents as specified in Clause 1 of the Terms of Tender;
“Tender Form”	means the Tender Form G.F. 231 (Rev.04/20) issued for the Invitation to Tender;
“Tender Validity Period”	means the period of time mentioned in Clause 14 of the Terms of Tender during which a tender shall remain open;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“Time”	all references to time refer to Hong Kong time, i.e. GMT+8;
“Working Hours”	means, in relation to Cleansing Attendant, the period in each day from 0900 to 1700 which includes one hour meal break mentioned in Clause 6 of Part 3A – Service Specifications.
“WTO GPA”	means the Agreement on Government Procurement of the World Trade Organization.

2. In these Tender Documents (including the Contract), unless the context otherwise requires, the following rules of interpretation shall apply –
- (a) words and expressions in the singular include the plural and vice versa;
  - (b) words and expressions importing the masculine gender include the feminine and neuter gender and vice versa; and

- (c) reference to any person shall include references to individual, firm, public body, body corporate or unincorporated (whenever established or incorporated).
3. Section, part or clause headings to any provision, schedule, annex, appendix and other attachments of this Tender Document are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of the Tender Document.
  4. Where in any part of the Tender Document reference is made to a part, clause, sub-clause, schedule, annex, appendix or attachment by number or letter, such reference, unless expressly stipulated otherwise, shall be construed as a reference to the clause, sub-clause, schedule, annex, appendix or attachment of that number or letter contained in that part of the Tender Document.
  5. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
  6. Reference to a day refers to a calendar day; reference to a working day means any day other than Saturdays and General Holidays; reference to a month or a monthly period refers to a calendar month.
  7. The Government Representative may exercise all rights and powers of the Government under the Tender Document and the Contract. The Government may change the Government Representative and/or its post title from time to time as it thinks fit without prior notice to the Contractor.
  8. Where a word or expression is defined in the Tender Document, the meaning of such word or expression extend to its grammatical variations and cognate expressions as used in the Tender Document; and any reference to and the definition of any document shall be deemed to be a reference to such document (including any schedules and/or appendices thereto) as from time to time amended, supplemented, modified, novated or replaced (in whole or in part), but disregarding any amendment, supplement, variation or replacement taking place in breach of the terms of such document.
  9. Any word or expression to which a specific meaning has been attached in any part of any of the Tender Document shall bear such meaning whenever it may appear in the same or other parts of the Tender Document.
  10. Unless otherwise provided for in the Tender Document, all quotations and payments shall be made in Hong Kong Dollars.

**PART 1  
TERMS OF TENDER**

<u>Content</u>	<u>Sheet</u>
1. Tender Documents.....	9
2. Invitation to Tender .....	9
3. Essential Requirements and Information to be Submitted .....	10
4. Wages of Cleaners .....	16
5. Tender Preparation .....	18
6. Submission of Tender.....	20
7. Tender Evaluation .....	22
8. Basis of Acceptance .....	23
9. Award of Contract.....	24
10. Prices Quoted .....	24
11. Contract Deposit.....	25
12. Request for Information .....	26
13. Tenderer's Enquiries.....	26
14. Tender to Remain Open.....	27
15. Documents of Unsuccessful Tenderers .....	27
16. Complaints about Tendering Process or Contract Award.....	27
17. Undisclosed Agency .....	28
18. Personal Data Provided .....	28
19. Warranty against Collusion.....	29
20. Warning against Bribery .....	30
21. New Information Relevant to Qualified Status.....	30
22. Consent to Disclosure .....	31
23. Contractor's Performance Monitoring .....	32
24. Cancellation of Tender.....	32
25. Cost of Tender.....	32
26. Environmental Friendly Measures .....	32
27. Tenderer's Commitment.....	33
28. Tender Briefing Session .....	33
29. Supplementary Information/Tender Addenda.....	33
30. The Attachments.....	34
31. Negotiation .....	34

<b>32. Counter-Proposals.....</b>	<b>34</b>
<b>33. Government Discretion .....</b>	<b>35</b>
<b>34. Licence to use the materials submitted by Tenderers.....</b>	<b>39</b>
<b>35. Communication with the Government .....</b>	<b>39</b>
<b>Appendix A Tender Evaluation Procedures, Criteria and Marking Scheme .....</b>	<b>41</b>
<b>Appendix B Working Background and Status of the Tenderer .....</b>	<b>49</b>
<b>Appendix C Supporting Documents to be Submitted by the Tenderer.....</b>	<b>54</b>
<b>Appendix D Sample Form of Banker’s Guarantee for the Performance of a Contract .</b>	<b>55</b>
<b>Appendix E Registration Form for Attending Tender Briefing Session .....</b>	<b>60</b>
<b>Appendix F Non-Collusive Tendering Certificate .....</b>	<b>61</b>

**AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT**

**Provision of Hiring and Servicing of Solar Powered Portable Toilets in  
Country Parks of Hong Kong Island**

**PART 1**

**TERMS OF TENDER**

**ALL TENDERERS ARE ADVISED TO READ THE TENDER DOCUMENTS CAREFULLY PRIOR TO PREPARING THEIR SUBMISSION. ANY TENDER WHICH DOES NOT FOLLOW THE INSTRUCTIONS CONTAINED IN THE DOCUMENTS WOULD BE CONSIDERED INCOMPLETE AND MAY NOT BE CONSIDERED FURTHER.**

**1. Tender Documents**

- (a) The Tender Documents, identified as Tender Ref. AFCD/SPT/09/21 comprise the following documents:
  - (i) Lodging of Tender;
  - (ii) Important Reminders for Tenderers;
  - (iii) Interpretation;
  - (iv) PART 1 – Terms of Tender with Appendices A to F;
  - (v) PART 2 – Conditions of Contract with Annex A;
  - (vi) PART 3A – Service Specifications;
  - (vii) PART 3B – Contract Schedules 1 to 5;
  - (viii) PART 4 – Offer to be Bound; and
  - (ix) PART 5 – Memorandum of Acceptance
  
- (b) The Interpretation as provided for in Sheets 1 to 6 shall apply to the whole set of the Tender Documents and the Contract unless the context requires otherwise.

**2. Invitation to Tender**

- (a) Tenders are invited for the provision of the Services at the Contract Area (refer to Part 3A – Services Specifications) to the Government on such terms and conditions as set out in the Terms of Tender, the Conditions of Contract and the Contract Schedules.
- (b) A Tenderer should read the Tender Document carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Document.

- (c) A Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- (d) A Tenderer should check the numbers of pages of the Tender Document. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- (e) A Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Document (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.
- (f) No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Document (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Document (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation 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 liability under the Contract as a consequence of any misinterpretation by it of any matter or fact relating to the Tender Document or the Contract.
- (g) Information, statistics and forecasts set out in the Tender Document are provided for a Tenderer's 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 may vary depending on the actual need of the Procuring Department and the successful Tenderer must accept any increase or decrease of the stated estimates.
- (h) By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Document.

### **3. Essential Requirements and Information to be Submitted**

- (a) No Subcontracting of Services  
No proposal for sub-contracting of any or all parts of the Contract shall be made. A Tender containing a sub-contracting proposal will not be considered further and will be disqualified.
- (b) Debarment on Convictions and Demerit Points  
Past Convictions
  - (i) A Tenderer who is convicted of any 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 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 3 (b) (ii) below (“**Debarment Period**”)

- (1) Any offence under the Employment Ordinance (Cap. 57) and/or the Employees Compensation Ordinance (Cap. 282) convictions 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);
  - (2) Section 17I(1) or 38A(4) of the Immigration Ordinance (Cap. 115);
  - (3) Section 89 of the Criminal Procedure Ordinance (Cap. 221) and Section 41 of the Immigration Ordinance (Cap. 115) (aiding and abetting another person to breach his condition of stay);
  - (4) Section 7, 7A, 7AA, 43B(3A), 43BA(5) or 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
  - (5) 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).
- (ii) The five-year Debarment Period applicable to the relevant Tenderer shall stand unless and until a revised Debarment Period is determined by the Central Tender Board. The revised Debarment Period will only be applicable for the purpose of this Invitation to Tender if it is determined by the Central Tender Board under the established review mechanism on the date immediately before the Tender Closing Date. However, the revised Debarment Period will become invalid as soon as the Tenderer is convicted of any of the Relevant Offences subsequent to the Central Tender Board’s determination, and in such a case, the Tenderer is debarred from tendering for this Contract for a period of 5 years from the date of that subsequent conviction. 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/government-procurement-policy-procedures.htm>

- (iii) For the purpose of the above clause, if the Tenderer is a partnership or incorporated joint venture, conviction obtained by any participant of the partnership or shareholder of the incorporated joint venture will also be counted. The Tenderer shall submit with the tender a statement in the form in Section 3 of Appendix A whether it has been convicted in respect of the relevant offences under the Employment Ordinance (Cap. 57), the Factories and Industrial Undertakings Ordinance (Cap. 59), Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115), Criminal Procedure Ordinance (Cap. 221), Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Occupational Safety and Health Ordinance (Cap. 509), and, if so, it shall provide in the statement the dates of all such convictions are obtained during the five-year period immediately preceding the Tender Closing Date, and shall give consent and authorization to the AFCD to check with the relevant authorities to affirm the conviction records as provided in the statement. A statement shall be submitted in respect of the Tenderer, each participant of the partnership, or each shareholder of incorporated joint venture as applicable. For avoidance of doubt, for the purpose of this clause participant or shareholder means the company participating in the partnership or incorporated joint venture or the company holding the share of the incorporated joint venture. The statement shall be certified by an authorized person of the Tenderer who is duly authorised by the Tenderer to execute contracts with the Government.
- (iv) For the purposes of verification of the conviction records as stated in the statement in Section 3 of the Appendix B to the Terms of Tender, the Tenderer or each participant shall consent to and authorize AFCD to (a) obtain from any Government Department documents or information in relation to any conviction of an offence under the relevant Ordinances; and (b) release and make available to AFCD all documents or information in relation to such conviction, by completing Section 4 of the Appendix B to the Terms of Tender.
- (v) Conviction shall be counted irrespective of whether they are obtained in respect of a government or private business contract and irrespective of the type of services offered under the contract. Convictions shall be counted by the number of summonses convicted. Tenderer's convictions of the relevant offence under

appeal or review will be counted for the purpose of tender evaluation. If a Tenderer is found to have made a false declaration or untruthful revelation of, including but not limited to, its record of convictions of offences under the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115), Criminal Procedure Ordinance (Cap. 221), Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Government may without prejudice to any other rights which it has or may have, refuse to further consider its tender or terminate forthwith the Contract.

(vi) Notwithstanding 3(b)(i) above, in respect of the following offences of the Relevant Offences, only convictions obtained on or after 1 April 2019 will count:

- (1) Sections 7AA, 43B(3A) and 43BA(5) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
- (2) 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).

#### Demerit Points

(vii) "Demerit Points" means the demerit point attracted due to issue of notices of default by any Government bureaux or departments for breaches of contractual obligations under a Non-skilled Worker Contract in respect of:

- (1) Wages;
- (2) holiday pay payable to the Non-skilled Workers having been employed under a continuous contract for not less than one month;
- (3) 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;
- (4) daily maximum working hours;
- (5) signing of Standard Employment Contracts with Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days;
- (6) payment of wages by means of autopay to Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days (payment by cheque is only allowed upon

termination of employment contract and is made at the request of the worker concerned); and

- (7) gratuity payable to Non-skilled Workers with no less than one year of service under a continuous contract.

(viii) 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. Any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.

(ix) Demerit Points under appeal will still be counted for the purpose of debarment. 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.

(c) Complete Offers

Tenders will be considered on an overall basis. Tenders with partial / incomplete offer must not be considered.

(d) Technical Proposal

A Tenderer must submit with its tender the Execution Plan (Management Plan, Work Plan and innovative suggestion(s)(optional)) in Contract Schedule 3. The information submitted in the execution plan will form part of the tender to be evaluated by the Government. The Tenderer is required to incorporate information outlined below and any innovative suggestion(s) into its proposed management and work plan. The Tenderer may also include other materials or suggestions as appropriate to facilitate consideration of its tender by the Government.

(i) Management Plan

- (1) Name, expertise and qualification of Tenderer's managerial and supervisory staff;
- (2) The organization chart of the proposed work force to be deployed by the Tenderer for the provision of Services;
- (3) Details of the Tenderer's training programmes for its operational and supervisory/managerial staff for the performance of the Services; and

- (4) Details of arrangement for supervision and inspection of frontline workers.

(ii) Work Plan

- (1) The distribution of work for staff and deployment of staff and resources for completing the Services and meeting the performance requirements;
- (2) Details of arrangement for provision of leave relief worker to relieve those staff on leave (including rest day, holidays and other leaves) or absent from duty;
- (3) Monthly working programme and daily work schedule in a sampled month; and
- (4) Safety measures adopted in carrying out the Services.

(iii) Innovative Suggestions (optional)

Tenderers who intend to propose innovative suggestion(s) shall list out the suggestions that are incorporated in the Management Plan and Work Plan, and explain how the suggestions would:

- (1) improve the delivery of the Services as compared with how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general (Type I); or
  - (2) bring about positive values / benefits to the Government or the public at large, though the proposed suggestions are not directly relevant to the Services (Type II).
- (iv) Without prejudice to any other provision of these Terms of Tender, if the management plan, working plan and innovative suggestions(s) is/are accepted by the Government, it/they will be legally binding on the successful Tenderer and form part of the Contract.
- (v) The provision of solar powered portable toilet shall fully comply with the basic design and specifications requirements specified in the Service Specifications. Tenderers should submit documents to prove that their solar powered portable toilets fully meet the basic tender requirements.
- (e) A tender which fails to meet any of the essential requirements or submit required information as specified in clause 3(b) to (d) above, will not be considered further.

#### 4. Wages of Cleaners

- (a) (i) It is a contractual requirement of the Contract that the proposed monthly wage for each Cleaner must not be less than the monthly wage of HK\$9,300<sup>1</sup> derived from the Statutory Minimum Wage (SMW) under the Minimum Wage Ordinance (Cap. 608) plus paid rest days, which corresponds to thirty-one (31) days (twenty-seven (27) maximum number of normal working days plus four (4) paid rest days) per month and eight (8) hours of work per day (hereinafter referred to as “the monthly wage rate of SMW plus paid rest days”). The \$9,300 is subjected to revision provided that the SMW is adjusted under the Minimum Wage Ordinance. Tenderers should refer to note 3 of Contract Schedule 2 of this Tender Documents for explanation.
- (ii) For the avoidance of doubt, if the working days or working hours of a Cleaner deviate from the time basis specified in Clause 4(a) above, the monthly wage rate of SMW plus paid rest days of such Cleaner shall be determined on the basis as stipulated in the guidance notes of the Standard Employment Contract.
- (b) If the monthly wage for a Cleaner proposed in Contract Schedule 2 is less than the monthly wage rate mentioned in Clause 4(a) above, that Tender will be evaluated nevertheless but the proposed wage will be deemed to be not less than **the monthly wage rate of SMW plus paid rest days** for the purpose of tender evaluation.
- (c) The Government Representative will at any time before the tender exercise is completed request the Tenderer to confirm its abidance by **the monthly wage rate of SMW plus paid rest days**. Should the Tenderer refuse to or otherwise fail to confirm such abidance, such proposal will amount to a counter-proposal and may render its tender to be disqualified by the Government in accordance with Clause 30 hereto.
- (d) If the Tenderer proposes in Contract Schedule 2 the monthly wage higher than **the monthly wage rate of SMW plus paid rest days**, that higher monthly wage will become

---

<sup>1</sup> HK\$9,300 = \$37.5 x 8(hours) x 31(days). Please refer to example 1 of the “Guidance Notes on Signing of Standard Employment Contract (SEC) for Employees of Contractors of Government Service Contracts”, which can be downloaded at:

<[https://www.afcd.gov.hk/tc\\_chi/tender/tender\\_rel/tender\\_rel.html](https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html)> for Chinese version; or

<[https://www.afcd.gov.hk/english/tender/tender\\_rel/tender\\_rel.html](https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html)> for English version.

binding on the Tenderer should the Tenderer be awarded the Contract.

(e) Gratuity to Non-skilled Workers

The Contractor shall pay a gratuity to a Non-skilled 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 Non-skilled 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 or termination of the Standard Employment Contract. The amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Non-skilled Worker during the above period. The gratuity shall 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 shall comply with the relevant clauses and follow the examples of illustration therein.

The gratuity shall be paid to the Employee not later than 7 days after the expiry or termination of the Standard Employment Contract.

(f) Holiday Pay to Non-skilled Workers

The Contractor shall provide the holiday pay to a Non-skilled Worker provided that the Non-skilled 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 shall 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 shall comply with the relevant clauses and follow the examples of illustration therein.

(g) Extra Wages to Non-skilled Workers for Working under Typhoon Signal No. 8 or above

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 Non-skilled Worker has worked, the Contractor shall pay the Non-skilled Worker for that day/shift at least 150% of the Non-

skilled 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 shall comply with the relevant clauses and follow the examples of illustration therein. For the avoidance of doubt, the extra wages stipulated in this Clause shall also apply to a Non-skilled Worker with whom the Contractor is not required to enter into the Standard Employment Contract.

## **5. Tender Preparation**

- (a) Save in accordance with the terms of the Tender Document, a Tenderer must not alter any provision of the Tender Document.
- (b) A Tender must be completed in either English or Chinese and in ink or typescript and be submitted in accordance with the manner under "Lodging of Tender" of the Tender Form. The Government will not consider a Tender that is completed in any other language.
- (c) A Tenderer shall submit, in the following manner, its completed Tender together with all information and documents required under the Tender Document or relevant to its Tender in accordance with the terms of the Tender Document. A Tender not so submitted (for example, a Tender submitted by e-mail or facsimile) will not be considered.
- (d) Tenders with all necessary information including documentary evidences which are necessary for tender evaluation should be submitted in **TRIPPLICATE**.
- (e) A Tenderer is required to submit the following in the Tender Documents:
- |       |                               |  |
|-------|-------------------------------|--|
| (i)   | PART 1– Appendix B            | – Working Background and Status of the Tenderer            |
| (ii)  | PART 1 – Appendix C           | – Supporting Documents to be submitted by the Tenderer     |
| (iii) | PART 1 – Appendix F           | – Non-Collusive Tendering Certificate                      |
| (iv)  | PART 3B – Contract Schedule 1 | – Price Proposal with the price information duly completed |
| (v)   | PART 3B – Contract Schedule 2 | – Wage Proposal and Working Conditions for Cleaners        |
| (vi)  | PART 3B – Contract Schedule 3 | – Technical Proposal                                       |
| (vii) | PART 4 of the Tender Form     | – Duly signed Offer to be Bound                            |
- (G.F. 231 (Rev.04/20))
- (f) Failure to submit the documents in above sub-clause (e) (iv), (vi) to (vii) by the Tender



Closing date and time shall render the tender **disqualified** and the tender **will not be considered further**. Failure to submit other documents in sub-clause (e) by the Tender Closing Date and time may render the tender not to be considered any further at the discretion of the Government.

- (g) When completing the Tender Document (including the “PART 4 – Offer to be Bound of the Tender Form (G.F. 231 (Rev.04/20))”), a Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (i) if the Tenderer is a company incorporated in Hong Kong:
    - (1) The Certificate of Incorporation of the Tenderer; or
    - (2) If there is a change of name of the Tender since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
    - (3) Its business name as shown in the current business registration certificate of the Tenderer;
  - (ii) if the Tenderer is a sole proprietorship or a partnership, the latest business registration certificate of the Tenderer; or
  - (iii) if the Tenderer is formed, established or incorporated outside Hong Kong, a document equivalent to clause 5(g)(i)(1), 5(g)(i)(2) or 5(g)(ii) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is formed, established or incorporated.
- (h) Part 4 “Offer to be Bound” of the Tender Form shall be duly signed by:
- (i) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
  - (ii) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
  - (iii) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

A Tender will not be further considered if Part 4 “Offer to be Bound” of the Tender Form is not signed in the manner described in Clause 5(h) above or submitted with the Tender before the Tender Closing Time.

