

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
Agriculture, Fisheries and Conservation Department
TENDER FOR THE PROVISION OF SERVICES**

Tender Ref. : AFCD/PPS/2/21

TENDER FORM

Contract No. : _____

LODGING OF TENDER

To be acceptable as a tender, this tender must be duly completed in TRIPLICATE and enclosed in a sealed plain envelope marked

**“Tender for the Provision of Security Guard Services
to Tai Lung Experimental Station (TLES),
(Tender Ref: AFCD/PPS/2/21)”**

and addressed to the Chairman ~~...of Tender Opening Committee.....~~

must be deposited in the ~~Government Logistic Department.....~~

Tender Box situated at ~~Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong.....~~

before 12:00 noon (Hong Kong Time) on 9 March 2022 (Wed). Late tender will not be accepted.

INTERPRETATION

PART 1 – TERMS OF TENDER

PART 2 – CONDITIONS OF CONTRACT

PART 3 – ANNEX AND CONTRACT SCHEDULES

The tender documents for this Invitation to Tender are set out in Clause 1 of the Terms of Tender.

This tender is **not** covered by the Agreement on Government Procurement of World Trade Organization.

The above Tender Document is deposited with tenderers upon successful registration with the tender issuing department for receiving tender invitation. Copies can also be obtained from the following location:

Agriculture, Fisheries and Conservation Department
5/F Cheung Sha Wan Government Offices
303 Cheung Sha Wan Road
Kowloon, Hong Kong

Dated this14th..... day ofFebruary 2022.....

(CHEUNG Pak-yin, Calvin)
Government Representative
Agriculture, Fisheries and Conservation Department

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 rates 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:

.....

.....

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. The Government does not guarantee that all required items of this Tender are included in the checklist.

Tenderers should also refer to Clauses 3, 4, 5 and 6 of the Terms of Tender, please tick “✓” in the boxes below to indicate you have completed and submitted the documents required.

1. Documents to be inserted in the “Price Proposal” Envelope

- Part 1 Appendix C - Price Proposal *****

2. Documents to be inserted in the “Technical Proposal” Envelope

- Part 1 Appendix A - Information Schedule**
- Part 1 Appendix B - Information to be Submitted by the Tenderer**
 - Copy of a valid Business Registration Certificate
 - Copy of the current Memorandum and Articles of Association, the Certificate of Incorporation and any other corporate documents evidencing business status (where applicable)
 - Copy of documentary evidence of relevant experience
 - Copy of certificate of insurance
 - Copy of Security Company Licence
- Part 1 Appendix D - Proposal of Wages and Maximum Working Hours**
- Part 1 Appendix E - Registration form for Briefing Session**
- Part 1 Appendix F – Method of providing the Contract Deposit Method and Form of Bankers’s Guarantee**
- Part 1 Appendix G - Tenderer’s Business Experience in Provision of Security Guard Services**
- Part 1 Appendix H – Statement of Convictions**
- Part 1 Appendix I – Tender Evaluation Procedures, Assessment Criteria and Marking Scheme**
- Part 1 Appendix J - Non-collusive Tendering Certificate**
- Part 1 Appendix K - Management Service Plan and Innovative Suggestions (Execution Plan) *****
- Part 4 Offer to be Bound duly *signed* *****
- Submission in Triplicate**
- All submissions should be enclosed in a sealed plain envelope and marked as follow:**

“Tender for Provision of Security Guard Services for Tai Lung Experimental Station (TLES). (Tender Reference: AFCD/PPS/2/21)”

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

Tender Ref.: AFCD/PPS/2/21

deemed to form part of the Tender Document. Nothing in this reminder 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.

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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 of the Government;
“Commencement Date”	means 1 May 2022, or such later date as may be specified by the Government Representative in the Letter of Conditional Acceptance;
“Companies Ordinance (Cap.622)”	means Cap. 622 of the Laws of Hong Kong and includes the predecessor Companies Ordinance which has the meaning assigned to it in section 2 of the Companies Ordinance (Cap. 622);
“Contract”	means the contract made between the Government and the Contractor for the provision of the Services on the terms and conditions set out in the Tender Documents, the tender submitted by the Contractor (to the extent accepted by the Government), the Memorandum of Acceptance issued by the Government to that Contractor and any attachments to any of the above;
“Contract Deposit”	means the deposit as more particularly described in Clause 12 of the Terms of Tender and Clause 20 of the Conditions of Contract;
“Contract Manager”	means the person appointed by the Contractor under as described in Clause 5 of the Conditions of Contract to perform the duties as specified in Clause 3(ii) of Contract Schedule 1;
“Contract Period”	means the period specified in Clause 1 of the Conditions of Contract subject to any early termination or extension provided for in the Contract;
“Contract Area”	means Tai Lung Experimental Station (TLES) , Tai Lung Veterinary Laboratory (TLVL), Tai Lung Construction Depot (TLCD) and Tai Lung Irrigation Office (TLIO) as delineated in the map in Contract Schedule 2;
“Contractor”	means the Tenderer whose tender has been accepted by the Government;
“Contractor’s Employees”	means the persons deployed by the Contractor to

or “Employees”

perform the Services, including the individuals who perform the duties of a Contract Manager and Security Guard as described in Clauses 3(i) & 3(ii) of Contract Schedule 1;

“Debarment Period”

means the period during which a Tenderer is debarred from tendering for any Non-skilled Worker Contract due to:

- (a) conviction of any of the Relevant Offences, as provided under Clause 3(b) of the Terms of Tender; or
- (b) accumulation of three Demerit Points over a rolling period of 36 months, as provided under Clause 3(c) of the Terms of Tender;

“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:

- (a) wages;
- (b) daily maximum working hours;
- (c) 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;
- (d) 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);
- (e) holiday pay payable to the Non-skilled Workers having been employed under a continuous contract for not less than one month;
- (f) wages at a rate of at least 150% for the Non-skilled Workers who have worked when the typhoon signal no. 8 or above is hoisted; and
- (g) gratuity payable to Non-skilled Workers with no less than one year of service under a continuous contract;

“Force Majeure Event”

means:

- (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion,

revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, fire if not caused or contributed to by the Contractor, its related persons (as defined in Clause 33(f) of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God; or

(b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Contractor, its related persons (as defined in Clause 33(f) of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof; or

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

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

“General Holiday” or “Public Holiday” means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149);

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

“Government” means the Government of Hong Kong;

“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;

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names,

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

“Letter of Acceptance”	Conditional	means the letter of conditional acceptance referred to in Clause 10 of the Terms of Tender;
“Materials”		means any and all works and materials (including their drafts and uncompleted versions) developed, written or prepared by the Contractor, its employees, agents or sub-contractors in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, models, questionnaires, analyses, papers, documents, records, plans, drawings, formula, tables, charts, data or information collected, compiled, produced or created by the Contractor in relation to the Services recorded or stored by whatever means;
“Monthly 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 13 of the Conditions of Contract subject to and after any adjustment or deductions in respect of that month;
“Monthly Rate”		means the monthly rate as set out in Contract Schedule 3 chargeable by the Contractor to the Government for the provision of the Services before adjustment or deductions and on the basis of which the Monthly Fee is determined;
“Non-collusive Certificate”	Tendering	means the Non-collusive Tendering Certificate in the form of Contract Schedule 5;
“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 Security Guards under this Contract;
“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;
“Security Company Licence”		means a valid Type I Security Company Licence issued by the Security and Guarding Services Industry Authority under section 21 or renewed under section 23 of the Security and Guarding Services Ordinance

(Cap. 460) for provision of security guard services;

“Security Control Centre”	means the headquarters/central controlling centre of the Contractor, where it issues a command remotely to the Security Guard on site;
“Security Guard”	means a person deployed by the Contractor to perform duties set out in Clause 3(i) of Contract Schedule 1. A Security Guard must hold a valid Category B Security Personnel Permit issued under the Security and Guarding Services Ordinance (Cap. 460) <i>[DOJ: This is to prevent the Contractor from deploying non-qualified persons to perform the duties and argue that such person should not be regarded as Security Guards. Please ensure that the Category of Security Personnel Permit meets your service requirements.]</i> ;
“Security Personnel Permit”	means a permit issued to an individual by the Commissioner of Police under section 14 or renewed under section 15 of the Security and Guarding Services Ordinance (Cap. 460) for doing the type of security work described in the Contract;
“Services”	means the provision of security guard services by the Contractor to the Government and includes all other obligations, tasks and duties ancillary or incidental thereto in accordance with the Service Requirements and subject to all the terms and conditions of the Contract;
“Service Requirements”	means the specifications and requirements of the Services to be provided by the Contractor as set out in Contract Schedule 1;
“SMW plus rest day pay rate”	has the same meaning as ascribed to the term “statutory minimum wage plus rest day pay rate” in paragraph 2 of the Guidance Notes accompanying the Standard Employment Contract;
“Specified Tender Box”	means the tender box specified in the “Lodging of Tender” section of the Tender Form or, where applicable, other places assigned by a Government officer for depositing bulky tenders;
“Standard Employment Contract”	means the written employment contract to be entered into between the Contractor and each of the Security Guard employed by the Contractor, a copy of such contract and its guidance notes can be downloaded from the following hyperlink