- (i) **Tenderers should tick the checklist on “Important Reminders for Tenderers” attached at the front of this tender documents and ensure all the necessary documents are completed and submitted.**

## **6. Submission of Tender**

### **(a) Two-Envelope System**

- (i) A two-envelope system will be adopted for this tender exercise. A Tenderer shall submit its tender in two (2) envelopes clearly labeled Envelope A and Envelope B respectively on the outside as follows –
- (1) Documents relating to the **Price Information** (i.e. the original copy and two (2) copies of Contract Schedule 1 – Price Proposal should be enclosed in a sealed envelope clearly marked “**Envelope A**” and “**Tender Ref.: AFCD/SPT/09/21 – Tender for the Provision of Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island – Price Information**”; and
  - (2) Documents relating to the **Technical Information** (i.e. the original copy and two (2) copies of all other remaining information, the duly signed “Offer to be Bound”, forms, schedules and supporting documents required by these Tender Documents **but without any indication in the Rates for Provision of Services**) should be enclosed in another sealed envelope clearly marked “**Envelope B**” and “**Tender Ref.: AFCD/SPT/09/21 – Tender for the Provision of Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island – Technical Information**”.
- (ii) The tender comprising both Envelope A and Envelope B should be enclosed into one single large sealed envelope (**Envelope C**) clearly marked “**Tender Ref.: AFCD/SPT/09/21 – Tender for the Provision of Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island**” without bearing any reference to the identity of the Tender, and addressed to the Chairman, Tender Opening Committee, Government of Logistics Department and be deposited

in the Government Logistics Department Tender Box situated at the lift lobby on Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before the Tender Closing Date. The envelopes must not bear any indication which may relate them to a particular Tenderer. **Late Tender or Tender not deposited in the Specified Tender Box will not be accepted.**

(b) Tender Closing Time

- (i) A Tender must be deposited in the Specified Tender Box before the Tender Closing Time. A Tender deposited in the Specified Tender Box at or after the Tender Closing Time, or a Tender not deposited in the Specified Tender Box, will not be considered.
  - (ii) 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 specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box will be extended to 1200 hours on the next working day.
  - (iii) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 hours on the Tender Closing Date, the Government will announce extension of the Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- (c) No modification to the terms set out in the Tender Document may be submitted or proposed by a Tenderer. Any modifications proposed or submitted by a Tender in contravention of this requirement will be ignored and will not be treated as part of its tender. Any appendices/annexes to the Terms of Tender and Contract Schedules issued with this invitation to tender must not be altered by the Tenderer.
- (d) Figures submitted by the Tenderer should not be altered or erased. Any alteration to the

figures in a Tenderer's proposal should be done by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.

- (e) The Government will not be responsible for any mislaid submissions. Incomplete Tenders or Tenders submitted in a form or manner other than that described in the preceding sub-clauses of this clause may result in the Tender not being considered further.
- (f) All documents to be submitted by a Tenderer shall either be originals or certified true copies of the documents. If a Tenderer fails to comply with this requirement, its Tender may not be further considered.
- (g) The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Tender submission submitted and/or deposited by Tenderers in the Specified Tender Box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning Tender submission as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- (h) The Government reserves the right to extend at its sole discretion the Tender Closing Date at any time and from time to time.

## 7. **Tender Evaluation**

A two-envelope approach with a technical to price weighing of 50:50 will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. All tenders will be assessed in the following manner. The Government will use the Marking Scheme as set out in Appendix A of this Tender Document to assess the tenders.

### (i) **Stage 1 – Completeness Check on the Tender Offers Submitted**

All tenders received will be checked on whether all the documents and information

required in Clause 5 (e) in the Terms of Tender have been submitted. Failure to submit any of the required documents on or before the Tender Closing Date may render a tender invalid and will not be considered further.

(ii) Stage 2 – Compliance with Essential Requirement

A tender which has passed Stage 1 will be checked to determine its compliance with all the essential requirements including but not limited to those set out in Clause 3 of the Terms of Tender. A tender which fails to meet any of the essential requirements will not be considered further. A tender which passes Stage 2 will proceed to Stage 3 assessment.

(iii) Stage 3 – Technical Assessment

The maximum total technical marks are 100 and are divided into six (6) criteria. There is no passing mark set for the total marks scored in the Technical Assessment.

(iv) Stage 4 – Price Assessment

The price information of tenders that have passed “Stage 3 – Technical Assessment” will be assessed according to the formula stated under “Stage 4 – Price Assessment” of the Marking Scheme.

(v) Stage 5 – Calculation of Combined Score

The combined score of the tenders which passed the “Stage 3 – Technical Assessment” will be calculated. Subject to other provision in these Terms of Tender, the Tender that has achieved the highest combined score will normally be recommended for acceptance.

## **8. Basis of Acceptance**

- (a) Tenders will be considered on an **OVERALL** basis for essential services. A tender with only partial offers will not be considered further.
- (b) The Government is not bound to accept the Tender with the lowest price offer or the Tender with the highest combined technical and price score or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.
- (c) Without prejudice to and in addition to the provisions of these terms and conditions, the Government will award the Contract to the Tenderer who meets the following criteria –
  - (i) the Government is of the opinion that the Tenderer is fully capable of undertaking the Contract; and

- (ii) the Government considers that, in terms of the evaluation criteria specified in the Tender Documents, the tender is or appears to be the most advantageous one to the Government.

## **9. Award of Contract**

- (a) The successful Tenderer will receive a Letter of Conditional Acceptance by facsimile or by mail from the Government Representative, whereby the Government's acceptance of the tender will be subject to the conditions that the recommended Tenderer not being debarred up to the date of issue of the Letter of Conditional Acceptance (otherwise the Conditional Tender Acceptance shall be deemed to have no further force and effect) due to conviction of any of the Relevant Offences in clause 3(b)(i) or having obtained three (3) or more Demerit Points under Clause 3(b)(vii) of the Terms of Tender.
- (b) The Government will conduct further checking to determine the fulfilment of the conditions as specified in Clause 9 (a) above. A duplicate hard copy of the Contract Document, including the "Part 5 – Memorandum of Acceptance" duly completed by the Government, will subsequently be delivered to the successful Tenderer evidencing the earlier acceptance.
- (c) Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.

## **10. Prices Quoted**

- (a) Each Tenderer shall ensure that all prices and other proposals offered in its Tender are accurate and complete before submitting its Tender. Under no circumstances shall the Government be obliged to accept any request for rates or contract value adjustment after Tender Closing Date on grounds that a mistake has been made in the rates or contract value tendered.
- (b) All prices quoted in the Tender shall be in Hong Kong dollars and, if accepted by the Government, shall remain valid and binding throughout the Contract Period.
- (c) Prices quoted by a Tenderer shall only be shown in the Price Schedule.
- (d) Without prejudice to the generality of the terms and conditions of these Tender Documents, the Government may require a Tenderer, who in the opinion of the Government, has submitted unreasonably low price, to justify and demonstrate to the reasonable satisfaction of the Government that it is capable of carrying out and completing the Contract. Failing to so justify and demonstrate to the Government's

satisfaction would entitle the Government not to consider the Tender further without having the need to give any reason(s) for not considering the Tender.

#### **11. Contract Deposit**

- (a) If the Total 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, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to two percent (2%) of the Contract Value as security for the due and faithful performance of the Contract by the successful Tenderer.
- (b) The Contract Deposit shall be payable within twenty-one (21) days from the date of the Letter of Conditional Acceptance and either in cash or in the form of a banker's guarantee. Each Tenderer should state clearly in Section 6 of Appendix B to the Terms of Tender 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 in cash.
- (c) If the successful Tenderer elects to pay the Contract Deposit by way of a banker's guarantee, the proposed guarantor and the form and substance of the banker's guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the banker's guarantee must comply with the following:
  - (i) 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;
  - (ii) unless otherwise agreed by the Government, it must be on the terms set out in Clause 22 of the Conditions of Contract; and
  - (iii) the banker's guarantee shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Tender Acceptance as the date on which the banker's guarantee is to take effect. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.
- (d) The Contract Deposit, whether paid by way of cash or banker's guarantee shall be returned to the Contractor or released in accordance with the Contract.

**12. Request for Information**

- (a) In the event that the Government determines that:
- (i) clarification in relation to any Tender is necessary; or
  - (ii) a document or a piece of information, other than the document or information set out in Clause 12(b), is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall within five (5) working days from the date of the request or within such other period as specified in the request submit the clarification, information or document. If the clarification or information or document is not provided by the aforesaid deadline, the Tender may not be considered further (or will not be considered further where the missing information or document is of the type specified in Clause 5 of the Terms of Tender).

- (b) The document and information not covered by Clause 12(a)(ii) are
- (i) price information or quotes required in the Tender Document;
  - (ii) a signed Offer to be Bound; and
  - (iii) any other document or information in respect of which it is specified in the Tender Document that a failure to provide to the Government in a Tender at the time of submission of the Tender or by the Tender Closing Time will result in the Tender not being considered.
- (c) Tenderers should also note that the Government will not consider any clarification or information submitted by a Tenderer after the Tender Closing Time irrespective of whether or not the clarification or information is submitted at the invitation 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 the other Tenderers.

**13. Tenderer's Enquiries**

- (a) Before the Tender Closing Date, any enquiries concerning the submission of tender procedures and technical issues such as Service Requirements, Schedules, Tender Briefing etc., please contact Mr. W.K. IP, Field Officer/Contract Management at telephone no. (852) 2150 6865. The Government officers may at any time request any Tenderer to make enquiries in writing.



- (b) After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- (c) Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

#### **14. Tender to Remain Open**

- (a) Tenders shall remain valid and open for acceptance by the Government on these terms for not less than one hundred and fifty (150) days after the Tender Closing Date.
- (b) If before expiry of the Tender Validity Period, a Tenderer withdraws its offer, the Government will take due notice of the Tenderer's action and this may prejudice its future standing as a Government contractor.

#### **15. Documents of Unsuccessful Tenderers**

The Government may destroy all documents submitted by unsuccessful Tenderers three (3) years after the Contract has been constituted under Clause 9 above.

#### **16. Complaints about Tendering Process or Contract Award**

- (a) The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Director of Agriculture, Fisheries and Conservation Department who will personally examine the complaint and refer it to the approving authority or relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the

complaint within three (3) months after the award of Contract.

- (b) This tender is covered by the World Trade Organization Agreement on Government Procurement (WTO GPA) and the provisions of the WTO GPA will apply to this tender exercise.
- (c) A Tenderer is requested to note that 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. Where the Invitation to Tender is subject to WTO GPA, and that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may, within ten (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 shall 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 thirty (30) working days after the basis of the challenge is known or reasonably should have been known to the Tenderer.

#### **17. Undisclosed Agency**

The person who signs a Tender as Tenderer shall be deemed to be acting as a principal unless it discloses therein that it is acting as an agent only, in which case it shall also disclose therein the name, address and the name(s) of the contact person(s) of its principal.

#### **18. 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, and the disclosure pursuant to Clause 22 of Terms of 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 18 (a) above, or the disclosure pursuant to Clause 22 of the Terms of Tender.
- (c) An individual to whom personal data belongs and a person authorised 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.
- (d) Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer (Deputy Secretary (General)) of the AFCD.

#### **19. Warranty against Collusion**

- (a) The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to Clause 19(b) below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- (b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Appendix F of the Terms of Tender) as part of its Tender.

- (c) In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Clause 19 (a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 19 (b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (i) reject the Tenderer's Tender;
  - (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
  - (iii) if the Government has entered into the Contract with the Tenderer, terminate the Contract under Clause 25 in Conditions of Contract.
- (d) 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, warranties and/or undertakings in Clause 19 (a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 19 (b) above.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in Clause 19 (a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 19 (b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government under Clause 19 (c) to (e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

## **20. Warning against Bribery**

- (a) 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) or employees will render its Tender null and void.
- (b) The successful Tenderer shall inform its officers, employees (whether permanent or temporary) 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.

## **21. New Information Relevant to Qualified Status**

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.

## **22. 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 or any other Tenderer,
- (i) a brief description of the Services provided or to be provided by the successful Tenderer;
  - (ii) the Total Estimated Services Price and any other fees, cost and expense payable to the successful Tenderer pursuant to the Contract;
  - (iii) the engagement by the Government of the successful Tenderer under the Contract and the name and address of the successful Tenderer; and
  - (iv) the date of award of the Contract.
- (b) Nothing in Clause 22 (a) above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its tender (whether or not the information is specified in Clause 22 (a) above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (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 (including because of any disclosure under Clause 22 (b)(i) above);
  - (iv) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, a request made by the Review Body mentioned in Clause 16 (c) of the Terms of Tender, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
  - (v) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
  - (vi) without prejudice to the power of the Government under Clause 22 (a) above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

**23. Contractor's 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.

**24. Cancellation of Tender**

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

**25. Cost of Tender**

Each Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender and the doing of all acts required for the purpose of this Invitation to 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, (c) presenting the Tenderer's reference sites and equipment to the Government Representative during the site visits, and (d) provision of tender samples, whether before or after the Tender Closing Time.

**26. Environmental Friendly Measures**

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.

**27. Tenderer's Commitment**

All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the offer, commitment and 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.

**28. Tender Briefing Session**

In order to have a clear understanding of the Contract and the Services before submitting offers, all Tenderers who wish to submit a bid in this Tender are strongly recommended to deploy staff at supervisory level to attend a Tender Briefing will be held as follows:

<b>Date:</b>	21 April 2021 (Wednesday)
<b>Time:</b>	4:00 p.m.
<b>Venue:</b>	Room 615, 6/F, Cheung Sha Wan Government Office 303 Cheung Sha Wan Road, Kowloon

Tenderers who would like to attend the briefing session should complete the reply slip attached at **Appendix E** to the Terms of Tender and send back to Field Officer /Contract Management (FO/CM) to register (either via email: fo\_cm@afcd.gov.hk or fax 2317 0482) on or before noon of 19 April 2021 (Monday). Each Tenderer may nominate one representative to attend the tender briefing session.

In case Black Rainstorm Warning Signal is in force or Tropical Cyclone Warning Signal No.8 or above or “extreme conditions after super typhoons” announced by the Government is in effect for any duration two (2) hours before the scheduled time for the briefing session, the briefing session scheduled on the relevant day will be cancelled and the briefing session will be postponed until further notice.

Any information given at the tender briefing session should not be taken as varying the information in the Tender Documents unless subsequently confirmed in writing.

**29. Supplementary Information/Tender Addenda**

All supplementary information or tender addenda to the Invitation to Tender will be provided in writing by the Government and forwarded to all prospective Tenderers who have registered with the Government when obtaining a copy of the Tender Document.

**30. The Attachments**

Tenderers should study all attachments to these Tender Documents (including the Annexes, Appendices, Attachments and Contract Schedules) carefully before submitting their tenders. Tenderers should note that all information and statistics provided by the Government in connection with this tender are for reference only. The Government (including its servants and agents) gives no warranty, statement or representation, expressed or implied, as to its accuracy, availability, completeness, usefulness or future changes of such statistics and information. Tenderers should conduct their own independent assessment of the statistics and information. The Government does not accept any liability for the accuracy, completeness or otherwise of such information and statistics.

**31. Negotiation**

The Government reserves the right to negotiate with any Tenderer in relation to the Tenderer's Tender and/or the Contract.

**32. Counter-Proposals**

- (a) The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Terms of Tender (Supplement) (if any).
- (b) The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Terms of Tender (Supplement) or the Schedules.
- (c) If a Tenderer fails to comply with Clause 32 (a) or (b) above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.
- (d) Counter-proposal to other provisions of the Tender Documents not specified in Clause 32 (a) or (b) above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Clause 32 (a) or (b) above ("Counter-Proposals"), the Counter-Proposals shall be submitted in the following manner:
  - (i) the Counter-Proposals shall be attached to Part 4 "Offer to be Bound" of the Tender Form



- (ii) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
  - (iii) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
  - (iv) if it is an addition, the additional provisions shall be underlined;
  - (v) words to be deleted shall be crossed out by a single line only; and
  - (vi) an explanation shall be given below the alteration or deletion and put in square brackets “[ ]”.
- (e) Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 32 (d) above will not be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer's Tender on this basis.
- (f) Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

### **33. Government Discretion**

- (a) Notwithstanding anything to the contrary in this Tender Document, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
- (i) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Time or an order is made or a resolution is passed for the winding up of the Tenderer;
  - (ii) 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;
  - (iii) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any

thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person ("IPR infringement") (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;

- (iv) any time during the twenty-four (24) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in clause 33(f) and 33(g) below and including those who were in such capacity any time within the same period, i.e., twenty-four (24) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficienc(ies) in the performance of any requirement or obligation under any other Government contract awarded by the head of the Procuring Department regardless of whether the default(s) or deficienc(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficienc(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficienc(ies) has been remedied ("Contract Default(s)"); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;
- (v) (1) the Tenderer; or (2) a related person of the Tenderer; or (3) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of 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 Contract award;

- (vi) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (vii) any failure of the Tenderer 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.

The grounds specified in clause 33(a)(i) to 33(a)(vii) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

- (b) For the purposes of clause 33(a) above, each Tenderer shall 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 and those information in relation to its related person or its director or management staff (which it has knowledge and 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:
  - (i) details of any petition or proceeding mentioned in clause 33(a)(i) above;
  - (ii) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in clause 33(a)(iii) above;
  - (iii) details of all Contract Defaults as mentioned in clause 33(a)(iv)) above;
  - (iv) details of conviction as mentioned in clause 33(a)(v) above in Hong Kong or any overseas jurisdiction;
  - (v) details of any professional misconduct or act or omission as mentioned in clause 33(a)(vi) above; and
  - (vi) details of any failure to pay taxes as mentioned in clause 33(a)(vii) above.

If none of the events as mentioned in clause 33(a)(i) to 33(a)(vii) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the Information Schedule at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to clause 33(c) below. The information provided by the Tenderer is not conclusive. The Government may independently

verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- (c) In addition to the information mentioned in clause 33(b) above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under clause 33(a) above.
- (d) If the Tenderer fails to comply with the request made by the Government pursuant to clause 33(c) above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to clause 12 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to clause 33(a)(ii) above.
- (e) In providing the information required under clause 33(b) and 33(c) above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in clause 33(a) above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- (f) If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
  - (i) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("majority shareholder");
  - (ii) a holding company or a subsidiary of the Tenderer;
  - (iii) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
  - (iv) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (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).

- (g) If the Tenderer is a sole proprietor or partnership, the expression "related person" includes any one of the following:

- (i) any partner of the Tenderer (if it is a partnership);
  - (ii) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall 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; or
  - (iii) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- (h) References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-clause of clause 33(a) above include persons who were in such capacity at such time of the event referred to in that Sub-clause.

#### **34. Licence to use the materials submitted by Tenderers**

A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed in accordance with clause 15 of the Terms of Tender. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

#### **35. Communication with the Government**

Without prejudice to the requirements set out in Clause 9 of the Terms of Tender concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing

and sent or delivered to the other Party in the manner provided in Clause 33 of the Conditions of Contract at the address, facsimile number or email address specified in the Appendix, save that in the case of lodging any enquiries under clause 13 of the Terms of Tender, the Tenderer shall lodge such enquiries by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Appendix to the Terms of Tender and 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.

**Appendix A**

**Tender Evaluation  
Procedures, Criteria and Marking Scheme  
for  
the Provision of Hiring and Servicing of Solar Powered Portable Toilets  
in Country Parks of Hong Kong Island**

**Marking Scheme for Tender Evaluation**

The Government will use a Marking Scheme to assess the tenders, which meet all essential requirements as stipulated in Clause 3 of the Terms of Tender. A two-envelope approach with a technical to price weighting of **50:50** will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment.

The technical assessment comprises three sections: Part A, B and C. The Tenderers who have passed the technical assessment would be awarded with a weighted technical score calculated by the formula in Note 1 (c). Upon completion of the technical assessment, the price information will be evaluated. The tender with the highest combined score combining the weighted technical score and the weighted price score will normally be recommended for acceptance. 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.