<http://www.afcd.gov.hk/tc_chi/tender/tender_rel/files/common/Standard_Employment_Contract_Chi_Rev2017.04.11.pdf> for Chinese version or

<http://www.afcd.gov.hk/english/tender/tender_rel/files/common/Standard_Employment_Contract_Eng_Rev2017.04.11.pdf> for English version;

“Statement of Convictions”	means the Statement of Convictions in respect of the Relevant Offence in the form of Appendix H;
“Statutory Minimum Wage” or “SMW”	means the “minimum wage” as defined in the Minimum Wage Ordinance (Cap. 608);
“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 7(f) or (g) of the Terms of Tender;
“Tender Document”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued under Clause 29 of the Terms of Tender prior to the Tender Closing Date;
“Tender Validity Period”	means the period of time mentioned in Clause 14(a) of the Terms of Tender during which a tender shall remain open;
“Tenderer”	means the company which has submitted a tender in response to this invitation to tender;
“Total Estimated Contract Value”	means the amount quoted as such by the Contractor in Appendix C as the estimated total amount of payment for the provision of the Services, to be payable by the Government to the Contractor by way of Monthly Fees in accordance with the provisions of the Contract;
“work shift”	means the working hours of each shift of Security Guard as specified in Contract Schedule 1;
“working day” or “Business Day”	means Monday to Friday other than a Public Holiday.

1. The following rules of interpretation apply:
 - (a) references to statutes or statutory provisions means references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and includes all subordinate legislation made under those statutes;
 - (b) words importing the singular includes the plural and vice versa; words importing a gender includes all other genders; references to any person includes any individual, firm, body corporate or unincorporate (wherever established or incorporated);
 - (c) headings are inserted for ease of reference only and do not affect the construction of the Tender Document or the Contract;
 - (d) references to a document:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Document or the Contract;
 - (e) references to “Tenderer” or “Contractor” include its permitted assigns, successors, or any persons deriving title under them;
 - (f) references to “Government” include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
 - (g) references to “law” and “regulation” include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
 - (h) references to “Cap.” means a Chapter of the Laws of Hong Kong;
 - (i) any word or expression to which a specific meaning has been attached in any part of the Tender Document bear such meaning whenever it appears in the same and other parts of the Tender Document;
 - (j) a time of a day means a reference to Hong Kong time;
 - (k) references to “normal business hours” mean 0900 to 1800 hours;
 - (l) references to a day mean a calendar day;
 - (m) references to a month or a monthly period mean a calendar month;
 - (n) any negative obligation imposed on any party means if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party means if it were also an obligation to procure that the act or thing in question be done;

- (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
- (p) words importing the whole are treated as including a reference to any part of the whole;
- (q) references to “writing” include typewriting, printing, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
- (r) where a general obligation in the Tender Document or the Contract is followed by more specific obligations, the general obligation is not construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

2. All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) is, in the absence of manifest error, final and conclusive.

**PART 1
TERMS OF TENDER**

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Provision of Security Guard Services to Tai Lung Experimental Station**PART 1
TERMS OF TENDER****1. Tender Documents**

- (a) This tender document, identified as Tender Ref. AFCD/PPS/2/21, comprises the following documents: -
- (i) Tender Form;
 - (ii) Interpretation;
 - (iii) PART 1 – Terms of Tender;
 - (iv) PART 2 – Conditions of Contract;
 - (v) PART 3 – Contract Schedules 1 to 5;
 - (vi) PART 4 – Offer to be Bound; and
 - (vii) PART 5 – Memorandum of Acceptance.
- (b) The Interpretation as provided for in Sheets 1 to 4 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 to the Government at the Contract Area on such terms and conditions as set out in the Terms of Tender, the Conditions of Contract and the Contract Schedules.
- (b) Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- (c) Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- (d) Each Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- (e) Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.

- (f) No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.

3. **Essential Requirements**

Tenders that fail to meet any of the essential requirements set out in this Clause will not be considered further or evaluated: -

(a) 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) Past Convictions

(i) A Tenderer who is convicted of any offence under the relevant sections of the following Ordinances (such offences collectively referred to as “Relevant Offences”) is subject to the Debarment Period of a maximum of 5 years from the date of the Tenderer’s last conviction, during which period the Tenderer is debarred from tendering for this Contract. The length of the Debarment Period is determined in accordance with sub-clauses (iv) and (v) below and may be reviewed under the Review Mechanism in sub-clause (vi) below. The Relevant Offences are as follows:

- (1) any offences under the Employment Ordinance (Cap. 57) 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); or
- (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); or
- (4) Section 38A(4) of the Immigration Ordinance (Cap. 115); and
- (5) Sections 7, 7A, 43B(3A), 43BA(5) or 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
- (6) any offence under the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertakings Ordinance (Cap. 59), 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).