## Appendix A

## I. Technical Assessment

Assessment Criteria	Maximum Marks	Unit Mark (M)	Standard Score (S)					Marks Scored (M x S)	Basis of Assessment	
			(See Note 1)							
			4	3	2	1	0			
<b>Part A – Execution Plan (criterion without an individual passing mark)</b>										
1.	Management Plan	20	5						See Note 2	
2.	Work Plan	24	6						See Note 2	
3.	Innovative Suggestions									
	(a) Type I – directly relevant to the Services	8	4	N.A.					See Note 3A	
	(b) Type II – not directly relevant to the Services but can bring positive values or benefits to Government or the public	4	2	N.A.					See Note 3B	
<b>Part B – Experience (criterion without an individual passing mark)</b>										
4.	Tenderer's experience in providing portable toilet services in the 10-years period immediately preceding the Original Tender Closing Date	12	4	N.A.					See Note 4	
<b>Part C – Labour Benefits (criterion without an individual passing mark)</b>										
5.	Proposed monthly wage of Cleaners for this Contract	25	N.A.						See Note 5	
6.	Proposed maximum allowable working hours per day of Cleaners for this Contract	7	7	N.A.					See Note 6	
<b>Total Technical Mark</b>		<b>100</b>								



**Appendix A****Note 1**

(a) A Tenderer's proposal/qualifications in respect of the features mentioned in the assessment criteria will be rated as follows:

For item 1 and 2

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

For item 3

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

For item 4

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

For item 5

See Note 5.

For item 6

Standard score of 1 or 0 will be awarded.

(b) The total technical mark is 100.

(c) The calculation of weighted technical score for a Tenderer is:

$$50 \quad \times \quad \frac{\text{Technical mark of the offer being assessed}}{\text{Highest technical mark among all tender offers}}$$

The weighted technical score of each tender will be rounded to the nearest 2 decimal places. Figures with the values 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 values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

Example of calculating the weighted technical score and the rounding arrangements are given as follows:

Tenderer A gains the highest total technical mark of 80;

Tenderer B gains a total technical mark of 65;

Tenderer C gains a total technical mark of 50.

The weighted technical scores of the three (3) Tenderers are:

**Appendix A**

Tenderer A =  $50 \times 80/80 = 50$

Tenderer B =  $50 \times 65/80 = 40.63$

Tenderer C =  $50 \times 50/80 = 31.25$

**Note 2: Management Plan and Work Plan**

- 4 – Proposed Management Plan / Work Plan is **practicable** with **detailed information covering all aspects listed** in clause 3(d) of the Terms of Tender respectively.
- 3 – Proposed Management Plan / Work Plan is **practicable** with **detailed information covering three (3) aspects listed** in clause 3(d) of the Terms of Tender respectively.
- 2 – Proposed Management Plan / Work Plan is **practicable** with **detailed information covering two (2) aspects listed** in clause 3(d) of the Terms of Tender respectively.
- 1 – Proposed Management Plan / Work Plan is **practicable** and provides **brief information for at least two (2) aspects listed** in clause 3(d) of the Terms of Tender respectively.
- 0 – Proposed Management Plan / Work Plan is **impracticable or fails to provide** information for **any aspects listed** in clause 3(d) of the Terms of Tender.

**Note 3: Innovative Suggestion (3A and 3B)****3A. Type I – Innovative suggestions directly relevant to the Services**

- 2 – Proposed plan contains **more than one (1)** practicable innovative suggestions contributing to any of the positive values (a) to (g) as listed below
- 1 – Proposed plan contains **one (1)** practicable innovative suggestions contributing to any of the positive values (a) to (g) as listed below
- 0 – **No** practicable innovative suggestion is proposed

Marks for innovation is assigned to innovative suggestion(s) that are directly relevant to the services and can enhance service delivery. Only innovative suggestion(s) that is/are considered effective and practicable in improving service delivery or operations will be given marks for innovation. Their benefits/positive values may cover, but not limited to, the following items –

- (a) Saving of manpower resources;
- (b) Economical use of resources, e.g. water, electricity;

**Appendix A**

- (c) Higher operational efficiency / performance reliability;
- (d) Shortening of gearing-up period;
- (e) Better service quality;
- (f) Improved or greater flexibility to adapt to operational changes;
- (g) Boosting of staff morale/user satisfaction / service utilization.

Tenderers shall highlight the proposed innovative suggestion(s) and explain clearly what benefits/positive values, including item (a) to (g) above, their proposed innovative suggestions can bring about in their submissions to facilitate tender evaluation.

Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions(s) 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 (if any) will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are not allowed to provide additional information not contained in their original tender submissions.

Marks **will not** be given to innovative suggestions for (i) labour benefit measures; (ii) the provisions and requirements already set out in the Contract; (iii) a Tenderer will neither be capable of nor responsible for implementation; and (iv) the suggestion without detailed information on demonstrating its practicability and effectiveness.

**3B. Type II – Innovative suggestions not directly relevant to the Services but can bring positive values or benefits to Government or the public**

- 2 – Proposed plan contains **more than one (1)** practicable innovative suggestions contributing to any of the positive values (a) to (d) as listed below;
- 1 – Proposed plan contains **one (1)** practicable innovative suggestions contributing to any of the positive values (a) to (d) as listed below;
- 0 – **No** practicable innovative suggestion is proposed

Marks will be given if the proposed innovative suggestions though are not directly relevant to the Services, can bring about positive values/benefits to the Government or the public at large. **Type II** innovative suggestions shall contribute to any of the following positive values –

- (a) to make the society happier, healthier, smarter;

**Appendix A**

- (b) to enable the managed premises as a test bed to foster research and development opportunities by start-ups or young entrepreneurs;
- (c) to provide better care for the elderly and youth; and
- (d) to promote consumption of fewer resources and reduction of waste and make the society more environmental friendly.

**Note 4: Tenderer's Experience**

Assessment will be based on the aggregate number of years of experience in providing portable toilet services in the past ten (10) years immediately preceding the original Tender Closing Date.

- 3 – Tenderer has **Five (5) or more aggregate years** of experience in providing portable toilet services during the ten (10) years period immediately preceding the original Tender Closing Date.
- 2 – Tenderer has **Three (3) to less than Five (5) aggregate years** of experience in providing portable toilet services during the ten (10) years period immediately preceding the original Tender Closing Date.
- 1 – Tenderer has **One (1) to less than Three (3) aggregate years** of experience in providing portable toilet services during the ten (10) years period immediately preceding the original Tender Closing Date.
- 0 – Tenderer has **less than One (1) aggregate year** of experience in providing portable toilet services during the ten (10) years period immediately preceding the original Tender Closing Date or no valid documentary proof to support its claim of experience submitted.

Remarks:

- (a) Tenderers shall submit valid documentary proof (e.g. Contract copy with clear contract period) to substantiate their claims of experience. The service experience shall be in providing portable toilet services.
- (b) Only the Tenderer's experience in the same business entity of the Tenderer will be counted. The same business entity of the Tenderer refers to the company with the same unique company registration number under the Companies Ordinances, Cap. 622 or its equivalent. For the avoidance of doubt, a Tenderer's experience gained in its capacity as sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Tenderer shall not be considered. The meanings of "parent company" and "subsidiary" follow the meanings under the Companies Ordinance (Cap. 622).

**Appendix A**

- (c) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership, will be counted.
- (d) For the purpose of tender evaluation, the aggregate year of experience will be counted in calendar days. "One (1) aggregate year of experience" is equivalent to have accumulated 365 (i.e. 365 days x 1) days of experience. Besides, any overlapping period under different contracts of the tenderer **will not be double-counted**.

Contracts performed by a Tenderer	Contract period	Contract period without overlapping with the earlier contract	Number of days of experience counted in the tender evaluation
Contract A	16.4.2017 - 15.4.2019	16.4.2017 - 15.4.2019	730 days
Contract B	1.10.2018 - 31.3.2020	16.4.2019 - 31.3.2020	351 days
Contract C	1.1.2019 - 31.5.2020	1.4.2020 - 31.5.2020	61 days
		Total:	1,142 days

**Note 5: Proposed Monthly Wage**

The marks scored by each tender will be determined by the following formula:

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

P = Proposed monthly wage rate for Cleaner of the conforming tender being assessed

H = Highest proposed monthly wage rate for Cleaner among all conforming tenders

S = The prevailing SMW monthly wage rate plus paid rest days for Cleaners, derived on the basis of thirty-one (31) days (i.e. eight (8) hours of work per day and twenty-seven (27) working days plus four (4) paid rest days per month) i.e. HK\$9,300

Illustrative Example for Tenderer's Proposed Monthly Wage Rates for Cleaners:

	Marks Scored (Example)
P = HK\$12,000	$25 \times \frac{12,000 - 9,300}{14,500 - 9,300}$
H = HK\$14,500	
S = HK\$ 9,300	

Remarks:

- (a) If H is equal to S, no marks will be given to all Tenderers.

Terms of Tender

**Appendix A**

- (b) Tenderers are advised to refer to the mark calculation method with an illustrative example above. The marks scored of each tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in Note 1 (c).

**Note 6: Proposed daily maximum working hours for Cleaner**

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

Remarks:

If a Tenderer fails to indicate any maximum allowable net working hours per day for all Cleaner in its tender on or before the Tender Closing Date or the Extended Tender Closing Date, as the case may be, 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.

**II. Price Assessment**

The calculation of weighted price score of the technical assessment is:

$$50 \quad \times \quad \frac{\text{Lowest tender price}}{\text{Tender price of the offer being considered}}$$

(Remarks: The weighted price score of each tender will be rounded to the nearest 2 decimal places according method as shown in Note 1(c) )

**III. Combined Score**

Combined Score = Weighted technical score + Weighted price score

**Appendix B**

**Working Background and Status of the Tenderer  
(To be Inserted into the Technical Envelope)**

**Section 1 – Information of Tenderer**

1. Name of Tenderer (in English) : \_\_\_\_\_  
(in Chinese) : \_\_\_\_\_

2. Address of Registered Office (in English) : \_\_\_\_\_  
(in Chinese) : \_\_\_\_\_

3. (a) Telephone Number : \_\_\_\_\_ (b) Fax Number : \_\_\_\_\_

4. Length of business experience (in year) : \_\_\_\_\_

5. Shareholders / Partners / Proprietor of the company / business organization:  
\_\_\_\_\_

6. Name and Residential Address of the following :  
Managing Director / Partners / Sole Proprietor (*please delete as appropriate*)

(a) Name \_\_\_\_\_

(b) Residential Address \_\_\_\_\_  
\_\_\_\_\_

7. Person Authorized to sign Tender :

(a) Name \_\_\_\_\_ (b) Telephone Number \_\_\_\_\_

(c) Post Title \_\_\_\_\_

8. Enquires

In the event of any quires relating to the offer or tender

Name : \_\_\_\_\_ Post Title : \_\_\_\_\_

Telephone No. : \_\_\_\_\_ Fax No. : \_\_\_\_\_

Authorized Signature : \_\_\_\_\_

Date : \_\_\_\_\_

**Appendix B**

**Working Background and Status of the Tenderer  
(To be Inserted into the Technical Envelope)**

**Section 2 – Tenderer’s Experience in Provision of relevant Portable Toilet Services**

Assessment on a Tenderer’s experience as stipulated in Marking Scheme for tender evaluation will be solely based on information on the Tenderer’s past experience as stated **by the Tenderer in its tender as at the Original Tender Closing Date**. In this connection, a Tenderer shall submit with its tender information on its past experience as required in this **Appendix B**.

Experience in the provision of portable toilet service during the ten (10) years immediately prior to the Original Tender Closing Date will be evaluated. Tenderers **must** provide description and history of their relevant experience in the provision of portable toilet services with clear indication on the number of years of relevant experience. And the tenderer shall provide documentary proof to substantiate claims of the relevant experience. e.g. copy of contract, client reference letter, etc. showing the contract description, the contract commencement and completion dates, the contract value and the scopes of services must be provided by the Tenderer to substantiate the past experience claimed in the tender. Otherwise, the relevant claimed past experience will not be taken into account.

	Client Name	Contract Period	Place of Business	Areas Served	Description of Business
1.					
2.					
3.					

*(Use separate sheets if required)*

Remarks: A Tenderer’s experience under different contracts will not be double-counted for any overlapping periods. Please refer to Note 4 of Appendix A in Terms of Tender.

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_



**Appendix B**

**Working Background and Status of the Tenderer  
(To be Inserted into the Technical Envelope)**

**Section 3 – Statement of Compliance**

A Tenderer is requested to confirm whether its offer submitted comply with the required Service Specifications by completing the following statement -

**\* I / We** confirm that the services offered **\* is / is not** totally in compliance with the required specifications

*\* please delete as appropriate*

Note Below: Should the services offered is not totally in compliance with the required specifications, Tenderers should provide details below.

Clause

Deviation

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

Terms of Tender

**Appendix B**

**Working Background and Status of the Tenderer  
(To be Inserted into the Technical Envelope)**

**Section 4 – Statement of Convictions** [Please refer to Clause 3(b) of the Terms of Tender.]

1. A Tenderer Hereby declares if the following person(s) has/have obtained any conviction of the Relevant Offences (as defined in Clause 3(b)) for a period of 5 years immediately preceding the Tender Closing Date or the Extended Closing Date, as the case may be:
- (a) The Tenderer itself;
  - (b) Where applicable, each of its partners if it is a partnership or each of its shareholders if it is a company; and
  - (c) Where applicable, its sub-contractor.

Yes/No *(please delete as appropriate)*

If yes, please complete the following table: -

Date of Offence	Location of Offence	Date of Conviction	Ordinance and the Sections Breached	Court Penalties

*(Use separate sheets if required)*

This Statement of Convictions shall be certified by an authorized person of the Tenderer who is duly authorized by the Tenderer to execute contracts with the Government.

The signatory of this Statement of Convictions hereby authorize the hereby authorize the Agriculture, Fisheries and Conservation Department to obtain information from all Government bureaux/departments and give consent to the Government bureaux/departments concerned to provide information about my/our conviction records in respect of the Relevant Offences 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.

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

Terms of Tender

**Appendix B**

**Working Background and Status of the Tenderer  
(To be Inserted into the Technical Envelope)**

**Section 5 – Election of method of payment of Contract Deposit**

[Please refer to Clause 11 of the Terms of Tender and Clause 24 of the Conditions of Contract.]

If the tender is accepted, we shall elect, pursuant to Clause 11 of the Terms of Tender to deposit with the Government, not later than twenty-one (21) days after the date of the facsimile or letter of acceptance referred to in Clause 9 of the Terms of Tender or at such other time as shall be directed by the Government, a sum stated in Clause 11 of the Terms of Tender as security for the sue and faithful performance of the Contract -

- \* (i) in cash,
- \* (ii) in the form of a banker's guarantee in accordance with Clause 24 of the Conditions of Contract.

*\*Delete as appropriate. In the event that a Tenderer fails to elect which method of providing a Contract Deposit, it will be assumed that the Tenderer will deposit cash with the Government.*

**Section 6 – Innovative Suggestions (refer to Clause 3(d)(iii) and Appendix A of Terms of Tender)**

Please put a tick “✓” in the following box if innovation suggestions are proposed.

There are innovative suggestions in applicable component of the Technical Proposal, the proposed innovative suggestions have been highlighted and explained clearly with benefits/positive values.

- Type I - directly relevant to the Services
- Type II - not directly relevant to the Services but can bring positive values or benefits to Government or the public

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Appendix C**

**Supporting Documents to be Submitted by the Tenderer  
(To be Inserted into Technical Envelope)**

[Please refer to Clause 3 & Appendix A of the Terms of Tender and Service Specifications]

**(Please indicate by  as appropriate)**

1. The following documents are attached for assessment: -

Business Status

- Copy of a valid Business Registration Certificate. The certificate should bear a machine printed line to show that full registration fee has been paid.
- Copy of the current Certificate of Incorporation, Memorandum and Articles of Association, Certificate of Change of Name (if any) if the Tenderer is a company or body corporate and any other corporate documents evidencing business status.

Relevant Experience and Qualification

- Copy of Documentary evidence of my/our relevant experience in the ten (10) years immediately preceding the Tender Closing Date in provision of cleansing services. (*Client name, Contract period, Place of Business, Areas served, Description of Business*).

Others

- Copy of Certificate of Insurance
- Copy of Certificates of Compliance and / or Test Reports for Biodegradable Plastic Litter Bag
- A letter certifying the person who signs this letter is an authorised person to sign contracts / agreements on behalf of the Tenderer.

2. (a) I/We hereby authorize the Agriculture, Fisheries and Conservation Department to obtain information from the referee(s) referred to in the documentary evidence submitted regarding my/our relevant experience in providing portable toilet services: -

\_\_\_\_\_

\_\_\_\_\_ and give consent for the referee(s) to release and provide information to the Agriculture, Fisheries and Conservation Department as regards my/our record of performance concerning the types of services listed in Service Specifications.

(b) I/We hereby declare that all information given in (a) above and any additional sheets attached hereto are correct. I/We agree that, if any of such information is found to be incorrect, my/our tender may not be considered any further.

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Appendix D**

[Please refer to Clause 11 of the Terms of Tender]

**Sample Form of  
Banker's Guarantee**

THIS GUARANTEE is made on the ..... day of .....  
By.....  
of ....., a bank within the meaning of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

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 «SERVICE PROVIDER\_NAME» of «SERVICE PROVIDER\_ADDRESS» (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as <<Name of the Procuring Department>> Contract No. «CONTRACT\_NUMBER»), the Contractor agreed and undertook to provide \_\_\_\_\_ 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 this Guarantee executed as a deed witnesses 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's acceptance of the bank named herein as the Guarantor under this Guarantee:

(a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, 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

**Appendix D**

[Please refer to Clause 11 of the Terms of Tender]

any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.

- (b) The Guarantor, as a primary obligor and as a separate, continuing 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 Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

(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 or where "the Contractor" is a company, any change its member or shareholder or its officers or 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 amended or 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;

**Appendix D**

[Please refer to Clause 11 of the Terms of Tender]

- (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 on the same date as the Contract 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 end of three (3) months from the date of early termination or expiry of the Contract Period; or
- (b) in the case if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing),

whichever is the applicable.

**Appendix D**

[Please refer to Clause 11 of the Terms of Tender]

(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 <<Name of Procuring Department>> of <<Address of the Procuring Department>> marked for the attention of \_\_\_\_\_, facsimile number \_\_\_\_\_;

(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) This Guarantee may only be amended by an instrument in writing signed by the Guarantor and the Government as represented by the Government Representative.



**Appendix D**

[Please refer to Clause 11 of the Terms of Tender]

IN WITNESS whereof this Guarantee was executed as a deed and 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 of witness: )  
 Title of witness:  
 Signature of witness:

@ 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 of witness:  
 Title of witness:  
 Signature of witness:

\* 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.

**Appendix E**

[Please refer to Clause 28 of the Terms of Tender]

To: Field Officer / Contract Management  
Agriculture, Fisheries and Conservation Department  
Fax: (852) 2317 0482

**Registration Form for Attending Tender Briefing Session**

**Provision of Hiring and Servicing of Solar Portable Toilets  
in Country Parks of Hong Kong Island**

**Details of the Briefing Session**

Date : 21 April 2021 (Wednesday)  
Time : 4:00 p.m.  
Venue : Room 615, 6/F, Cheung Sha Wan Government Office, 303 Cheung Sha Wan Road,  
Kowloon

**Details of Registration**

The following person from our company will attend the Briefing Session:

<b>Name</b>	<b>Post Title</b>	<b>Contact No.</b>
(1) _____	_____	_____

Company Name: \_\_\_\_\_

Phone no.: \_\_\_\_\_ Fax no.: \_\_\_\_\_

Date : \_\_\_\_\_

**NOTE: This form should be completed and returned by fax to the Agriculture, Fisheries and Conservation Department on or before noon of 19 April 2021 (Monday)**

For enquiries concerning briefing session, please contact Mr. IP at Tel.: 2150 6865.

Terms of Tender

**Appendix F**

**NON-COLLUSIVE TENDERING CERTIFICATE**

( To be completed and returned together with the tender submission )  
[Please refer to Clause 19 of the Terms of Tender]

To: the Government

Dear Sir/ Madam,

**Non-collusive Tendering Certificate**

1. I/We, (name of the Tenderer) \_\_\_\_\_ of  
(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.

Terms of Tender

**Appendix F****NON-COLLUSIVE TENDERING CERTIFICATE**

( To be completed and returned together with the tender submission )  
[Please refer to Clause 19 of the Terms of Tender]

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the Government;
  - (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
  - (c) 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;
  - (d) 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;
  - (e) 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;
  - (f) 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
  - (g) 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 subcontracting 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 19 (a) of the Terms of Tender, the Government may exercise any of the rights under Clause 19 (c) to (e) of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

## Terms of Tender

**Appendix F**

**NON-COLLUSIVE TENDERING CERTIFICATE**

( To be completed and returned together with the tender submission )  
[Please refer to Clause 19 of the Terms of Tender]

6. Under the Competition Ordinance (Chapter 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.

Signed by the Tenderer / Signed by an  
authorised signatory for and on behalf of :  
the Tenderer

---

Name of the authorised signatory (where  
applicable) :

---

Title of the authorised signatory (where  
applicable) :

---

Date :

---

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

<b>Content</b>	<b>Sheet</b>
1. Contract Period .....	66
2. Total Services and Variation.....	66
3. Warranties and Representations.....	67
4. Assignment.....	68
5. Sub-contracting .....	68
6. Costs and Expenses .....	69
7. Contractor's Acknowledgement, Obligations and Contract Performance.....	69
8. Performance of Contractor's Employees .....	69
9. Signing of Standard Employment Contract with Non-skilled Workers .....	71
10. Wages to Non-skilled Workers .....	72
11. Committed Daily Maximum Working Hours for Non-skilled Workers.....	72
12. Holiday Pay to Non-skilled Workers .....	72
13. Gratuity to Non-skilled Workers.....	72
14. Extra Wages to Non-skilled Workers for Working under Typhoon Signal No. 8 or above .....	73
15. Debarment Mechanism and Demerit Point System .....	73
16. Order for variation .....	73
17. Inspection and Rejection.....	74
18. Payment to Contractor .....	75
19. Deduction in Monthly Fee .....	76
20. Suspension of Services.....	77
21. Liability and Indemnities .....	77
22. Public Liability Insurance .....	79
23. Recovery of Sums Due .....	80
24. Contract Deposit .....	80
25. Termination of Contract.....	83
26. Consequences of Termination.....	85
27. Use of Electricity and Water Supplies .....	87
28. Government Property .....	87
29. Government Premises / Contractor's Premises.....	88
30. Government's Confidential Information.....	88
31. Corrupt Gifts .....	89
32. Publicity .....	89
33. Service of Notice.....	90
34. General Service Arrangements .....	90
35. Monies or Valuables Found by the Contractor's Employees .....	91
36. Conflict of Interest .....	91
37. Confidentiality.....	92
38. Force Majeure.....	95
39. Probity.....	96

40.	Illegal Workers.....	97
41.	Entire Agreement .....	97
42.	Relationship of the Parties .....	97
43.	Governing Law and Jurisdiction.....	97
44.	Severability .....	98
45.	Waiver.....	98
46.	Assistance in Legal Proceedings.....	98
47.	Contracts (Rights of Third Parties) Ordinance .....	99
48.	Disputes.....	99
49.	Complaints/Enquiries Handling.....	99
50.	Retention of Record .....	99
51.	Matters in which the Decision of the Government Representative is Final.....	99
52.	Review of the Management Plan and Work Plan .....	99
53.	Order of Precedence.....	100
	Annex A Sample of Accountant’s Certificate for Payment Application.....	101

## PART 2 CONDITIONS OF CONTRACT

### 1. Contract Period

- (a) The contractor shall provide the Services to the Government for a period of **eighteen (18) months commencing in 1 August 2021 and expiring on 31 January 2023**, both dates inclusive, subject to clause 1(b) and to any provision for sooner termination or extension of the Contract as is provided for in the Contract.
- (b) The Government may, on giving the Contractor a 7-day advance written notice before **31 January 2021**, postpone or advance the Commencement Date of the Contract Period to a date specified by the Government in the notice.
- (c) 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.
- (d) The Contractor must agree to the extension of the Contract made under clause 1(c) hereof when the Government exercised its right to extend the Contract.

### 2. Total Services and Variation

- (a) The Services to be performed under the Contract shall be as laid down in the Service Specifications, Conditions of Contract and Contract Schedule and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the Government will not be responsible for Services performed on oral instructions issued by any person whomsoever.
- (b) The Contractor shall not extend the Services beyond the requirements specified in the Service Specifications, Conditions of Contract and Contract Schedule except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall 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 Service Specifications, Conditions of Contract and Contract Schedule.
- (c) Notwithstanding anything to the contrary herein contained, the Government Representative may from time to time and at any time during the Contract Period:



- (i) by giving a prior written notice to the Contractor so that the Contractor will, within seven (7) days, provide such additional Services at such part of the Contract Area which are not covered in the Services Requirements as set out in Services Specification for such duration and in such manner as may be specified in the notice; and
  - (ii) by giving a prior verbal notice (to be properly documented subsequently) to the Contractor so that the Contractor will, within one (1) day, carry out emergency services at such part of the Contract Area, for such duration and in such manner as may be directed by the Government Representative and the Contractor shall provide such Services accordingly.
- (d) Where a variation has been made to the Contract the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable and where rates are not contained in the Price Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.
- (e) All of the Services provided by the Contractor including those provided under Clause 2(b) hereof will be payable in accordance with the rates of charges specified in Contract Schedule 1.

### **3. Warranties and Representations**

- (a) The Contractor warrants, represents and undertakes that:
- (i) the Contractor and all the Contractor's Employees shall have the necessary skills, experience, qualifications and expertise to provide the Services on the terms and conditions as set out in the Contract;
  - (ii) the Contractor shall carry out and provide the Services with all due diligence and in a timely, safe, proper, skillful and professional manner;
  - (iii) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
  - (iv) it shall not employ any illegal workers to carry out its obligations under the Contract;
  - (v) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
  - (vi) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
  - (vii) 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;
  - (viii) all information and documents supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine,

true, accurate and complete;

- (ix) 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;
  - (x) 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;
  - (xi) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
  - (xii) 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; and
  - (xiii) 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.
- (b) The warranties, representations and undertakings, expressed or implied, contained in Clause 3(a) above and other provisions of the Contract (collectively, "Warranties" and each, a "Warranty") shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.
- (c) Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- (d) 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.

#### **4. Assignment**

The Contractor shall 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. The performance of the Contract by the Contractor shall be personal to it.

#### **5. Sub-contracting**

The Contractor shall not be allowed to enter into sub-contracts with any Person for the performance of any or all parts of the Contract.

**6. Costs and Expenses**

Save as otherwise expressly provided for in the Contract, the Contractor shall comply with all provisions of the Contract and its obligations under the Contract at its own costs and expenses.

**7. Contractor's Acknowledgement, Obligations and Contract Performance**

- (a) The Contractor shall employ sufficient number of suitably trained, experienced and competent managerial and site supervisory staff for the maintenance and execution of the Services.
- (b) The Contractor shall ensure that they all fulfill the respective qualifications to carry out all their responsibilities and duties as stipulated in Section 1 of Part 3A - Service Specifications.
- (c) The Contractor shall comply with all applicable laws and regulations. In particular, the Contractor shall:
  - (i) 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 shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;
  - (ii) 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
  - (iii) 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.

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

- (a) The Contractor shall ensure the good conduct of each of the Contractor Employees while they are performing the Services for or on behalf of the Contractor. Without prejudice to the aforesaid, the Contractor shall ensure that each employees :
  - (i) is fit for their tasks;
  - (ii) maintains the standard of discipline, courtesy, behaviour and consideration in performing the Services;
  - (iii) do not smoke, sleep, consume alcoholic drink, listen to radio, gossip and will refrain from any other malpractices while they are performing the Services; and
  - (iv) is on duty during the period of a day as specified in Service Specifications as applicable to the post set out therein for which the Contractor's Employees is assigned to perform his/her duties for the purpose of this Contract and is punctual at all times.

- (b) The Government Representative may require on reasonable grounds (including but not limited to medical, security and disciplinary grounds) the immediate removal or replacement of any of the Contractor's employees engaged or deployed for the purpose of the Contract.
- (c) Any employees so removed shall at the sole cost and expense of the Contract be replaced as soon as possible by a competent substitute and within such time as specified by the Government Representative. The Contractor shall not deploy the removed person to perform the Services at any other location.
- (d) The Government shall in no circumstances be liable to the Contractor, its employees in respect of any liability, loss or damage occasioned by such removal and the Contractor hereby agrees to fully indemnify the Government against any aforesaid claim made by such employees.
- (e) The Contractor and the Contractor's Employees shall:
  - (i) deal promptly and courteously with the Government Representative, the general public and all others with whom they may have contact in performing the Services under the Contract;
  - (ii) wear tidy and clean uniforms and such special or protective clothing and footwear as the Government may consider necessary or appropriate. Any such special or protective clothing and footwear shall be provided, maintained and replaced as necessary by the Contractor at its own expenses;
  - (iii) 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;
  - (iv) give proper training, supervision and guidance to the Cleaners in performing the Services.
  - (v) conduct surprise checks at such frequency agreed by the Government Representative and record the findings of his surprise checks in a record book;
  - (vi) provide the record book for the Government Representative's inspection whenever requested by the Government Representative;
  - (vii) if required by the Government Representative, deliver to the Government within such period as specified by the Government Representative, copies of the record for the Government's retention;
  - (viii) 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); and
  - (ix) if required by the Government Representative, prepare a written report on any aspect of the Services as instructed by the Government Representative.

**9. Signing of Standard Employment Contract with Non-skilled Workers**

- (a) The Contractor shall maintain or shall ensure to be maintained proper, current and accurate records of the Standard Employment Contracts, the attendance log and wage books showing details of working hours, working days, payment of wages to the Contractor's Employees, bank autopay returns, receipts of wages and records of contributions to the mandatory provident fund schemes. Such records shall also include the name, identity card number, photograph, grade, qualifications and/or record of experience (of manager and supervisor ranks only) and age of each of the Contractor's Employees.
- (b) The Contractor shall keep proper records of all amendments, variation or cancellation to the Standard Employment Contracts and the wage payment to the Contractor's Employees.
- (c) The Contractor shall enter into written Standard Employment Contract (if the contractual period exceeds seven (7) days) with accompanying guidance notes with each of the Cleaners including the Cleansing Supervisor, and shall ensure that all Employees fully understand all contents of the Standard Employment Contract. Copies of the signed employment contract should be kept by the Contractor, the Employees and the Government for record and for monitoring of the Contractor's compliance with the Contract. The Standard Employment Contract can be downloaded from the following hyperlink:
  - (i) for Chinese version  
<[https://www.afcd.gov.hk/tc\\_chi/tender/tender\\_rel/tender\\_rel.html](https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html)>; or
  - (ii) for English version  
<[https://www.afcd.gov.hk/english/tender/tender\\_rel/tender\\_rel.html](https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html)>
- (d) The Contractor shall within fourteen (14) days from the Commencement Date of the Contract provide the Government Representative with copies of the Standard Employment Contracts entered into under sub-clause (b) above at its own costs. In the event that there is any subsequent change of concerned Employees and/or of the terms of the Standard Employment Contract as approved by the Government Representative, the Contractor shall provide the Government Representative within three (3) days after such change with a copy of any new Standard Employment Contract entered into or any employment contract as amended, as the case may be, at its own cost.
- (e) Any breach of the undertaking in sub-clause (c) to (d) above in respect of written Standard Employment Contracts with Contractor's Employees shall be construed as a material breach of the Contract and the Government shall have right to terminate the Contract.
- (f) The Contractor shall not vary the terms and conditions of the Standard Employment Contract without the prior written approval of the Government Representative.
- (g) The Contractor shall strictly observe its contractual obligations under the Standard Employment Contract, including but not limited to, the contractual obligations the breach of which would attract a Demerit Point.
- (h) The Contractor shall obtain consent from the Contractor's Employees for disclosure of their personal data, the Standard Employment Contracts and all other records of employment to the Government Representative and the representatives of the Labour Department for the purposes of the Contract.

**10. Wages to Non-skilled Workers**

- (a) The Contractor shall pay each cleaner, during the Service Period, monthly wage in an amount not less than –
  - (i) the monthly wages specified in Contract Schedule 2; or
  - (ii) the monthly wages referred to at (i) above as the same may be adjusted as a result of future revision of the Statutory Minimum Wage, whichever is the higher.
- (b) The Contractor shall promptly pay wages to the Contractor's Employees, failure to do so will entitle the Government to terminate the Contract.

**11. Committed Daily Maximum Working Hours for Non-skilled Workers**

- (a) The Contractor shall not allow any Cleaner to work each day for more than the maximum allowable net working hours per day as specified in Contract Schedule 2.
- (b) The Contractor shall allow each Cleaner not less than one hour meal break each day. The period of meal break of each Cleaner shall be specified in the Standard Employment Contract.

**12. Holiday Pay to Non-skilled Workers**

The Contractor shall provide the holiday pay to a Non-skilled Worker provided that the Non-skilled Worker has been employed by the Contract or 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 shall 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 shall comply with the relevant clauses and follow the examples of illustration therein.

**13. Gratuity to Non-skilled Workers**

- (a) The Contractor shall pay a gratuity to a Non-skilled 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 Non-skilled 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 or termination of the Standard Employment Contract. The amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Non-skilled Worker during the above period. The gratuity shall 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 shall comply with the relevant clauses and follow the examples of

illustration therein.

- (b) The gratuity shall be paid to the Employees not later than 7 days after the expiry or termination of the Standard Employment Contract.

**14. Extra Wages to Non-skilled Workers for Working under Typhoon Signal No. 8 or above**

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 Non-skilled Worker has worked, the Contractor shall pay the Non-skilled Worker for that day/shift at least 150% of the Non-skilled 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 shall comply with the relevant clauses and follow the examples of illustration therein. For the avoidance of doubt, the extra wages stipulated in this Clause shall also apply to a Non-skilled Worker with whom the Contractor is not required to enter into the Standard Employment Contract.

**15. Debarment Mechanism and Demerit Point System**

- (a) If the Contractor is convicted of any of the Relevant Offences (regardless of whether the conviction arises from this Contract), such conviction(s) will be taken into account in the assessment of the Contractor's offer (as the case may be) in future tender or quotation exercises.
- (b) If the Contractor is in breach of any contractual obligations referred to in the definition of "Demerit Point", the Government is entitled to issue a default notice to the Contractor.
- (c) Each default notice issued under Clause 15(b) attracts one Demerit Point. The Demerit Point(s) will be taken into account in the assessment of the Contractor's offer (as the case may be) in future tender or quotation exercises.

**16. Order for variation**

- (a) Without prejudice to other provisions of the Contract enabling the Government to stipulate variations, the Contractor agrees and acknowledges that the Government Representative shall have the absolute power to unilaterally vary, without obtaining further consent from the Contractor, the form, quality of any labour (including the number of Cleaner required), work or materials as well as any of the specifications or requirements set out in the Service Specifications and Contract Schedules hereof. A variation pursuant to this clause shall not in any way vitiate or invalidate the Contract.

- (b) Without limiting the generality of any of the foregoing, the Government Representative may vary the scope of the Contract by including new/additional facilities not specified in the Contract Schedules in the Contract or deleting the Venues required for Services in the Contract during the Contract Period.
- (c) No variation shall be made by the Contractor without an order in writing from the Government Representative.

#### **17. Inspection and Rejection**

- (a) The Services performed shall be subject to inspection and certification by the Inspecting Officer and/or the Government Representative. Upon breach of any term or condition of the Contract by the Contractor, including but not limited to failure to comply with the performance requirements in accordance with the Service Specifications, the Government shall be entitled to reject unsatisfactory performance of the Services and withhold payment of the Contract Price until the deficiencies or defects have been rectified by the Contractor.
- (b) In the event that the Contractor shall fail to comply with any of the requirements of the Contract, or in the event that there is a breach of or non-compliance with any warranty, undertaking or obligation on the part of the Contractor to observe and perform which is capable of remedy, the Government may by notice in writing to the Contractor at any time require the Contractor to make good the defect, deficiency or remedy the breach at its sole costs and expenses within such time as may be stipulated by the Government in the notice.
- (c) At any time during the Contract Period, the Government Representative may investigate each case where the Contractor has failed to perform the Services or any part thereof in accordance with the provisions of the Contract. If in any particular case the Services provided by the Contractor has failed to meet the performance standards required under the Contract or any terms and conditions of the Contract, the Government Representative shall be entitled to instruct/advise the Contractor either verbally or in writing to remedy/rectify the failure in order to comply fully with the performance standards required under the Contract and terms and conditions of the Contract.
- (d) Within twenty-four (24) hours of being notified verbally or in writing of any of the Services being unsatisfactory, the Contractor shall be required to take immediate and necessary action to rectify such unsatisfactory Services. If the Contractor fails to rectify such unsatisfactory Services in accordance with Clause 17(c) or fails to provide required number of staff in accordance with the Service Requirements, the Government Representative may, without prejudice to any other rights and remedies available to the Government, carry out and complete such Services by its own resources or by other contractors. All costs and expense whatsoever which may be incurred by the Government Representative thereof shall be recoverable in full from the Contractor by deducting such sums from any money due or becoming due to the Contractor under this or other contracts with the Government.



**18. Payment to Contractor**

- (a) Subject always to the terms and conditions hereof, and the Contractor having performed the Services in accordance with the terms and conditions of the Contract to the satisfaction of the Government, the Government shall pay to the Contractor a service charge on a monthly basis **(the “Monthly Fee”)** in accordance with the following formula:

$$\begin{array}{r}
 \text{(Monthly Rate)} \\
 + \\
 \text{(Any total charges for additional Services provided by the} \\
 \text{Contractor, under Clause 2, calculated on the basis of the} \\
 \text{applicable rates of charges as set out in Contract Schedule 1)} \\
 \text{Monthly Fee payable to Contractor} = \quad - \\
 \text{(Total deductions calculated under Clause 19)} \\
 \quad - \\
 \text{(Such other sums the Government is entitled to deduct pursuant} \\
 \text{to other provisions of the Contract)}
 \end{array}$$

All costs and expenses in connection with the appointment and employment of the auditors/accountants shall be borne solely by the Contractor.

- (b) The Monthly Fee set out in sub-clause (a) above shall be inclusive of all fees, costs, charges and disbursements incurred by the Contractor in the performance of the Services including but without limitation to the equipment, materials, uniforms and tool required to be deployed/provided under the contract; the costs and expenses incidental to the attendance of meetings, the giving of presentations and briefings; the fees for obtaining any licence, authorization or permit from any Government or other authority.
- (c) Payment shall be made in Hong Kong dollars. The Contractor shall at the beginning of each month deliver to the Government Representative an invoice in respect of the Services rendered to the Government in the preceding month. Subject to the Government Representative being satisfied that the calculations of the Monthly Fee is correct, the Government should pay the Contractor the Monthly Fee within 30 days after having received from the Contractor the invoice and the statement in accordance with the provisions of sub-clause (a). The Monthly Fee will be paid by the Government into the Contractor’s bank account direct. The Contractor shall, upon request by the Government Representative, provide a statement in the form as at Annex A to the Conditions of Contract which shall be certified by a certified public accountant (practicing) or a corporate practice registered under the Professional Accountants Ordinance (Cap.50).
- (d) Unless the Government Representative otherwise notifies in writing, all invoices and correspondence concerning the Monthly Fee shall be addressed to the Government Representative at the address specified in Clause 33. The Government Representative shall not be liable for any delay in the payment of the Monthly Fee if invoices and correspondence shall not be so addressed.

- (e) The billing periods for the Monthly Fee shall begin on the first day to the last day of the month during the Contract Period. In the case where the first or the last month of the Contract Period does not begin on the first day or end on the last day of the month, the Monthly Fee shall be adjusted on a pro rata basis.