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

- (ii) For the purpose of debarment, a conviction of any of the Relevant Offences will count irrespective of whether it is obtained under a government or private contract and irrespective of the type of services offered under that contract. For the avoidance of doubt, a conviction will still be counted even if it is not obtained under any service contract. Convictions will be counted by the number of summonses convicted.
- (iii) For the avoidance of doubt,
- (1) a conviction under appeal or review will still be counted as a conviction for the purpose of debarment unless it has been quashed by the court before such evaluation is conducted; and
 - (2) if the Tenderer is a partnership or a company, the Tenderer would be treated as having been convicted of a Relevant Offence if any partner of the partnership or any shareholder of the company has been convicted of a Relevant Offence and is currently debarred for tendering for any Non-skilled Worker Contract.
- (iv) If a sentence of imprisonment of any duration (including a suspended sentence) is imposed by the court on the Tenderer following the conviction of any of the Relevant Offences, the Tenderer shall be subject to a Debarment Period of five (5) years from the date of conviction, irrespective of whether a fine is also imposed.
- (v) For a Tenderer convicted of any of the Relevant Offences receiving a sentence other than imprisonment (including a suspended sentence), the applicable Debarment Period shall be determined with reference to the level of maximum fine that the Relevant Offence individually carries under the relevant ordinance in accordance with the following table

Level of Maximum Fine of the Relevant Offence	Debarment Period
More than \$200,000	5 years from the date of conviction
\$200,000 or below	3 years from the date of conviction

- (vi) The 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, if any, will only be applicable for the purpose of this Invitation to Tender if it is determined by the Central Tender Board under the Review Mechanism on a date 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 determined in accordance in accordance with sub-clauses (iv) and (v) above in regard to that subsequent conviction.

(vii) The Tenderer shall submit as part of the Tender in Appendix H the Statement of Convictions setting out particulars of all convictions in respect of the Relevant Offences (if any) for a period of five (5) years immediately preceding the Tender Closing Date. The Statement of Convictions shall be submitted in respect of:

- (1) the Tenderer itself;
- (2) each of its shareholders; and
- (3) where applicable, its sub-contractor.

The Statement of Convictions shall be certified by a director of the Tenderer or a person duly authorised by the Tenderer to sign the Tender on behalf of the Tenderer.

(viii) If the Tenderer is found to have made false declaration or untruthful revelation in the Statement of Convictions, the Government may without prejudice to any other rights which it has or may have, disqualify the Tenderer, or if it has been awarded the Contract, terminate the Contract immediately.

(ix) Notwithstanding Clause 3(a)(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).

(c) Demerit Points

- (i) If a Tenderer has accumulated three (3) Demerit Points over a rolling period of 36 months, it shall be debarred from tendering for this Contract for a period of five (5) 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.
- (ii) Any Demerit Point which is under appeal to the procuring department of the Government which issued the same will still be counted for the purpose of

debarment.

(d) Security Company Licence

- (i) It is an essential requirement that a Tenderer must possess a Security Company Licence which is valid as at the Tender Closing Date. A Tenderer which does not satisfy this essential requirement will be disqualified and its Tender will not be considered further. A Tenderer must shall provide a copy of the licence in its Tender at the same time when it submits its Tender pursuant to Clause 6(c) of the Terms of Tender.
- (ii) For the avoidance of doubt, where a Tenderer is holding a valid Security Company Licence as at the Tender Closing Date but such Security Company Licence will expire during the Tender Validity Period or before the Commencement Date, the Government may at any time before the tender exercise is completed request the Tenderer to provide documentary evidence to prove that its Security Company Licence has been renewed so as to justify and demonstrate that such Tenderer is capable of carrying out and performing its obligations under the Contract. Failure to provide documentary evidence pursuant to this sub-clause (ii) would entitle the Government not to consider the Tender further.