**19. Deduction in Monthly Fee**

- (a) The Contractor shall ensure the Cleaners employed for the work are not less than the number stipulated in Service Specifications. Without prejudice to any other rights and remedies of the Government under the Contract or otherwise at law, the Government is entitled to make deductions from the Monthly Rate an amount (to be rounded to the nearest dollars) calculated in the formula below if any of the Contractor’s Employees have resigned, have been dismissed or absent from duty without immediate replacements for the period of absence. The sum (to be rounded to the nearest dollars) shall be calculated in the following sub-Clauses.

$$\frac{\text{Monthly Rate}}{\text{Total working man-hours of all Cleaners of the month concerned}} \times \text{Duration of absence from duty (in total number of absence man-hour) of all Cleaners}$$

- (b) The Government reserves the right to make the following deductions from payment due under this contract on the occurrence of any of the following events:
  - (i) the number of staff is found to be less than that specified in Service Specifications;
  - (ii) the staff is found to be absent from duty without reasonable excuse or is found to be sleeping whilst on duty or in any other way present but not performing his or her duties; and
  - (iii) the staff fails to obey instructions, supply required equipment, dress in proper attire, and any other minor infringement of his or her specified duties.
- (c) Except in the circumstance as provided in Clause 20, the Contractor shall ensure at all time during the Contract Period to provide the required number of PTs and required frequency of servicing to PTs in accordance with the requirements stipulated in Service Specifications. In the event of Contractor’s failure to comply the requirements in the provision of and servicing to PTs, without prejudice to any other rights and remedies of the Government under the Contract or otherwise at law, the Government shall be entitled to not to make payment to the Contractor for the number of PTs or number of times of servicing to PTs the Contractor fails to provide. It should be deemed that no service charge shall be made in respect of the service works which has not been executed by either not providing the PT units or servicing. The total monthly charge shall then be deducted proportionally based on the no. of calendar days of the month. This sum (to be rounded to the nearest dollar) shall be deducted from the Monthly Rate and calculated in the following sub-Clauses:

No. of PTs missing (if any) <b>OR</b>	No. of days either PT units or servicing		
No. of times of cleansing & supply of consumable items services to PTs missing (if any) <b>OR</b>	$\frac{\text{missing}}{\text{Total No. of}}$	X	Monthly Rate
No. of times of desludging & water refilling services to PTs missing (if any)	service days of the month concerned	X	

(d) Unless otherwise agreed by the Government,

- (iv) where there is a variation of addition/deduction the number of portable toilets in Location covered by the Monthly Rate specified in Service Specifications and in section 2- the location map, the Monthly Rate for such Services shall be calculated and paid on a pro rata basis for the number of days when the Services have actually been performed; and
- (v) where there is an extension of the Contract Period, additional Monthly Rates for the Services as stated in the Price Proposal of Contract Schedule 1 shall be payable for each month of extension.

***In case of dispute, the decision of the Director of Agriculture, Fisheries and Conservation Department shall be final and binding.***

## **20. Suspension of Services**

Notwithstanding any other provision herein, the Contractor may suspend the Services during any period when Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by Hong Kong Observatory. Deduction of fee in accordance with Clause 19 above is not applicable to the suspension of Services under the mentioned inclement weather conditions. However, the Contractor shall resume the Services and be responsible for the Services forthwith after the above inclement weather warning signals are lowered by Hong Kong Observatory.

## **21. Liability and Indemnities**

- (a) Neither the Government nor any of its employees shall be under any liability whatsoever for or in respect of:
  - (i) any loss of or damage to any of the Contractor's property or that of its employees however caused (whether by any Negligence of the Government or any of its employees); or
  - (ii) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees, save and except any such injury or death caused by the Negligence of the Government or any of its employees.

(b) Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its employees (each an “Indemnified Person”) from and against:

- (i) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (ii) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, “Claims” and each a “Claim”) and everything stated in Sub-clause (i) above incurred or suffered by an Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (1) the breach of any provisions of the Contract by the Contractor;
- (2) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, its employees;
- (3) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (4) any claim or allegation that the use or possession of the Materials or Third Party Materials infringes the Intellectual Property Rights or any other rights of any person;  
or
- (5) the non-compliance by the Contractor, its employees with any applicable law, or regulation, order or requirement of any government agency or authority;
- (6) any act or omission of the Contractor, or its employees, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (7) any loss, damage, injury or death referred to in Clause 20(a) above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (8) any injury or death of any third party, or any loss or damage to property sustained by

any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its employees.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

- (c) 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 shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- (d) For the purposes of this Clause, "Negligence" shall have 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).
- (e) The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall 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.

## **22. Public Liability Insurance**

- (a) The Contractor shall effect and keep in force during the Contract Period and at its own expense a public liability policy of insurance exclusively for the Contract in the joint names of the Government and the Contractor in the sum of not less than Ten Million Hong Kong dollars (HK\$10,000,000) for each accident with unlimited claim for each year with an insurance company. The insurance policy shall cover liability to pay damages and compensation for injury to or death of any persons and for loss or damage to any properties whatsoever where such injury, death, loss or damage (as the case may be) is caused by or arises out of any act, negligence or default of the Contractor, the Contractor's Employees.
- (b) For the purposes of obtaining the Government's approval of the terms and conditions of the insurance policy, before taking out of the same, if required by the Government, the Contractor shall submit the draft insurance policy to the Government for review no later than one (1) week after the Date of Tender Acceptance.
- (c) The Applicable Period for the public liability insurance policy shall be the Contract Period; and for other insurance policies specified to be required in the Special Conditions of Contract, such

Applicable Period shall be as stated in the Special Conditions of Contract.

- (d) Without prejudice to Clauses 22(a) and (b) above, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable laws and regulations.
- (e) If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- (f) For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim covered by the relevant insurance policy.
- (g) If the Contractor fails to give effect to or maintain any insurance policy 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.
- (h) No provision including any indemnity limit specified in any insurance policy required under the Contract shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor 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.

### **23. 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.

### **24. Contract Deposit**

- (a) The Contractor shall deposit with the Government in cash or a performance bond issued by a

bank that holds a valid banking licence under the Banking Ordinance (Chapter 55 of the Laws of Hong Kong) or an insurer authorized under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong), in the form set out in Appendix B of the Terms of Tender with only such amendments as may previously have been agreed in writing by the Government, as security for the due and proper performance of the Contract by the Contractor, within twenty-one (21) days from the date of Letter of Acceptance.

- (b) If the Contractor fails to comply with Clause 24(a) above, the Government shall have the right to terminate the entire Contract pursuant to Clause 25 of the Conditions of Contract
- (c) Without prejudice to Clause 24(b) above, if the Contractor fails to comply with Clause 24(a) above, the Government may deduct from any sum due or payable by the Government to the Contractor from time to time, an amount equal to the Contract Deposit to serve as the Contract Deposit.
- (d) If:
  - (i) the Contractor fails to comply with any provision of the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or
  - (ii) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable,

in each case of Sub-clause (i) or (ii) above, irrespective of whether or not a demand for payment has been made against the Contractor.

- (e) The Contract Deposit (whether paid in cash 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 of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- (f) 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 shall, within twenty-one (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 shall 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 12 of the Terms of Tender.

- (g) Where the Contract Price payable for all Services to be procured under the Contract is likely to exceed the original Total Estimated Services Price, the Government may, by written notice to the Contractor, require the Contractor to submit to the Government such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to two percent (2%) of the revised Total Estimated Services Price specified by the Government in the notice.
- (h) If a notice is issued by the Government under Clause 24 (g) above, the Contractor shall within twenty-one (21) days deliver to the Government the additional amount of further Contract Deposit required in the notice in the form of either cash or a further banker's guarantee. The further banker's guarantee must comply with the requirements in Clause 11 of the Terms of Tender. A further Contract Deposit paid by the Contractor to the Government shall form part of the Contract Deposit.
- (i) If the Contractor fails to comply with Clause 24(f), 24(g) or 24(h) above, the Government shall have the right to terminate the entire Contract pursuant to Clause 25 below.
- (j) Upon the expiry or termination of the Contract Period:
  - (i) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit (if any) in cash and without interest to the Contractor by the date specified in (i) or (ii) below, whichever is applicable:
    - (1) the end of three (3) months counting from the date of early termination or expiry of the Contract Period; or
    - (2) in the case if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing).
  - (ii) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with the guarantee period as stated therein.



(the applicable period specified in Sub-clause (i) or (ii) above is referred to as the “Guarantee Period”.)

- (k) Where upon expiry of the Guarantee Period, any claim of the Government or any liability of the Contractor, whether under or arising from or in relation to the Contract cannot yet be quantified or finalised, the Government may, without prejudice to its other rights and remedies, pay the entire Contract Deposit or any part thereof (whether in cash or in banker’s guarantee) into a suspense account, for so long as it considers necessary, and pending the quantification or finalisation of the amount of the claim or liability. Upon quantification or finalisation of the amount of all or any claims or liabilities, the Government shall apply the amount in the suspense account in or towards satisfaction of the quantified amount. Where there is any remaining amount in the suspense account after such application, the Government will return the remaining amount to the Contractor without interest. Where the amount in the suspense account is insufficient to cover all or any claims or liabilities, the Government reserves all rights and remedies against the Contractor in respect of such claims and liabilities.

## **25. Termination of Contract**

- (a) The Government may forthwith terminate the Contract without prejudice to any other rights which the Government has or may have if:
- (i) the Contractor fails to provide to the Government any Services specified in an Order within the time as specified in the Order or in accordance with Clause 16 in Conditions of Contract;
  - (ii) any Services are rejected pursuant to the Contract;
  - (iii) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
  - (iv) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
  - (v) any Warranty is incorrect, inaccurate, incomplete or misleading;
  - (vi) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
  - (vii) the Contractor, any officer (including director) or employees 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;

- (viii) the Contractor abandons the Contract in whole or in part;
- (ix) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (x) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of this Conditions of Contract:
  - (1) Clause 24 - Contract Deposit;
  - (2) Clause 38 – Force Majeure;
  - (3) Clause 39 – Probity;
  - (4) Clause 40 – Illegal Workers; or
  - (5) Clause 19 – Warranty against Collusion in Terms of Tender,

the Government may by seven (7) days' written notice to the Contractor terminate the Contract immediately.

- (b) The Government may immediately terminate the Contract upon the occurrence of any of the following events:
  - (i) 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;
  - (ii) if the Contractor is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
  - (iii) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
  - (iv) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
  - (v) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
  - (vi) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (vii) the Government reasonably believes that any of the events mentioned above is about to occur.

- (c) Separate from the event mentioned in Clause 25(a)(x)(2) above and Clause 38 of this Conditions of Contract, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole pursuant to Clause 39 below.
- (d) Instead of terminating the Contract in relation to all Services pursuant to Clause 25(a), 25(b) or 25(c) above, the Government may elect, but is not obliged, to terminate the Contract in relation to any part or parts of the Services only (“Partial Termination”). The part(s) of the Services to which the Partial Termination relates are referred to as “Terminated Services”. The Terminated Services may cover all or any part(s) of the Services which have not been accepted up to the time of termination.
- (e) Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 25(a) to 25(c) above and in each Sub-clause of Clauses 25(a) and 25(b) shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

## **26. Consequences of Termination**

- (a) Upon expiry or early termination of the Contract (howsoever occasioned) (“Termination”):
  - (i) the Contract shall be of no further force and effect, but without prejudice to:
    - (1) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
    - (2) the rights and claims which have accrued to a Party prior to the Termination; and
    - (3) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned);
  - (ii) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
  - (iii) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 21 of this Conditions of Contract, in the event of the Termination under Clause 2 of the Conditions of Contract, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amount in excess of the Contract Price 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 (ii) any additional

expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 25 of the Conditions of Contract. 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 shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;

- (iv) the Contractor shall immediately return to the Government all Government Property which is supplied or in respect of which access is granted to the Contractor by the Government for the purposes of or in relation to the Contract;
- (v) the Contractor shall provide all such assistance as the Government may request from time to time after the Termination to ensure an orderly and effective transition of the provision of the Services to the Government or another contractor to be appointed by the Government Representative and/or completion of any work-in-progress;
- (vi) the Contractor shall within twenty-eight (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
- (vii) at the request of the Government, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

Further, upon request by the Government and/or in the event of the expiry or termination (howsoever occurred) of the Contract, the Contractor shall at its sole costs and expenses promptly deliver to the Government the Materials (including any drafts and copies thereof) then in the Contractor's custody, control or possession, whether in their completed forms or not.

- (b) Upon a Partial Termination pursuant to Clause 26 in this Conditions of Contract:

- (i) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Services shall be of no further force and effect, but without prejudice to:
  - (1) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
  - (2) the rights and claims which have accrued to a Party prior to the Partial Termination; and
  - (3) the continued existence and validity of all remaining provisions of the Contract; and
- (ii) all of the consequences specified in Clause 26(a) above (apart from Clause 26(a)(i) above), and in the case of Partial Termination under the circumstances mentioned in Clause 25 above shall apply save that references to "Termination" shall mean "Partial Termination"; references to "Services" shall mean the "Terminated Services".

## **27. Use of Electricity and Water Supplies**

- (a) The Government Representative shall permit the Contractor to use free of charge water supplies and to consume electricity made available at the supply points installed at the Contract Area for the purpose of provision of the Services. The Contractor shall warrant and undertake to the Government that it has made known to all its employees that the water and electricity supplies shall only be used for purposes under and in accordance with the Contract.
- (b) The Contractor shall ensure that all Contractor's Employees exercise their utmost care in the use of the water or electricity supplies to avoid wastage and damage to Government property. The Contractor shall not use any electrical equipment in such manner that will overload the fuses in the electricity supply of the Contract Area. Particular attention must be given to the maintenance of cleansing equipment in order that it does not run below rated speed and draw excessive electricity current. Double adaptors shall not be permitted.
- (c) Permission to use the said water and electricity supplies shall cease at the end or sooner determination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.
- (d) The Contractor shall adopt the green measures in the Green Guidelines for Cleansing Services developed by Environmental Protection Department and Government Logistics Department stipulated at Contract Schedule 5 in using the electricity and water supplies for the performance of the Services.

## **28. Government Property**

When Government property is issued to the Contractor under the Contract, the Contractor shall 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 its employees, the Contractor shall pay an amount equal to its replacement costs 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 shall render such assistance as is necessary for this purpose.

## **29. Government Premises / Contractor's Premises**

- (a) The Government may at its sole discretion provide free of charge office and/or storage space within the Contract Areas for use by the Contractor's Employees, or for the storage of the tools, equipment and materials employed in the Services provided that:
- (i) such use shall cease at the end or sooner termination of the Contract, or at such earlier time as may be specified by the Government Representative by notice in writing to the Contractor;
  - (ii) the Contractor shall keep the said office or storage space clean, tidy, in reasonably good state of repairs and properly secured, as appropriate;
  - (iii) no fixtures, fittings or alteration shall be erected at or made to such office or storage space except with the Government Representative's prior consent in writing; and
  - (iv) the Contractor shall, upon termination of the Contract or on demand, remove at its own costs as soon as practicable, all fixtures or fittings erected at such office or storage space and restore the same to its original state. If the Contractor shall fail to do so within a reasonable time, the Government shall be entitled to remove and dispose of any properties, chattels, fixtures or fitting left uncollected in the Contract Area in any manner deemed appropriate by the Government Representative (including sale and abandonment) and that no compensation will be made 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 shall be recoverable as a debt due from the Contractor.
- (b) The safety of any tools, equipment and vehicles used by the Contractor and brought alongside or onto Government premises shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises caused by such tools, equipment and vehicle.
- (c) The Contractor shall not use any space provided to it by the Government for conducting any fee-charging activities.
- (d) Nothing in this Contract shall create a tenancy or licence of whatsoever nature in favour of the Contractor.
- (e) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative at all reasonable time.

## **30. Government's Confidential Information**

The Contractor shall treat as confidential all information supplied by the Government under this contract which is designated as confidential by the Government or which is by its nature clearly confidential provided that this Clause shall extend to any information which was rightfully in

the possession of the Contractor prior to the commencement of the negotiations leading to this contract or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause). The Contractor shall not divulge or use any confidential information except for the purpose of the Contract. The Contractor shall ensure that its employees are aware of and comply with the provisions of this Clause. The Clause shall survive termination of this Contract.

### **31. Corrupt Gifts**

- (a) The Contractor shall prohibit its employees who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Contract.
- (b) If the Contractor or any of the Contractor's Employees breach sub-clause (a) above or commit an offence under the Prevention of Bribery Ordinance (Cap. 201) or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefor Suspected bribery cases would be reported to the Independent Commission Against Corruption (ICAC) for investigation.
- (c) The Contractor shall be liable for all expenses incurred by the Government as a result of the termination of the Contract under this Clause.

### **32. Publicity**

- (a) Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- (b) Subject to Clause 32(a), the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Services or other services provided or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.
- (c) Notwithstanding any consent or approval given under Clause 32(a) or 32(b), whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

**33. Service of Notice**

- (a) Unless otherwise provided in this Contract, every notice, request, demand, direction or other communication under this Contract shall be made in writing, by post, by fax or by hand.
- (b) Every notice, request, demand, direction or other communication given or made under this Contract shall be sent to the relevant party at its address or facsimile number stated below, or to such other address or fax number which a party may have notified the other party by no less than three (3) days' prior written notice:

	<u>Address</u>	<u>Fax. No.</u>
(i) the Government:	Contract Management Unit Protection Section Country Parks Technical Services Division Country and Marine Parks Branch, Agriculture, Fisheries and Conservation Department, 6/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, Hong Kong	2317 0482
(ii) the Contractor:	As stated in Appendix B to Terms of Tender	As stated in Appendix B to Terms of Tender
(c)	Such notice, request, demand, direction or other communications addressed to the relevant party as provided in sub-Clause (b) shall be deemed to have been duly given	
	(i) if sent by personal delivery, upon delivery to the relevant address; or	
	(ii) if sent by post, five (5) business days (for local post) and ten (10) business days (for overseas post) after the date of posting; or	
	(iii) if sent by facsimile, when dispatched with confirmed transmission receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by facsimile machine used for such transmission; or	
	(iv) if sent by e-mail, on the date of transmission	

**34. General Service Arrangements**

The Contractor shall: -

- (i) submit, seven (7) days before each month, a monthly cleansing programme and work schedule (including but not limited to the planned roster of the Cleaners, names of Cleaners on-duty and their areas of responsibility) in respect of each working day.
- (ii) provide a attendance record in such manner and at such location(s) as may be approved by the Government Representative to monitor the attendance of the Contractor's Employees at the Contract Area;
- (iii) ensure the Contractor's Employees to use the attendance monitoring system to keep proper attendance records; and



**35. Monies or Valuables Found by the Contractor's Employees**

All monies or other items of value found by the Contractor or Contractor's Employees (if any) at the Contract Area in the course of performance of the Services shall be handed to the Government Representative as soon as possible and the Contractor shall obtain from the Government Representative a written receipt obtained therefor.

**36. Conflict of Interest**

- (a) The Contractor shall during the Contract Period and for six (6) months thereafter:
- (i) ensure that it (including each and every officer and employee of the Contractor) engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively "Restricted Group") shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the Government; and
  - (ii) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.
- (b) The Contractor shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.
- (c) In the Contract:
- (i) "associate" of a person means:
    - (1) a relative or partner of that person; or
    - (2) a company one or more of whose directors is in common with one or more of the directors of that person;
  - (ii) "associated person" of a person means:
    - (1) any person who has control, directly or indirectly, over the second-mentioned person;
    - (2) any person who is controlled, directly or indirectly, by the second-mentioned person;or

- (3) any person who is controlled by, or has control over, the person mentioned in (1) or (2) above;

(iii) “control” over another person (“person under control”) means the power of a person to secure:

- (1) by means of the holding of shares or interests or the possession of voting power in or in relation to that person under control or any other person;
- (2) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that person under control or any other person; or
- (3) by virtue of holding office as a director in that person under control or any other person;

that the affairs of the person under control are conducted in accordance with the wishes of that person exercising control;

(iv) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director;

(v) “relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall 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 parents and the step parent; and

(vi) “Restricted Group” has the meaning given to it in Clause 36(a) above.

### **37. Confidentiality**

- (a) The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government Data, any other information, report, document, plan, record, 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)), database, code or particulars (a) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor; or (b) otherwise is accessible by or available to the Contractor in the course of performing the Contract; or (c) any Materials, advice, recommendations, reports or any other materials containing information belonging to the Government or specifically relating to or relevant to the Services provided to the Government (collectively “Confidential Information”) in whatever form or media. The restrictions on disclosure contained in this Clause 37(a) shall not apply to the disclosure of any Confidential Information if:
  - (i) such disclosure to any person employed, used or engaged by the Contractor in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable

opinion of the Contractor for the performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the Confidential Information to a third party;

- (ii) such Confidential Information is already known to the recipient other than as a result of disclosure by the Contractor or any other member of the Restricted Group; or
  - (iii) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
  - (iv) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
  - (v) with the prior consent in writing of the Government.
- (b) Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 21 above which the Government may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:
- (i) a breach of confidence (whether under the Contract or general law) by the Contractor or any other member of the Restricted Group;
  - (ii) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees in connection with the performance of the Contract; and
  - (iii) 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).
- (c) The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 37(a) above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.
- (d) When requested by the Government, the Contractor shall forthwith require any of its officers or employees as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 37(a) above, to execute a written undertaking in favour of the Contractor and the Government in a form to be determined by the Government agreeing to the restrictions

attached to the Confidential Information set out in this Clause 37 and the Contractor agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

- (e) The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- (f) The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).
- (g) The Contractor shall ensure that each of its employees and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 37 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong)
- (h) The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 38.
- (i) The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 37 and/or specific performance ensuring the compliance of this Clause 37 in light of any threatened or actual breach of this Clause 37, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- (j) Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- (k) The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 37 and any copies, analyses,

compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

### **38. Force Majeure**

- (a) If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing of that matter and all relevant particulars.
- (b) Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall 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".
- (c) Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor shall keep the Government informed at reasonable intervals, and upon the request of the Government, of:
  - (i) 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;
  - (ii) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
  - (iii) any other matters relevant to that Force Majeure Event or the Contractor's performance affected by that Force Majeure Event.
- (d) 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 38(e), 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 shall forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

- (e) During the suspension of any obligations under Clause 38(d).
  - (i) the Contractor shall 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;
  - (ii) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
  - (iii) the Contractor shall 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.
- (f) As soon as the relevant Force Majeure Event has ended, the Contractor shall 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 shall 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 shall be final in the absence of manifest error.
- (g) 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 shall be entitled to terminate the Contract pursuant to Clause 25.

### **39. Probity**

- (a) The Contractor acknowledges it has been reminded that:
  - (i) dishonesty, theft and corruption on its part or that of its officers or employees 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); and
  - (ii) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- (b) The Contractor shall inform its officers and employees (whether permanent or temporary) 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.
- (c) The Government shall have the right to terminate the entire Contract pursuant to Clause 25 of this Conditions of Contract in the event that the Contractor or any of its employees is convicted

of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).

- (d) The Contractor shall within two (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 employees to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract.

#### **40. Illegal Workers**

The Contractor undertakes not to employ illegal workers in the execution of this Contract or any other Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice, terminate this Contract pursuant to Clause 25 of this Conditions of Contract.

#### **41. Entire Agreement**

- (a) 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. On the other hand, the Government has relied on the Warranties when entering into the Contract.
- (b) All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

#### **42. Relationship of the Parties**

The Contractor enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall 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 authorized to act in the name of, or on behalf of, or otherwise bind the other party.

#### **43. Governing Law and Jurisdiction**

- (a) The Contract shall 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.
- (b) The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to the Contract.

**44. 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 shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

**45. Waiver**

- (a) Time shall be of the essence of the Contract but 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 shall operate as a waiver thereof; nor shall 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 shall 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 shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.
- (b) Without prejudice to the generality of Clause 45(a) above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall 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, shall 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 shall constitute a waiver by the Government of any other right, power or remedy.

**46. Assistance in Legal Proceedings**

- (a) If and whenever requested to do so by the Government Representative, the Contractor shall 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 shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.
- (b) Where the Contractor or any employees 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 shall notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.



**47. Contracts (Rights 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).

**48. Disputes**

If disputes arises between any officer of Agriculture, Fisheries and Conservation Department and the Contractor in reference to the performance of the Contract, or any part thereof which cannot otherwise be resolved, such dispute shall be referred to the Director of Agriculture, Fisheries and Conservation whose decision shall be final and binding.

**49. Complaints/Enquiries Handling**

The Contractor shall ensure all their employees/staff strictly follow the “Guidelines in handling public Complaints and Enquiries” issued by AFCD and record all complaints received to facilitate monitoring by AFCD representative. The Contractor shall circulate the “Guidelines in handling public Complaints and Enquiries” quarterly and submit the documentary proof for AFCD Representative.

**50. Retention of Record**

The Contractor shall keep and maintain until seven (7) years after the expiry of the Contract, or such longer period as may be agreed by the Parties, full and accurate records in relation to 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 shall afford the Government or its representative or authorised person access to the records and to make and retain copies thereof as may be requested by the Government or its representative or authorised person.

**51. Matters in which the Decision of the Government Representative is Final**

In the case of any question arising as to any of the following matters:

- (a) as to the quality of materials and workmanship;
  - (b) as to the method or means (including any question as to what equipment should be provided and used by the Contractor) by which the Services or any part thereof should be provided;
  - (c) as to the assessment/judgement on the quality of the Services;
- the Government Representative shall state his decision thereon in writing and the Government Representative’s said decision shall be final and binding upon the parties, provided that the Government Representative shall have power to cancel any such decision and to substitute it with any other decision thereof.

**52. Review of the Management Plan and Work Plan**

The Government Representative may from time to time and at any time require in writing the Contractor to revise any of the plans contained in Contract Schedule 3 in such manner as the Government Representative may specify.

**53. Order of Precedence**

In the event of, and only to the extent of, any conflict or inconsistency between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) Service Specifications;
- (b) Contract Schedules;
- (c) Conditions of Contract;
- (d) Terms of Tender;
- (e) Tender Form (GF231); and
- (f) Interpretation.

**Annex A**

**SAMPLE OF ACCOUNTANT’S CERTIFICATE  
FOR PAYMENT APPLICATION**

ACCOUNTANT’S STATEMENT FOR PAYMENT APPLICATION  
REQUIRED UNDER CONTRACT NO. \_\_\_\_\_

IN RELATION TO THE CONTRACTOR’S PAYMENT APPLICATION NO. \_\_\_\_\_

FOR THE MONTH :                                  20\_\_

I/we have examined the relevant employment agreements, payrolls, books, records, and other supporting documents. I/we deem necessary to ascertain the number and ranks of the Contractor’s Employees deployed to work at the Contract Area under the above Contract by (*the Contractor*) \_\_\_\_\_

\_\_\_\_\_ and the wages paid to the Cleaners, I/we certify that the information contained in the attached Statement of Deployment and Wages of Cleaners are in accordance with the said agreements, payrolls, books, records and supporting documents.

\_\_\_\_\_  
(✘Accountant’s Signature)  
\_\_\_\_\_  
(✘Accountant’s Name)  
\_\_\_\_\_  
(Date)

✘ To be certified by a certified public accountant (practising) or a corporate practice registered under the Professional Accountants Ordinance (Cap. 50) when requested by Government Representative.

## Annex A

<<SAMPLE OF STATEMENT OF DEPLOYMENT AND WAGES OF CLEANER/WORKER  
AND ACCOUNTANT'S STATEMENT FOR PAYMENT APPLICATION>>

STATEMENT OF DEPLOYMENT AND WAGES OF CLEANERS

REQUIRED UNDER CONTRACT NO. \_\_\_\_\_

IN RELATION TO THE CONTRACTOR'S PAYMENT APPLICATION NO.

FOR THE MONTH: \_\_\_\_\_

No. of Saturdays/Sundays in the month : \_\_\_\_\_ No. of Statutory Holidays in the month : \_\_\_\_\_

Staff No.	Rank	Name	Committed wages for the Cleaner* (HK\$)	Number of days on duty	Number of no-pay leave days taken (such as no-pay statutory holidays)	Number of overtime hours	Wages for the month**	Provident Fund contributed by the Cleaner, if applicable	Wages paid to the Cleaner	Provident fund contributed by the employer	Remarks #
							(a)	(b)	(a) – (b)	(a) x 5%	
	e.g. CS / CL										

CS = Cleansing Supervisor      CL = Cleaner

\* Committed wages means wage as set out in Contract Schedule 2 by successful Tenderer.

\*\* Wage received refers to that before deduction of employees's contribution to the Mandatory Provident Fund.

# Among other things, any non-compliance with the committed daily maximum working hours for Cleaners shall be stated.

I/we have examined the relevant employment agreements, payrolls, books, records and other supporting documents. I/we deem necessary to check the number and ranks of Cleaner/Worker deployed to the Venue(s) under the above Contract by (*the Contractor*) and the wages paid to the Cleaner/Worker. I/we certify that the information contained in the above Statement of Deployment and Wages of Cleaner/Worker are in accordance with the said agreements, payrolls, books, records and supporting documents.

\_\_\_\_\_  
(※Accountant's Signature)\_\_\_\_\_  
(※Accountant's Name)\_\_\_\_\_  
(Date)

※ To be completed and signed by a certified public accountant (practicing) or a corporate practice within the meaning of the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong) when requested by Government Representative.

Conditions of Contract

**PART 3A  
SERVICE SPECIFICATIONS**

<u>Content</u>	<u>Sheet</u>
<b>Section 1 - Services Requirement</b>	
1     General Service Requirements	104
2     Design and Specifications of Solar Powered Portable Toilets and Portable Cabin	105
3     Repair and Maintenance Works of Portable Toilets	108
4     Supply of Consumable Items to Portable Toilets	108
5     Services to Portable Toilets	110
6     Cleansing Attendant Services at To Tei Wan, Shek O Country Park	111
7     Contractor's Vehicles, Vessels, Portable Toilets, Equipment, Materials and Tools	111
8     Design and Specification of Desludging Vehicles	112
9     Desludging Operations	113
10    Disposal of Sludge	113
11    Operations of Vehicles, Vessels, Equipment and Tools	114
12    Suspension of Services	115
13    Site Record, Return and Report	115
14    Contractor Personnel and Manner of Superintendence	117
<b>Section 2 – Solar Portable Toilets Required and Location Map</b>	<b>118</b>

---

**PART 3A – SERVICE SPECIFICATIONS****Section 1 - Services Requirement****1. General Service Requirements**

- (a) The Contractor has agreed to provide the professional hiring and servicing of the required Portable Toilets in country parks meeting various Hong Kong environmental, health and hygiene standards from time to time.
- (b) The Contractor shall during the entire Contract Period provide to the Government the following Services in accordance with the terms and conditions of the Contract:
  - (i) Supply of **Solar Powered Portable Toilets**, including assembly, disassembly and transportation, provision of repair and maintenance works to and, where necessary, relocation of portable toilets. The solar powered Portable Toilets shall be of the design and specifications in accordance with Clause 2 of this Service Specifications;
  - (ii) Provision of **daily servicing** which includes desludging, cleansing, water refilling services, supply of consumables items for each Portable Toilet;
  - (iii) Provision of a **cleansing attendant** for the Portable Toilets at To Tei Wan, Shek O Country Park; and
  - (iv) Supply of a **portable cabin** at To Tei Wan, Shek O Country Park to serve as a work station for the cleansing attendant, including assembly, disassembly, transportation, repair and maintenance, where necessary, relocation of the portable cabin; and
  - (v) Provide **additional cleansing services** for specified portable toilets listed in Section 2 of Service Specifications on every Saturdays, Sundays and public holidays, including desludging, cleansing with disinfectant of 1:99 bleach, and water filling services.
- (c) The Contractor shall provide at his own expense sufficient number of vehicles (including Desludging Vehicles), Portable Toilets, equipment, materials and tools for the performance of the Services under this Contract.
- (d) The Contractor shall provide the hiring and servicing of **10 units** of solar powered Portable Toilet (including regular type and the type for person with disability) at the locations as listed in Section 2 of the Service Specifications. Types of Portable toilets required and exact locations are to be confirmed on site with the Government Representative to meet the operational need. The Contractor shall be responsible to obtain necessary road restriction permits, if required, by various Departments on the use of the access roads.
- (e) The Government may vary the schedules of Services at the location map in Section 2 of the Service Specifications including addition or cessation of Services in any locations in all other Country Parks of the New Territories from time to time to meet operational need. For this purpose, the decision of the Government Representative

is final in determining location other than those specified in the Location map in the Section 2 of the Service Specifications. These shall include but not limited to an increase or decrease in the number of location, the number of Portable toilets required for a location.

- (f) The vehicles (including Desludging Vehicles), Portable Toilets, equipment, materials and tools shall be of the type and quality specified in the Service Specification respectively and as approved by the Government Representative. Prior approval from the Government Representative must be sought in case there is any change in the type of vehicles (including Desludging Vehicles), Portable Toilets, equipment, materials and tools used in the performance of the services.
- (g) Except as provided for in below Clause 12 of the Service Specification, the Contractor shall maintained the required services throughout the contract period.

## 2. Design and Specifications of Solar Powered Portable Toilets and Portable Cabin

- (a) The Portable Toilets shall be **non-HDPE** (High Density Polyethylene) plastic type (e.g. to be Aluminum Alloy / Metal framed or similar, Figure 1), and fulfill the following design and specifications. No alternation to the design and specification or replacement of any Portable Toilets shall be made without the prior approval of the Government Representative.



*Figure 1 - Example of an Aluminum Alloy framed Portable Toilet*

- (b) Each regular Solar Powered Portable Toilet used to provide Service shall:
  - (i) be constructed with Aluminum Alloy frame with polyethylene/fiber glass body panel (or similar materials), which is structurally strong enough to be located outdoors in exposed places subject to wind, rain and weather conditions experienced in the territory as well as to withstand regular use by members of the public;
  - (ii) be light or subdued colour, which is compatible to the country parks environment, such as light grey, brown, green or white and as agreed by inspecting officer;

- (iii) have surfaces with low moisture absorption rate and are easy to clean;
- (iv) be constructed of floor tiles with non-slippery (slip resistance value at least equal to group R10 or equivalent), low-water absorbent and easy for cleansing. Other materials will also be accepted if documentary proof issued by an Independent Accredited Laboratory is provided indicating that the characteristics / performance of the proposed material is the same as or higher than the above requirements;
- (v) be in principal of Seat-type styles and is equipped with foot-operated flushing system (or other acceptable non-contact flush system); the flushing system shall be capable of removing effectively all soil matter after each flush. Squat-type styles shall also be made available should it be required on operational needs.
- (vi) have landing steps or low threshold for convenient use by the general public in particular the children and the senior citizens. Suitable armrests / handrails shall be installed to facilitate the use of the portable toilets;
- (vii) have an internal dimensions and headroom sufficient for comfort use by the general public;
- (viii) be fitted with translucent roof / louver. Louvers for ventilation shall be provided in the upper and lower parts of the walls and door;
- (ix) be provided with hand-washing facilities, mirror, litter bin, coat hook, door locking device, toilet paper holder (bulk size) and soap dispenser (foam type). The design of the hand-washing facilities shall be in such a manner as to avoid splashing of water;
- (x) be equipped with a hand / toilet seat sanitizer with dispenser on all portable toilets (including portable toilet for person with disability). The signage shall be displayed with bilingual labels "手部及廁板消毒液" and "Hand and Toilet Seat Sanitizer";
- (xi) have a self-closing baffle or any isolation device that separates the toilet from the waste /sewage tank to prevent odour;
- (xii) have a waste tank with a capacity of not less than 400 litres. The volume ratio of the fresh water tank to waste tank shall not be less than 1:4;
- (xiii) be equipped with lighting (LED or energy saving lamp) and ventilation fan with a diameter of not less than 100mm and with protective cover;
- (xiv) be provided with appropriate anti-mosquito measures in portable toilets such as electric mosquito killer, and openings cover with mosquito nets;
- (xv) have motion sensor(s) to automatically switch on the ventilation fan(s) and LED lamps(s) etc. when in use and switching off after use;



- (xvi) have a **solar energy** supply system of at least 100 watts which can support the operation of the ventilation fan(s), LED lamps, and all electronic equipment in the Portable Toilet;
  - (xvii) be provided with adequate notice in both Chinese and English to indicate the operation of the flushing system and the intended use of other facilities; and
  - (xviii) Install equipment / systems to record the use of portable toilets to facilitate management. The toilet usage data and records can be obtained through the internet / mobile application. Equipment / systems and recording methods shall not infringe any user privacy.
  - (xix) Install independent solar charging facilities on the external wall of portable toilets to provide emergency mobile phone charging services for country park visitors.
- (c) Each Solar Powered Portable Toilet for the persons with disability used for the Services shall comply with the requirements stipulated in above Clauses 2, 2(a)(i) to (iv) and (vii) to (xix) and meet the following additional requirements:
- (i) the Portable Toilet for the person with disability shall comply with the Americans with Disabilities Act (ADA) Standards or equivalent;
  - (ii) be of Seat-type style design and the dimension of Portable Toilet for the persons with disability shall not be less than 1.5 m x 1.75 m in area and shall have in it a water closet with a height of not less than 450 mm and not more than 475 mm, measured to the top of the toilet seat;
  - (iii) flush control shall be hand-operated. Such hand-operated control shall be capable of being operated with one hand and shall not require tight grasping, pinching or twisting of the wrist. The force so required for the operation shall not be greater than 22 Newton (or other acceptable non-contact flushing system);
  - (iv) hand wash basin shall be provided with the rim not higher than 750mm above the floor level. The operation of the basin tap shall not require tight grasping, pinching or twisting of the wrist. The force so required for the operation shall not be greater than 22 Newton (or other acceptable non-contact flushing system);
  - (v) the door locking device shall be capable of being operated from the outside in the event of an emergency;
  - (vi) the portable toilet shall be equipped with at least two sets of handrails of different colors for easy indication and an outer diameter of not less than 32 mm but not more than 40 mm; and
  - (vii) suitable signs and symbols indicating the intended use of the facilities for persons with disability shall be displayed outside the toilets.
- (d) The provision of a Portable Cabin to serve as a work station for the cleansing attendant at To Tei Wan, Shek O Country Park shall:

- (i) include assembly, disassembly, transportation, and provision of repair and maintenance works to and, where necessary, relocation of the portable cabin;
- (ii) have an internal dimension and headroom not less than 1.5m x 1.5m x 2.3m;
- (iii) provide adequate protection to the cleansing attendant from the sun, weather, rain and wind of the county park environment;
- (iv) be adequately ventilated and illuminated, and equipped with necessary facilities such as chair, table, drinking water and etc., to meet Occupational Safety and health requirements;
- (v) have a **solar energy** supply system which can support the function of electrical fixtures such as ventilation fan and light etc.;
- (vi) The Contractor should note that the location of the portable toilets / cabin at To Tei Wan do not have electricity and water supply; and
- (vii) the Portable Cabin shall be installed at the assigned area and as agreed with the inspection officer.

### 3. **Repair and Maintenance Works of Portable Toilets**

- (a) The Contractor shall, at its own costs including labour and materials, carry out and complete all repair and maintenance works to the Portable Toilets within twenty-four (24) hours of being notified by Inspecting Officer.
- (b) All materials and replacement parts used shall be a direct replacement and they shall be of the same brand and quality as the existing parts used in the Portable Toilets. In case such materials and replacements are not available in the market, the nearest equivalent shall be provided subject to the prior approval of the Government Representative.
- (c) The Contractor shall maintain such stocks of materials, spares, equipment and tools as it considers necessary for the prompt and effective completion of the repair and maintenance works required in Clauses 3(a) and (b) above.
- (d) If the Contractor fails to complete the repair and maintenance works to the Portable Toilets within twenty-four (24) hours of being notified by the Inspecting Officer resulting in non-provision of Services, the Contractor shall forthwith replace the defective Portable Toilet with another one of good working condition at no extra cost to the Government.