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

- (a) Tenderers must complete and submit Appendix G on relevant experience in providing security guard services and Appendix A on information of tenderers. Without prejudice to the Government's right to seek clarification or missing information under Clause 13 below, failure to complete and submit Appendix A or G may render a tender invalid.
- (b) If a Tenderer is incorporated outside Hong Kong, it must, if required and at its own cost, provide a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation of the Tenderer and acceptable to the Government on the following issues and any other issues as may be required by the Government:
 - (i) the Tenderer is duly incorporated and validly existing under the laws of the place of the Tenderer's incorporation, and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract;
 - (ii) the Tenderer has the full power, authority and legal capacity to:
 - (1) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (2) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
 - (iii) the proposed Contract with the Government will, upon its formation pursuant to Clause 10(d), constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation and is enforceable against the Tenderer in

accordance with its terms;

- (iv) the execution, delivery and performance of its Tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;
- (v) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (vi) the tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation in order to secure their validity and/or priority;
- (vii) there is no restriction under the laws of the place of the Tenderer's incorporation affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (viii) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation of the Tenderer; and
- (ix) it is not necessary under the laws of the place of incorporation of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation in order to enable it to enforce its rights under the Tender Documents and the Contract.

5. Wages of Security Guard

- (a) A Tenderer must propose the monthly wage payable to each Security Guard in Appendix D of the Terms of Tender. The proposed monthly wage must not be less than the "SMW plus rest day pay rate" on the basis of thirty-one (31) days (twenty-seven (27) maximum number of normal working days plus four (4) paid rest days) per month and twelve (12) normal hours of work per day.
- (b) The monthly wage payable by the Contractor to each Security Guard **must not be less than the higher of** (i) the proposed monthly wage quoted by the Contractor in Contract Schedule 1; and (ii) the "SMW plus rest day pay rate". (Note A)
- (c) If the monthly wage for a Security Guard proposed in Appendix D to the Terms of Tender is less than the "SMW plus rest day pay rate", that Tender will be evaluated nevertheless but the proposed wage will be deemed to be not less than **the "SMW plus rest day pay rate"** for the purpose of tender evaluation.
- (d) The Government may at any time before the tender exercise is completed request the Tenderer to confirm its abidance by **the "SMW plus rest day pay rate"**. Should the Tenderer refuse to or otherwise fail to confirm such abidance, its tender will not be further considered by the Government.

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

Note A:

- (i) The “SMW plus rest day pay rate” on the basis of 31 days (27 working days plus 4 paid rest days) per month, 12 normal hours of work per day and current minimum hourly wage rate (<HK\$37.5>) is <HK\$13,950> per month.
- (ii) The SMW may be adjusted from time to time. Under no circumstances will the Government accept any request for price adjustment on such grounds. A Tenderer should take into consideration the adjustment of SMW and its impact on the monthly wage and price quotation. The Government will not provide any “top-up” arrangement in case of any adjustment of SMW.
- (iii) The “SMW plus rest day pay rate” on the basis of work patterns other than that in Note A(i) above should be derived with reference to Example 1 on “Determining the monthly wages” in the “Guidance Notes on Signing of Standard Employment Contract for Employees of Contractors of Government Service Contracts” at the end of the Standard Employment Contract.

6. Tender Preparation

- (a) Tenders must be completed in English or Chinese and in ink or typescript and be submitted in accordance with Clause 7 of the Terms of Tender.
- (b) Tenderers must submit by the Tender Closing Date and time the following documents, failing which the tender **will not** be considered further:
 - (i) PART 1 – Appendix C - Price Proposal;
 - (ii) PART 1 – Appendix K – Execution Plan; and
 - (iii) PART 4 – Offer to be Bound which **must** be duly signed.
- (c) Tenderers are expected to complete and/or submit the following documents including the documentary evidence which are necessary for tender evaluation, failing which a tender may not be considered further:
 - (i) PART 1 – Appendix A - Information Schedule;
 - (ii) PART 1 – Appendix B - Information to be Submitted by the Tenderer;
 - (iii) PART 1 – Appendix D - Proposal of Wages and Maximum Working Hours;
 - (iv) PART 1 – Appendix G - Tenderer’s Business Experience in Provision of Security Guard Services;
 - (v) PART 1 – Appendix H - Statement of Convictions;
 - (vii) PART 1 – Appendix J – Non-Collusive Tendering Certificate;
 - (viii) PART 1 – Appendix K – Management Service Plan and Innovative Suggestions (Execution Plan); and

- (ix) a copy of a valid Security Company Licence.
- (d) When completing the Tender, Tenderers should ensure that:
 - (i) the name of the Tenderer should be the same as the name shown on the Certificate of Incorporation or the Certificate of Change of Name (if any) when the company is incorporated under the Companies Ordinance (Cap.622) or other similar ordinance elsewhere; and
 - (ii) the “Offer to be Bound” and all Appendices are duly signed by the Tenderer or the Tenderer’s authorized person or persons for an on behalf of the Tenderer (in the case of a company);
- (e) Tenderers should incorporate the following information in the Management Service Plan and Innovative Suggestions (Execution Plan) (as set out in Appendix K hereto) :
 - (i) Management Plan
 - (1) an organisation chart showing the line of command and division of labour of the proposed workforce;
 - (2) details of the professional qualifications and experience of the key personnel including Contract Manager, Executive Officer, etc. proposed by the Tenderer for the Contract;
 - (3) details of the mechanism setting out the monitoring and appraisal system on daily supervision of the workers for ensuring delivery of quality service, dealing with unsatisfactory standard of performance/ conduct/discipline of the workers and preventing recurrence of sub-standard services; and
 - (4) details of the training programmes provided to staff for the performance of the Contract.
 - (ii) Work Plan
 - (1) a staff deployment plan setting out the distribution and responsibilities of all the staff members of the proposed workforce in meeting the performance requirements of the Contract;
 - (2) daily/weekly/monthly work plans in meeting the work schedules and the performance requirements of the Contract in respect of the cleansing services;
 - (3) daily/weekly/monthly work plans in meeting the work schedules and the performance requirements of the Contract in respect of the pest control services;
 - (4) safety measures adopted for the performance of the Contract including cleaning of external walls, operation for working at height;
 - (5) details of the arrangement of leave relief to cover staff on leave including the minimum qualification and experience requirement for the leave relief staff; and
 - (6) details of the arrangement during transition-in and transition-out periods including implementation plan and timeline in arrangement of taking

over/handing over of duties at pre-commencement and upon expiry of the Contract.

(iii) Contingency Plan

- (1) details of the operational strategy during contingency or emergency situations including availability of additional resources, provision of emergency contact numbers/hotlines, commitment to mobilize additional manpower and redeployment of equipment within short notice;
- (2) a risk management plan setting out the deployment of resources and manpower to the spot speedily and responsively including the response time to each emergency situation for handling emergency situations; and
- (3) details of mechanism for maintaining close communication with the Government Representatives when there are emergency situations.

(iv) Innovative Suggestions

- (1) the proposed innovative suggestions are directly relevant to, effective and practicable in improving 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.
- (2) Innovative suggestions may cover, but not limited to, the following items –
Adoption of technology to enhance service delivery in security guard services e.g. mobile surveillance cameras etc.

- (f) The submitted management plan, work plan, contingency plan and innovative suggestions (as set out in Appendix K hereto) if accepted by the Government will form part of the tender and may be subject to such modification as may requested by the Government. Tenderers may also include other materials or suggestions as appropriate to facilitate consideration of its offer by the Government.

7. Submission of Tender

- (a) The Tender (including the Tender Form) shall be completed in ink or typescript and shall be submitted in triplicate in accordance with the “Lodging of Tender” section of the Tender Form.
- (b) A Tender will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part 4 “Offer to be Bound” of the Tender Form is signed in the following applicable manner:
 - (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.
- (c) **A two-envelope system** will be adopted for this invitation to tender. Tenderers shall submit the following in two envelopes clearly labeled “Price Proposal” and “Technical Proposal” on the outside-
- (i) Documents relating to the price information (i.e. the original and two copies of “Appendix C – Price Proposal”) must be enclosed in a sealed envelope clearly marked “Price Proposal” and “Tender for the Provision of Security Guard Services to Tai Lung Experimental Station (TLES) (Tender Ref.: AFCD/PPS/2/21)”; and
 - (ii) Documents relating to the technical information (i.e. the original and two copies of all other remaining information, forms, schedules and documents required by this invitation to tender but without any indication on the prices for provision of the Services) must be enclosed in another sealed envelope clearly marked “Technical Proposal” and “Tender for the Provision of Security Guard Services to Tai Lung Experimental Station (TLES) (Tender Ref.: AFCD/PPS/2/21)”.
 - (iii) The proposal comprising both “Price Proposal” and “Technical Proposal” must be enclosed in a sealed envelope addressed to the person specified in the “Lodging of Tender” section of the Tender Form and clearly marked “Tender for the Provision of Security Guard Services to Tai Lung Experimental Station (TLES) (Tender Ref.: AFCD/PPS/2/21)” and deposited to the Specified Tender Box before the Tender Closing Date.