### 4. **Supply of Consumable Items to Portable Toilets**

- (a) The Contractor shall provide at its own expense toilet paper (Jumbo size), liquid soap (foam type), hand / toilet seat sanitizer, disinfectant, fresh water, deodorant and de-fouling chemicals to the Portable Toilets in the manner as stipulated in Clauses 4(b) to 4(d) below. The contractor shall maintain the uninterrupted stocks of consumable

items and cleansing materials to permit the uninterrupted provision of the Services.

- (b) The consumable items provided to the Portable Toilets of the Service shall include but not limited to the followings:
- (i) Toilet paper shall be in the form of Jumbo sized of white color soft double-ply tissue;
  - (ii) Foam type hand soap with the foam type dispenser;
  - (iii) Hand / toilet seat sanitizer dispenser and sanitizing agent shall be alcohol based disinfectants or the types revised from time to time by the Government Representative;
  - (iv) Refill fresh water to water tank;
  - (v) Disinfectant and deodorant if necessary after cleansing;
  - (vi) Refill toilet bowl cleaner tablets into the toilet flush tank;
  - (vii) Refill de-fouling chemical into sewage / waste tank, if required; and
  - (viii) Biodegradable plastic litter bag should be made of at least 50% of recycled materials and in good conditions, if any.
- (c) All consumable items shall comply with the requirements of the legal provision and other relevant legislative provision in public health. The Contractor shall provide, when required, hygiene certificate from recognized laboratory to prove that the toilet paper (Jumbo size), liquid soap (foam type), seat sanitizer, disinfectant, deodorant and de-fouling chemical comply with the specified hygiene requirement.
- (d) The Contractor should, as far as possible, use cleansing products that comply with the green specifications developed by Environmental Protection Department (EPD) & Government Logistics Department (GLD) as stated in Clause 20 of Terms of Tender.
- (e) Uniforms with company name/logo of the Contractor for all Contractor's Employees working at the Contract Area;
- (f) The contractor shall furnish heavy duty type equipment and tools (i.e. working station trolley cart, reflective clothing, vacuum cleaner and water ejector pipe), if required; and
- (g) All other cleansing equipment and material required in the execution of the Contract from time to time.

**5. Services to Portable Toilets****(a) Daily Servicing**

- (i) In accordance with the following Service requirements and provisions of Clause 4(b) to (g) above, the daily Servicing of each Portable Toilets shall include Desludging, Cleansing, and Supply of consumable items and Water refilling. The daily cleansing schedule of the portable toilet should meet the operational needs and as agreed with the inspecting officer.
- (ii) Desludging of waste holding tank and the disposal of the wastes properly in accordance with the prevailing environmental, health and hygiene regulations required by Hong Kong Government from time to time.
- (iii) Cleansing services shall include scrubbing, washing and disinfecting the inside and outside of Portable Toilets, including but not limited to the floors, steps, toilet bowl, rims, handrails, fixtures, wash basins, ceilings, ventilation louvers and any portable toilet accessories, such as sanitizer and soap dispenser etc.
- (iv) After cleansing, wipe and mop dry all surfaces of the portable toilet; the floor in front of a portable toilet with a diameter of about one meter shall also be kept dry after cleansing and may require wiping dry with mop.
- (v) All materials and chemicals for use in the Services must be environmentally friendly. The Contractor shall not use any materials and chemicals of corrosive nature which may cause any personal injury or property damage to the Government, any members of the public or persons in the performance of the Services.
- (vi) The Contractor should adopt the Green Guidelines for Cleansing Services developed by the Environmental Protection Department and Government Logistics Department stipulated at Annex II in the performance of the Services.

**(b) Additional Cleansing Services**

- (i) Provide an additional cleansing services on every Saturdays, Sundays and Public Holidays throughout the contract period for specified solar powered portable toilets listed in Section 2 of Service Specifications;
- (ii) This additional cleansing services for portable toilets includes cleansing with 1:99 bleach disinfectant, desludging and water refilling; and
- (iii) This service shall comply with the requirement set out above in 5(a) (ii) to (vi).

**6. Cleansing Attendant Service at To Tei Wan, Shek O Country Park**

- (a) The contractor shall provide a cleansing attendant stationed at To Tei Wan, Shek O Country Park. The cleansing attendant shall provide cleansing and related services to the Portable Toilets at the location throughout the day during normal working hours.
- (b) The cleansing attendant works from 9:00 a.m. to 5:00 p.m. with 1 hour of lunch break on each calendar day (including public holidays on all calendar days) except for the suspension of services in Clause 12 below.
- (c) The cleansing attendant shall be able to be reached by phone / mobile during working hours.
- (d) The working hours of non-skilled workers, including cleansing attendant must not exceed the Daily Maximum working hour that specified in Contract Schedule 2.
- (e) Contractor shall provide all necessary cleansing equipment and material required for the cleansing works at all times.
- (f) The cleansing attendant shall replenish and maintain all consumables and cleanliness of the portable toilets to provide appropriate standard portable toilet services.

**7. Contractor's Vehicles, Vessels, Portable Toilets, Equipment, Materials and Tools**

- (a) All vehicles (including Desludging Vehicles), Portable Toilets, equipment and tools used for the performance of the Services shall be free of excessive noise, odour, smoke or other emission, as the case may be. They shall also be safe, of good working conditions and properly maintained. If the Government is of the opinion that the vehicles, Portable Toilets, equipment, materials or tools are inadequate or inefficient, or where the paintwork or finish of the vehicles or equipment fades or tarnishes, the Contractor shall repair, refurbish or replace such within a reasonable time to the satisfaction of the Government Representative.
- (b) All vehicles (including Desludging Vehicles), equipment, materials and tools shall be stored away after use, so that it is not unsightly or causing obstruction to the public. The Government shall not be liable for the loss or damage howsoever caused to the vehicles, vessels, equipment, materials and tools used by the Contractor and brought alongside or onto the Government premises as the case may be.
- (c) The Contractor shall cause all vehicles (including Desludging Vehicles), equipment, materials and tools to bear such words, devices or insignia as the Government Representative may require. No vehicles, Portable Toilets, equipment or tools shall bear any advertising matter of any sort without the prior written consent of the Government Representative.

- (d) All cleansing chemical, disinfection agents and materials shall be environmentally friendly. The Contractor shall not use any cleansing chemicals, disinfection agents and materials of corrosive nature which may cause any personal injury or property damage to the Government, any members of the public or person in the performance of the Services. The Contractor should adopt the Green Guidelines for Cleansing Services developed by Environmental Protection Department and Government Logistics Department stipulated at Clause 20 of Terms of Quotations (Supplement) in the performance of the Services.
- (e) For workers who need to undertake outdoor work at site, the Contractor shall provide the workers with wide-brimmed hats or equivalent for serving similar functions to protect them against sunshine. In addition, the Contractor shall provide them, upon request, with a pair of arm sleeves which are made of thin and vapour permeable fabric, if long-sleeved working clothes for protecting them against sunshine are not provided
- (f) The Contractor shall provide at its own expense and erect flashing beacons, street cleansing signs, traffic cones, etc. and display warning signs bearing the words “Cleansing Work in Progress (清潔進行中)”, “Beware of Wet Floor (小心地滑)” and “Caution! Desludging Work in Progress (請勿接近!清糞工作進行中)” as appropriate and take safety measure in performing the Services to ensure safety to and hygiene of persons and prevent damage to private and Government property.

## **8. Design and Specification of Desludging Vehicles**

- (a) The Contractor shall provide Desludging Vehicles with the design and specification set out in Clause 6(b) below for the desludging services in performance of this Contract. The truck chassis and construction of the Desludging Vehicles shall fully comply with Road Traffic Regulations (Cap. 374 of the Laws of Hong Kong), Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 of the Laws of Hong Kong), Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation (Cap. 311 of the Laws of Hong Kong) and Noise Control (Motor Vehicles) Regulation (Cap. 400I of the Laws of Hong Kong). No alteration to the design and specifications or replacement of any Desludging Vehicles shall be made without the prior approval of the Government Representative.
- (b) Each Desludging Vehicle used for the provision of the Services shall:
  - (i) Be equipped with petrol or diesel engine of Euro V or later emission standard;
  - (ii) Comply with different regulations and requirements for licensed vehicles used on roads, especially narrow roads (such as Tung Chung Road);
  - (iii) Have a main holding tank for storage of Sludge. A ‘Sight Glass’ shall be provided at the tank for visual inspection of the volume of Sludge;
  - (iv) Have ancillary tanks each of a size suitable for containing water for washing and disinfectants for disinfecting equipment and tools for the Services. Similar to the main holding tank, operation of these ancillary tanks shall be controlled by the vacuum pumping system;

- (v) Be installed with a powerful vacuum pumping system for generating sufficient suction force for effective desludging;
- (vi) Be provided with a pair of wheel chocks that can stop the vehicles from rolling when operating at gradient;
- (vii) Include special devices to prevent nuisances arising from the collection and transportation of Sludge, in particular, emission of bad odour, dripping of liquid and spilling Sludge;
- (viii) Be equipped with a suction pipe of suitable length to facilitate removal of Sludge from the Portable Toilets;
- (ix) Have warning labels and control instructions in both English and Chinese properly affixed at appropriate positions; and
- (x) Be equipped with rear distance sensors and rear automatic viewing CCTV system for reversing with an audible signal to alert the driver and the public.

## 9. **Desludging Operations**

- (a) The Contractor shall ensure that
  - (i) The drivers and Cleansing Workmen are fully trained and thoroughly competent in their respective responsibilities for the safe and proper use and operation of the Desludging operations. In particular, the drivers should pay attention to the loading of Sludge at the Sludge collection points and the off-loading of Sludge at the Disposal Site;
  - (ii) The desludging operations shall be carried out in a manner without causing unreasonable obstruction or annoyance to the public;
  - (iii) All preventive measures are taken so as to avoid spillage of Sludge and to minimise smell and noise nuisance during the desludging operations; and
  - (iv) All Sludge collected shall only be transported by Desludging Vehicles approved by the Government Representative to the Disposal Site.

## 10. **Disposal of Sludge**

- (a) The Contractor shall ensure that all Sludge generated from the provision of Services is properly disposed of at the legal disposal Site (Sewage Treatment facility managed by the Hong Kong Government Drainage Services Department (DSD)). Please visit the DSD website for more information about the location and opening hours of the disposal site. Improper disposal of Sludge, such as dumping into the sea, stream, watercourse, open channels or ditches, dumping on slopes, fly-tipping or in places other than the legal disposal sites is strictly prohibited and shall be deemed to be a breach of a material term of the Contract.
- (b) The Contractor shall note that disposal of Sludge must be carried out in Disposal Site in accordance with a permit system controlled by the Drainage Services Department. Before the commencement of the Services, the Contractor shall apply to the Drainage

Services Department for disposal of Sludge and obtain the requisite 'Permission for Domestic Liquid Waste Disposal'.

- (c) The Contractor shall deliver all Sludge arising from the performance of the Services to Disposal Site immediately after completion of the day's collection.
- (d) The Contractor shall ensure the Sludge disposal operations are concluded in full compliance with the requirement and conditions laid down in the "Permission for Domestic Liquid Waste Disposal", and the rules and directives as may be imposed by the management of the Disposal Site with regard to the disposal of Sludge thereat.
- (e) Drainage Services Department reserves the right to check the strength (e.g. BOD, TSS, COD, TKN, O&N and E-coli, etc.) of the Sludge to be disposed at any Disposal Site. If high strength of Sludge is observed, Drainage Services Department has the right to reject the delivery of Sludge by the Contractor.
- (f) The Contractor shall take all preventive measures so as to avoid spillage of the Sludge and leachate and escape of bad odour from the Desludging Vehicles or any equipment, materials and tools during loading and transit between the points of collection or to the Disposal Site.
- (g) No totting shall be allowed by the Contractor and its employees. Sludge collected under the Contract shall become the property of the Government.

#### **11. Operations of Vehicles, Vessels, Equipment and Tools**

- (a) The Contractor shall ensure that:
  - (i) Only those Drivers and operators authorized by the Contractor shall drive, operate or use the vehicles, equipment and tools and in so doing shall comply with all relevant legislation, regulations, code of practice and the like;
  - (ii) All Drivers and operators of vehicles, vessels, equipment and tools shall be fully trained and thoroughly competent in the safe and proper use and operation of all vehicles, vessels, equipment and tools and all associated equipment used in the execution of the Services;
  - (iii) Drivers and operators of vehicles, vessels, equipment and tools shall not leave any such vehicles, vessels, equipment or tools whilst such vehicles, vessels, equipment or tools are in any way operating (including when such vehicles, vessels, equipment or tools are stationary or in motion and whether or not engaged for use);
  - (iv) When using or operating any vehicles, equipment and tools in the course of execution of the Services such use or operation shall not obstruct, impede, hinder, interfere with, restrict or cause a nuisance to any vehicles wherever situated and whether moving or stationary or the flow of traffic on the road or to any pedestrian or any other member of the public using the road, footpath or whilst at any other location;



- (v) All vehicles, equipment and tools are used in such a manner so as not to cause any damage whatsoever and the Contractor shall make good any such damage caused to the satisfaction of the Government Representative within a reasonable period specified by the Government Representative. Should the Contractor fail to make good any such damage caused, the Government Representative shall be entitled to make good any such damage caused and recover the costs in so doing from the Contractor or deducting such cost from any payments otherwise due to the Contractor under this Contract or any other contract entered into with the Government; and
  - (vi) All vehicles, vessels, equipment and tools are kept in clean and sanitary condition. All vehicles and vessels shall be washed clean at the end of each working day.
- (b) The Government shall not be liable for any loss of damage howsoever caused to such vehicles, vessels, equipment or tools belonging to the Contractor and used for the performance of the Contract.

## **12. Suspension of Services**

- (a) The Contractor may suspend the Services when tropical cyclone signal No. 8 or above is hoisted, or when a black rainstorm Warning Signal is issued or “extreme conditions after super typhoons” announced by the Government is/ are in force. However, the Contractor shall resume normal Services and be responsible for the Services forthwith after the above inclement weather warning signals are lowered or the “extreme conditions” announced by the Government has/ have ceased to be in force.
- (b) The Contractor shall, on the instruction of the Government Representative, suspend the Services or any part thereof for such time or times and in such manner as the Government Representative may consider necessary.

## **13. Site Record, Return and Report**

- (a) The Contractor shall submit the monthly wage slip / receipt of the cleansing attendant.
- (b) Every employer must at all times keep a record setting out the wages and employment history of each employee covering the period of his employment during the preceding six months. The record should include the following information of the employee:
  - (i) Name and identity card number;
  - (ii) Date of commencement of employment;
  - (iii) Job title;
  - (iv) Wages paid in respect of each wage period;
  - (v) Wage period;

- (vi) Period of annual leave, sick leave, maternity leave and holidays entitled and taken, together with details of payments made in respect of such period;
  - (vii) Amount of end year payment and the period to which it related;
  - (viii) Period of notice required for termination of contract; and
  - (ix) Date of termination of employment.
- (c) In monthly interval, the Contractor shall submit a copy of monthly site record to the respective Inspecting Officer listed in Section 2 – Portable Toilets Required and Location Map of the Service Specifications at the end of the month. The monthly site records, including the following information:
- (i) Date of desludging operation including the disposal of Sludge at the Disposal Sites as required in the Service Specifications for each location;
  - (ii) Amount of sludge (in litres) collected in each desludging operation;
  - (iii) Amount of sludge (in litres) disposal in each sludge disposal; and
  - (iv) Disposal Site.
- (d) The Contractor shall provide an attendance log system (i.e. log-book record or other system) in such manner and at each location(s) of Portable Toilets as may be approved by the Government Representative to monitor the attendance of the Contractor's Employees in provision of the Services to Portable Toilets.
- (e) The Contractor shall deliver to the Inspecting Officer at the end of each month a management report showing in detail the Services performed in respect of that district during the month, such details shall include with limitation the numbers of and locations where Portable Toilets provided and the frequencies and times of Services for the Portable Toilets, the number as well as the grades and posts of his Employees, the details of any absentees and replacement. The monthly management report, which shall be signed off by the Contractor, shall also include accomplishment, significant events, run-in/operational problems, and remedial measures and any other information as required by Government Representative from time to time.
- (f) The Contractor shall provide any other information and documents related to the Service provision as may be requested by the Government Representative.
- (g) Notwithstanding the foregoing, the Contractor shall, as and when called upon to do so by the Government Representative, make available to the Government Representative, or such other person as the Government Representative may direct, such other information which may be within the Contractor's knowledge to enable the Government Representative to verify the data contained in the aforesaid records.

**14. Contractor Personnel and Manner of Superintendence**

- (a) The Contractor shall deploy sufficient suitably trained, experienced and competent managerial and site supervisory staff for the maintenance and execution of the Services.
- (b) The Contractor's personnel should have the following qualifications, capabilities and experience to carry out their responsibilities / duties under this Contract and as particularly provided below:

	<b>Rank</b>	<b>Qualification and Other Requirements</b>	<b>Responsibilities / Duties</b>
(a)	Contract Manager	<ol style="list-style-type: none"> <li>1. Possess at least three (3) years of experience in the field of management, or equivalent;</li> <li>2. Possess at least two(2) years of experience in cleansing Services or sewage management; and</li> <li>3. Be able to write and speak fluent English and Cantonese.</li> </ol>	<ol style="list-style-type: none"> <li>1. In charge of the Services and have the full authority to make all necessary decisions regarding the provision of the Services;</li> <li>2. Responding promptly to any queries raised and implement instructions given by the Government Representative in relation to the provision of the Services on behalf of the Contractor; and</li> <li>3. Attending meetings with Government Representative in relation to the provision of the Services</li> </ol>
(b)	Driver	<ol style="list-style-type: none"> <li>1. Possess a valid driving license for the respective vehicles (including Desludging Vehicles);</li> <li>2. Be able to speak Cantonese; and</li> <li>3. Driver can also perform the Cleansing service.</li> </ol>	<ol style="list-style-type: none"> <li>1. Driving and operating the vehicles (including Desludging Vehicles) for provision of the Services.</li> </ol>
(c)	Cleansing Attendant	<ol style="list-style-type: none"> <li>1. Be physically fit to carry out cleansing and related tasks;</li> <li>2. Be able to speak Cantonese; and</li> <li>3. Cleansing attendant can be one of the Workmen.</li> </ol>	<ol style="list-style-type: none"> <li>1. Performing all the cleansing and related tasks for the Portable Toilets</li> </ol>

- (c) The Contractor shall at its own cost provide the Contract Manager with mobile phones, so that he / she can be contacted during the execution of the Services. The authorized Contract Manager shall receive directions and instructions from the Government Representative or the Inspecting Officer on behalf of the Contractor, and shall conduct a site inspection on request.

**PART 3A – SERVICE SPECIFICATIONS****Section 2 – Solar Portable Toilets Required and Location Map****Location of Solar Powered Portable Toilets Required**

The Contractor shall provide the Solar Powered Portable Toilet services listed in the Table below according to the marks on the location Map. Exact locations are to be confirmed on site by the Inspecting Officers. If necessary, Contractors shall be responsible for obtaining the necessary restricted road permits, from relevant authorities/ Departments to use the roads.

Requires 10 Units of Portable Toilets (including 9 regular units and 1 unit for person with disability) in Country Parks of Hong Kong Island from 1 August 2021 to 31 January 2023.