- (iv) **Tenders submitted in a form or manner other than that described above may not be considered further.**
- (d) A tender to be submitted in response to this invitation to tender shall be submitted in **TRIPLICATE (i.e. one set of original and two sets of copies)** with all necessary information including documentary evidence necessary for tender evaluation and addressed to the Chairman, Tender Opening Committee, and be deposited in the Government Logistics Department Tender Box situated at the lift lobby on the 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 Tenders WILL NOT BE CONSIDERED.**
- (e) 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.
- (f) If a tropical cyclone signal No.8 or above is in effect or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force or for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the closing time of this tender will be extended to 12:00 noon (Hong Kong time) on the next working day after the tropical cyclone signal No.8 or above or the black rainstorm warning signal or “extreme conditions after super typhoons” is cancelled or lowered.
- (g) In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 a.m. and 12:00 noon 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>).

- (h) 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 Tenderer 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.
- (i) 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 initialed by the Tenderer in ink.
- (j) Each Tenderer may only submit **ONE** tender.
- (k) 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>).

8. 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 in Clause 8(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 (Cap.619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- (b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Appendix J) 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 8(a) above or in Non-collusive Tendering Certificate submitted by it under Paragraph 8(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.
- (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 8(a) above or in Non-collusive Tendering Certificate submitted by it under Clause 8(b) above.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in Clause 8(a) above or in Non-collusive Tendering Certificate submitted by it under Clause 8(b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government under Clauses 8(c) to 8(e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

9. **Tender Assessment**

- (a) Without prejudice to other rights and powers of the Government not to consider a tender under any applicable provisions in the Tender Document, all tenders will be assessed and evaluated in the manner as stipulated in Appendix I.

10. **Basis of Acceptance and Award of Contract**

- (a) Tenders will be considered on an **overall** basis and only one single Tenderer will be awarded the Contract. A tender must cover both items 1 and 2 of Services as set out in Appendix C. **A Tender with only partial offers will not be considered further.**
- (b) Subject to other provisions of the Tender Documents and unless the Government decides that it is in the public interest not to do so, the Government will normally award the Contract to the Tenderer which the Government has determined to be capable of fulfilling the terms of the Contract and whose Tender:
- (1) has passed the completeness check;
 - (2) conforms with all the essential requirements stipulated in the Tender Documents;

and

- (3) has attained the highest combined technical and price score amongst all the conforming Tenders.
- (c) The Government is not bound to accept the tender with the highest combined technical and price score or any Tender at all. The Government reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.
- (d) If two or more Tenders achieve the same highest combined technical and price score, the Government will normally award the Contract to the Tenderer whose Tender obtains the highest technical score.
- (e) Award of contract shall be subject to the recommended Tenderer (and where applicable, its sub-contractor) not being debarred up to the date of the Letter of Conditional Acceptance due to conviction of any of the Relevant Offences as stipulated in Clause 3(b) of Terms of Tender or accumulation of three or more Demerit Points as stipulated in Clause 3(c) of the Terms of Tender. The Government will issue to the successful Tenderer either by post or by facsimile transmission a letter notifying conditional acceptance of offer (“Letter of Conditional Acceptance”) subject to the following conditions precedent:
- (i) delivery of the Contract Deposit to the Government pursuant to Clause 12 hereof;
 - (ii) the selected Tenderer, where applicable the shareholder(s), not having been debarred from tendering for this Contract as at the date of the Letter of Conditional Acceptance due to:
 - (1) conviction of any of the Relevant Offences for the period as defined in Clause 3(b)(i) above; or
 - (2) accumulation of an aggregate of 3 or more Demerit Points from 1 or more Government bureau/departments as mentioned in Clause 3(c) above;
 - (iii) The Government having completed its check to confirm that the Tenderer is not so debarred under sub-clause (ii) above; and
 - (iv) other conditions as the Government may specify therein.
- (f) Upon and subject to the successful Tenderer having duly complied with Clause 10(e) hereof, the Government will issue the Memorandum of Acceptance notifying fulfillment of the conditions precedent and the Contract is deemed to have been formed on the date of the issuance of the Letter of Conditional Acceptance.
- (g) If the conditions precedent set out in Clause 10(e) above are not satisfied, the Government will be at liberty to award the Contract to another Tenderer, conduct a fresh tender exercise or take such appropriate action as the Government deems fit. Without prejudice to the foregoing, if the successful Tenderer fails to deliver the Contract Deposit to the Government pursuant to Clause 12 hereof, such failure may prejudice its future standing as a Government contractor or service provider.
- (h) Tenderers who do not receive any notification within the Tender Validity Period shall assume that their Tenders have not been accepted.