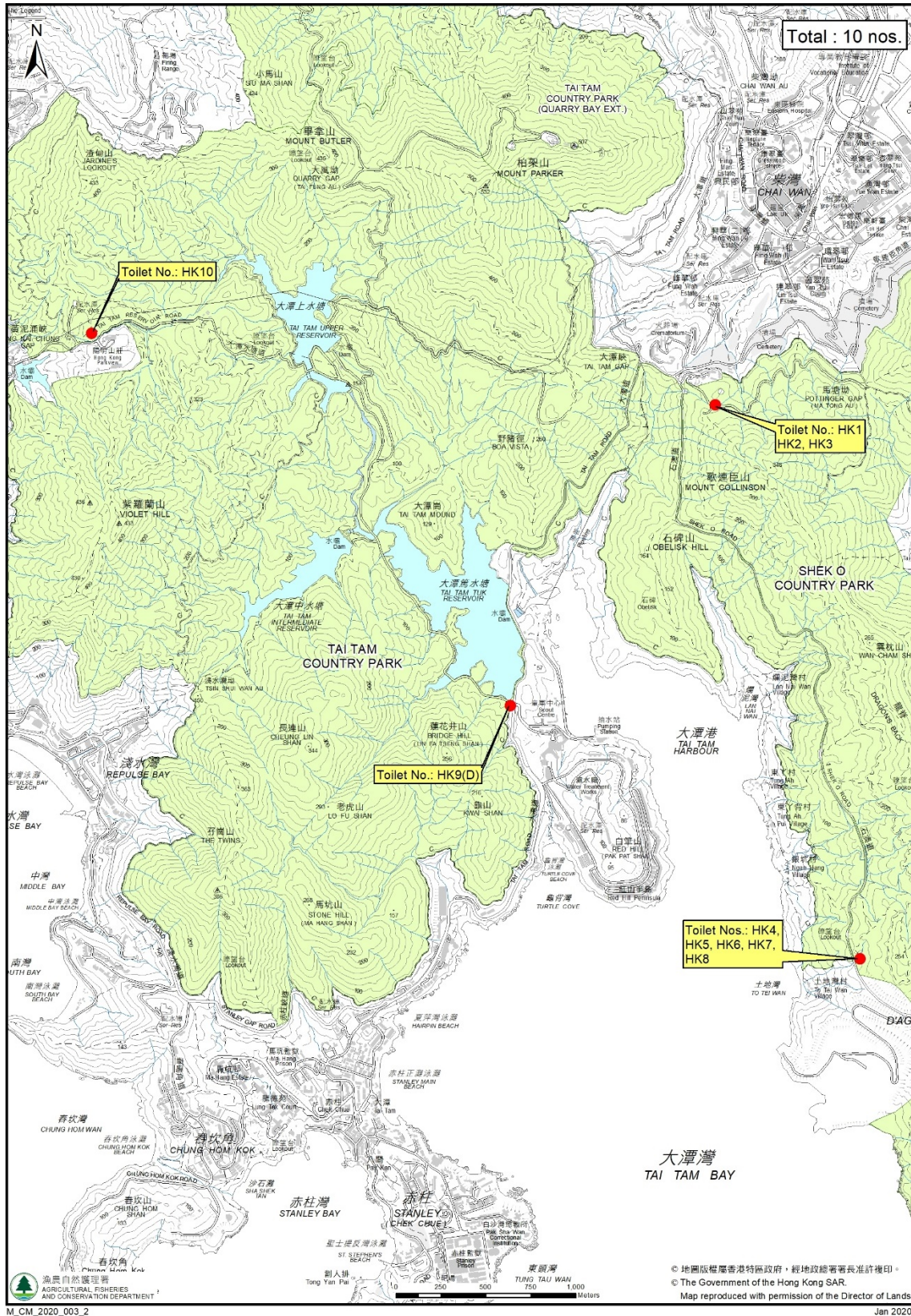
Toilet Ref. No.	Location		No. of Units of PTs		AFCD Inspection Officer
			Regular	Person with Disability	
*HK1-3	Ma Tong Au, Shek O Country Park	馬塘坳 (近大潭峽懲教所)	3	-	Field Officer (Tai Tam) Tel: 2812 1861
HK4, HK5 HK6, HK7 HK8	To Tei Wan, Shek O Country Park #	土地灣 # (石澳道近土地灣村)	5	-	
*HK9(D)	Near Tai Tam Tuk Reservoir Road, Tai Tam Country Park	大潭水塘道 (近大潭道)	-	1	
HK10	A Site (KK112641) near HK Parkview, Tai Tam Country Park	大潭水塘道 (近陽明山莊)	1	-	

**Note:**

\* Provide additional Cleansing services for 4 specified solar powered Portable Toilets, ie HK1-3 and HK9(D), on every Saturdays, Sundays, and Public Holidays. This additional cleansing service includes cleansing with 1:99 bleach disinfectant, desludging and water refilling services for solar powered portable toilets.

# Every day during working hours, a cleansing attendant is required to be stationed in To Tei Wan and provide cleansing and related services for the solar powered Portable Toilets thereat.

**Location Map for Solar Powered Portable Toilets**



Note: All the figures and drawings contained in this Schedule are for reference and identification only. There is no guarantee that the figures and drawings are complete and accurate. No claim against the completeness and accuracy of the figures and drawings shall be made by the Contractor.

Service Specifications

**PART 3B**  
**CONTRACT SCHEDULES**

		<b><u>Content</u></b>
		<b><u>Sheet</u></b>
Contract Schedule 1	Price Proposal	121
Contract Schedule 2	Wages Proposal and Working Conditions for Cleaners	122
Contract Schedule 3	Technical Proposal	124
Contract Schedule 4	Code of Conduct for the Contractor's Employees	126
Contract Schedule 5	Green Guidelines for Cleansing Services	127

**Contract Schedule 1**  
**Price Proposal**  
(To be inserted into the Price Envelope)

Provision of the **18 months** of **Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island** from **1 August 2021 to 31 January 2023** in accordance with the Service Requirements as detailed in the Part 3A – Service Specifications and on such terms as set out in the Terms of Tender and the Conditions of Contract

Item No.	Description of Service (as per Service Specifications)	*Estimated required no. of unit / Cleaner	*Estimated no. of Months	Monthly Charge per unit / Cleaner	Total Amount
		(No.) (a)	(Month) (b)	(HK\$) (c)	(HK\$) (d)=(a)x(b)x(c)
1	Hiring and Servicing of Solar Powered Portable Toilets in Country Parks of Hong Kong Island	10	18		
2	Provision of one Cleansing Attendant at To Tei Wan, Shek O Country Park	1	18		
3	Supply of a Portable Cabin at To Tei Wan, Shek O Country Park	1	18		
4	Provide additional cleansing services on every Saturdays, Sundays and Public Holidays	4	18		
<b>Total amount for Items 1-4 (HK\$):</b>					

**Remarks:**

1. A Tenderer should note that its tender will be considered on an **OVERALL** basis. **A tender with only partial or incomplete offer will result in the tender not being considered further.**
2. The tender price shall be inclusive of the staff cost, MPF Contribution, administration fee, supervisory charge, transportation, relocation, maintenance and any other cost incurred throughout the contract period.
3. \*Number of portable toilets / Cleansing Attendant / Months is an estimation. Only actual requirement will be entitled to payment and subject to real needs. Actual requirements may be varied of the estimates as stated in Clause 2 of the Conditions of Contract.

Name of Supplier in English  
(in Block Letters)

: \_\_\_\_\_

Tel. No. / Fax No.

: \_\_\_\_\_ / \_\_\_\_\_

Date

: \_\_\_\_\_

[BLANK PAGE]



**Contract Schedule 2**  
**Wages Proposal and Working Conditions for Cleansing Attendants / Cleaners**  
 (To be inserted into the Technical Envelope)

1. **Wages Proposal**

Tenderers must propose in the given spaces below a monthly wage rate for a cleansing attendant / cleaner and the basis on which such wage rate is calculated. The monthly wage rate proposed must comply with the requirements set out in Clause 4(a) of the Terms of Tender. Tenderers are advised to read Clauses 4(a) to 4(g) of the Terms of Tender carefully for the consequences of non-compliance of the wage requirements. Failure to provide the information for 1(b) and/or (2) below may result in the tender not being considered further.

(a) By way of illustration, the monthly wage payable to a cleansing attendant/ cleaner shall not be less than the monthly wage rate derived from the Statutory Minimum Wage under the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong) plus paid rest days, i.e. HK\$9,300, calculated on the basis of –

- (i) 31 days per month (i.e. 27 normal working days plus 4 paid rest days) <sup>Note 1</sup>;
- (ii) 6 normal working days per week;
- (iii) 8 hours of work per day <sup>Note 2</sup>; and
- (iv) HK\$37.5 per hour.

(b) The Contractor shall pay each Cleansing Attendant/ Cleaner no less than the wage as specified below (the wages are calculated on the basis as stipulated in clause 4(a)(i) of the Terms of Tender) :

Type of Staff	Proposed Monthly Wage <sup>Note 3</sup>	Basis of calculation <sup>Note 1 to 2</sup>
Cleansing Attendant / Cleaner	HK\$ _____	[Hourly rate of HK\$ _____ ] x [8 hours a day] x 31 days per month (i.e. 27 normal working days plus 4 paid rest days)

Note 1:  
Tenderers must allow one paid rest day for every period of seven days

Note 2:  
The number of hours means working hours plus meal break, if paid.

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Contract Schedule 2**  
**Wages Proposal and Working Conditions for Cleansing Attendants / Cleaners**  
 (To be inserted into the Technical Envelope)

Note 3:

The monthly wage payable to each cleansing attendant/ cleaner during the Contract Period should not be less than (i) the monthly wage committed by the Tenderer in this wages proposal; or (ii) any adjusted wage level brought about by future revisions of the Statutory Minimum Wage, whichever is the higher. In case the Tenderer fails to state the monthly wage in 1(b) above, then such wage submitted by the Tenderer will be deemed to be not less than the SMW plus rest day pay rate for the purpose of tender evaluation. Such presumption will be revoked immediately if the Tenderer fails to confirm in writing the correctness of this presumption upon request by the Government Representative at any time before the tender exercise is completed.

**2. Working Conditions**

The Contractor shall not allow the Cleansing Attendant/ Cleaner to work more than the daily maximum allowable net working hours as specified below-

Type of Staff	Maximum allowable net working hours per day for each staff engaged exclusively under the Contract (excluding meal break) <sup>Note 4</sup>
Cleansing Attendant/ Cleaner	

Note 4: If a Tenderer fails to indicate any maximum allowable net working hours per day for Cleansing Attendant/ Cleaner in its tender on or before the Tender Closing Date or the Extended Tender Closing Date, as the case may be, 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.

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Contract Schedule 3**  
**Technical Proposal – Management Plan and Work Plan**  
(To be inserted into the Technical Envelope)

Details of Management Plan and Work Plan, please refer to Clause 3(d) of Terms of Tender.

(a) Management Plan  
*(use separate sheet as required)*

(b) Work Plan  
*(use separate sheet as required)*

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Contract Schedule 3**  
**Technical Proposal – Management Plan and Work Plan**  
(To be inserted into the Technical Envelope)

(c) Innovative Suggestions (if applicable)

Authorized Signature : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

**Contract Schedule 4**  
**Code of Conduct for the Contractor's Employees**

1. All the Contractor's Employees shall maintain a high standard of hygiene, courtesy and consideration in performing the Services.
2. The Contractor's Employees shall deal promptly and courteously with the Government Representative, visitors and the public as well as all others with whom they may have contact in performing the Services under the Contract.
3. The Contractor's Employees while on duty at the Contract Area shall not commit any of the following acts:
  - (a) vandalising any Government Property or misusing any equipment/facility provided by the Government;
  - (b) gambling, stealing or committing any criminal offence;
  - (c) fighting or causing any disorder, disturbance or nuisance;
  - (d) using foul language or drinking liquor;
  - (e) behaving in a manner likely to endanger himself/herself or any other person or causing damage to Government Property;
  - (f) soliciting or accepting any money, gift or advantages from, or offering any money, gift or advantages to any Government employee, building user, visitor or member of the public;
  - (g) indulging in poor timekeeping for work or absent from duty without approval or good cause;
  - (h) indulging in smoking, sleeping or any audio/visual entertainment;
  - (i) committing fraud or dishonest acts;
  - (j) failing to wear full and proper uniform which is
    - (i) a vest, apron or jacket bearing the name/logo of the Contractor which is agreed by the Government Representative
    - (ii) a safety reflective vest when working at car park or along roadside
    - (iii) a protective clothing and equipment when working at site; and
  - (k) committing any act that will bring the Government into disrepute or embarrassment.

**Contract Schedule 5**  
**Green Guidelines for Cleansing Services**

**1. Cleansing Products and Supplies**

- The Contractor should, as far as possible, use cleansing products that comply with the green specifications developed by Environmental Protection Department (EPD) & Government Logistics Department (GLD). A list of cleansing products with recommended green specifications as programulated by EPD is attached for reference.

<b>Product Items</b>	<b>Recommended Green Specification</b>
<b>All purpose Cleaners</b>	<ul style="list-style-type: none"> <li>The pH of aqueous solution of the detergent shall not be higher than 10.5.</li> <li>The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and ethylene diaminetetra acetic acid.</li> <li>The product should not contain halogenated substances or solvents, including reactive chlorine compounds.</li> <li>The product should not contain more than 5% by weight of volatile organic compounds (VOCs).</li> <li>The product should not be formulated or manufactured with phosphate or phosphonates.</li> <li>The product should not be formulated with ammonia or ammonium compounds.</li> <li>The product should be at least 90% biodegradable.</li> <li>The product should not contain any heavy metals or their compounds as listed below:               <ul style="list-style-type: none"> <li>◆ Arsenic</li> <li>◆ Cadmium</li> <li>◆ Cobalt</li> <li>◆ Hexavalent chromium</li> <li>◆ Lead</li> <li>◆ Mercury</li> <li>◆ Selenium</li> </ul> </li> </ul>
<b>Laundry Detergent / Soap</b>	<ul style="list-style-type: none"> <li>The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and ethylene diaminetetra acetic acid (EDTA).</li> <li>The product should not contain halogenated substances or solvents, including reactive chlorine compounds.</li> <li>The product should not contain more than 5 % by weight of volatile organic compounds (VOCs).</li> <li>The product should not be formulated or manufactured with phosphate or phosphonates.</li> <li>The product should not be formulated or manufactured with optical brighteners.</li> <li>The product should be at least 90% biodegradable.</li> <li>The product should not contain any heavy metals or their compounds as listed below:               <ul style="list-style-type: none"> <li>◆ Arsenic</li> <li>◆ Cadmium</li> <li>◆ Cobalt</li> <li>◆ Hexavalent chromium</li> <li>◆ Lead</li> <li>◆ Mercury</li> </ul> </li> </ul>

**Contract Schedule 5****Green Guidelines for Cleansing Services**

	<ul style="list-style-type: none"> <li>◆ Selenium</li> </ul>
<b>Sanitary Detergent</b>	<ul style="list-style-type: none"> <li>• The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and ethylene diaminetetra acetic acid (EDTA).</li> <li>• The pH value of product, before dilution, should not be higher than 11.5 or less than 2.</li> <li>• The product should not contain halogenated substances or solvents, including reactive chlorine compounds.</li> <li>• The product should not contain more than 5% by weight of volatile organic compounds (VOCs).</li> <li>• The product should not be formulated or manufactured with phosphate or phosphonates.</li> <li>• The product should not be formulated with any chemicals that are included in the international Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens.</li> <li>• The surfactant used in the product should be at least 90% biodegradable.</li> <li>• The product should not contain any heavy metals or their compounds as listed below: <ul style="list-style-type: none"> <li>◆ Arsenic</li> <li>◆ Cadmium</li> <li>◆ Cobalt</li> <li>◆ Hexavalent chromium</li> <li>◆ Lead</li> <li>◆ Mercury</li> <li>◆ Selenium</li> </ul> </li> </ul>
<b>Soap Toilet Liquid</b>	<ul style="list-style-type: none"> <li>• Bio-accumulative preservatives shall not be used.</li> <li>• The pH value of 5% solution should range from 6-10.</li> <li>• The product should not be formulated or manufactured with alkylphenol ethoxylates (APEOs), ethylene diaminetetra acetic acid (EDTA) or nitrilotriacetate (NTA).</li> <li>• The product should be at least 60% biodegradable.</li> <li>• The product should not be formulated or manufactured with phosphate or phosphonates.</li> <li>• The product should not be formulated or manufactured with optical brighteners.</li> <li>• Fragrance used in the product should comply with international guidelines, e.g. the Code of Practice of the International Fragrance Association (IFRA). The product shall declare any fragrances on the product label in the ingredient line.</li> <li>• The product should not be formulated with any chemicals that are included in the International Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens.</li> </ul>
<b>Cleaning Rags and Cotton Waste</b>	<ul style="list-style-type: none"> <li>• Cleaning Rags <ul style="list-style-type: none"> <li>◆ Addition of optical brighteners should not be permitted</li> <li>◆ The content of detectable formaldehyde in the final product should not exceed 0.15 mg/kg.</li> <li>◆ The content of pentachlorophenol (PCP) in the final product should</li> </ul> </li> </ul>

**Contract Schedule 5****Green Guidelines for Cleansing Services**

	<p>not exceed 0.15 mg/kg.</p> <ul style="list-style-type: none"> <li>• Cotton Waste AOX emissions in the bleaching effluent should be less than 100 mg Cl/kg</li> </ul>
<b>Disinfectant</b>	<ul style="list-style-type: none"> <li>• The product should not be formulated or manufactured with surfactants belonging to alkylphenol ethoxylates (APEOs), ethylene diaminetetra acetic acid (EDTA) or nitrilotriacetate (NTA).</li> <li>• The product should not be formulated or manufactured with builders belonging to phosphates.</li> <li>• The product should not be formulated with any chemicals that are included in the International Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens.</li> <li>• The product should not be formulated or manufactured with aromatic compounds.</li> </ul>
<b>Deodorants</b>	<ul style="list-style-type: none"> <li>• The product should not contain substances regulated in the Montreal Protocol on Substances that Deplete the Ozone Layer (particularly CFCs and HCFCs).</li> <li>• The surfactant used in the product should be readily biodegradable.</li> <li>• The product should not be formulated or manufactured with alkylphenol ethoxylates (APEOs), ethylene diaminetetra acetic acid (EDTA), nitrilotriacetate (NTA), phthalates, halogenated organic solvents.</li> <li>• The product should not contain any heavy metals or their compounds as listed below: <ul style="list-style-type: none"> <li>◆ Arsenic</li> <li>◆ Cadmium</li> <li>◆ Cobalt</li> <li>◆ Hexavalent chromium</li> <li>◆ Lead</li> <li>◆ Mercury</li> </ul> </li> <li>• Selenium</li> <li>• The product should not contain more than 5% by weight of volatile organic compounds (VOCs)</li> <li>• The product should not contain phosphorus content of more than 0.2% by weight.</li> <li>• The sum of benzene, toluene, xylene, ethylbenzene, 1,4-Dichlorobenzene, and styrene contents should be smaller than 0.1% by weight.</li> <li>• The undiluted product should not contain any of the following components: <ul style="list-style-type: none"> <li>◆ Formaldehyde donors</li> <li>◆ Monoethanolamine, diethanolamine, and triethanolamine alone or in compounds</li> <li>◆ Parabens</li> <li>◆ Triclosan</li> <li>◆ Nitromusk and polycyclic musk fragrances</li> </ul> </li> </ul>
<b>Hand Soaps</b>	<ul style="list-style-type: none"> <li>• The pH value of product should not be higher than 11 or less than 2</li> </ul>



### **Contract Schedule 5**

#### **Green Guidelines for Cleansing Services**

	<ul style="list-style-type: none"> <li>• The product should be at least 90% biodegradable and not bioaccumulative</li> <li>• The product should not contain nitromusk and polycyclic musk fragrances</li> <li>• The product should not be formulated or manufactured with alkylphenol ethoxylates</li> <li>• (APEOs), ethylene diaminetetra acetic acid (EDTA), nitrilotriacetate (NTA), halogenated organic solvents</li> <li>• The product should not be formulated or manufactured with phosphate or phosphonates</li> <li>• The product should not contain more than 1 % by weight of volatile organic compounds (VOCs)</li> <li>• The product should not be formulated or manufactured with optical brighteners</li> </ul>
--	---

#### **2. Water Saving**

- Wash in a basin rather than under running water whenever practical.
- Reduce spillage by keeping water level in rinsing and washing basins to minimum.
- Report any leakage of faucets and hoses for repairing immediately.
- Use mops instead of running water hoses for cleaning floors whenever practical.

#### **3. Energy Saving**

- All powered equipment should be switched off and remove the plug from socket when not in use.
- Filters of vacuum cleaners should be changed or cleaned regularly to attain the optimal cleaning efficiency.

#### **4. Staff Training**

- All workers of the contractor shall receive regular trainings to maintain knowledge of correct procedures for equipment and techniques used to maintain environmental standards.