11. Prices Tendered

- (a) Tenderers should ensure that the all prices tendered are accurate and complete before submitting their bids. Under no circumstances shall the Government be obliged to accept any request for rates or contract value adjustment on grounds that a mistake has been made in the rates or contract value tendered.
- (b) All prices tendered in the tender shall be in Hong Kong currency and, if accepted by the Government, shall remain valid and binding throughout the Contract Period. The prices must cover all expenses incidental to the due and proper performance of the Contract by the Contractor. **Tenderer must note that prices quoted shall include all costs and expenses in the provision of gratuity, statutory holiday pay and extra wages to Non-skilled Workers who are required to work under typhoon signal no. 8 or above as stipulated in Clauses 40, 41 and 42 of the Conditions of Contract respectively.** No request for price variation will be considered.
- (c) Without prejudice to the generality of the Conditions of Contract, 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. A Tenderer's failure to so justify and demonstrate to the Government's satisfaction shall entitle the Government to reject the tender.

12. Contract Deposit

- (a) If the Total Estimated Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.4 million, but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government, within twenty-one (21) days from the Letter of Conditional Acceptance, an amount equivalent to two percent (2%) of the Total Estimated Contract Value.
- (b) If the Total Estimated Contract Value payable by the Government to the successful Tenderer exceeds HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government, within twenty-one (21) days from the Letter of Conditional Acceptance, an amount equivalent to:
- (i) two percent (2%) (if it passes the financial vetting); or
 - (ii) five percent (5%) or such other percentage as specified in the Letter of Conditional Acceptance, whichever is the higher (if it fails the financial vetting or in cases where the financial information available is inadequate for a meaningful assessment of the Tenderer's financial capability to fulfil the Contract requirements to be conducted),
- as the case may be of the Total Estimated Contract Value.
- (c) The successful Tenderer shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. Each Tenderer should state clearly in Appendix F 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.

- (d) 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 issued under the Banking Ordinance (Cap. 155) and acceptable to the Government;
 - (ii) unless otherwise agreed by the Government, it must be on the terms set out at Part II of Appendix F to the Terms of Tender; and
 - (iii) the banker's guarantee shall come into effect on the Commencement Date unless another date is specified in the Letter of Conditional Acceptance.
- (e) The Contract Deposit, whether paid by way of cash (if any is remaining) or banker's guarantee, shall be returned to the Contractor or released in accordance with Clause 20 of the Conditions of Contract.
- (f) If a Tenderer fails to deliver to the Government the Contract Deposit within such time as specified in Clause 12(a) or 12(b) above, the Government shall be at liberty to terminate the Contract, to conduct a fresh tender exercise or to take such appropriate action as the Government deems fit.

13. Tenderers' Response to the Government's Enquiries

- (a) In the event that the Government determines that clarification of any tender is necessary, it will advise the Tenderer accordingly indicating whether the Tenderer should provide any clarification or supplement any information relating to its tender. Each Tenderer shall thereafter within two (2) working days after the date of the Government's request or such other period as specified in the request for clarification submit the requested information. Tenders may not be considered if complete information is not provided as required.
- (b) Unless otherwise expressly stated by the Government in writing, any statement whether oral or written made in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement constitutes a representation or warranty of whatsoever nature, express or implied, and no invitation is made by the Government to any Tenderer or prospective Tenderer to reply on the accuracy or completeness of such statement. Unless in the context of an issued addendum to the Tender Documents, the statement will not be deemed to form part of these Tender Documents and it shall not alter, negate or waive any of the provisions set out in these Tender Documents.
- (c) As an alternative to seeking clarification or submission, the Government may, as its discretion, disqualify the Tender, or proceed to evaluate the Tender on an "as is" basis.

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 twenty (120) days after the Tender Closing Date.
- (b) If a Tenderer does not state in its Tender the period for which the tender is to remain valid and open for acceptance, the Tender Validity Period of that tender will be one hundred and twenty (120) days after the Tender Closing Date.
- (c) If a Tenderer offers in its Tender a period that is shorter than one hundred and twenty (120) days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with Clause 14(a) within five (5) working days or such other period as specified by the Government without any other change to the tender (except any change made in response to any clarification by the Government pursuant to Clause 13). If the Tenderer fails to confirm compliance with Clause 14(a) within the specified deadline or, despite confirming compliance therewith, introduces any change to the tender not in response to any clarification by the Government pursuant to Clause 13, its tender will not be considered further.
- (d) 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. Offer to be Binding

- (a) All parts of the Tender Document submitted and offered by the Tenderer will be binding on the Tenderer. A Tenderer is deemed to have satisfied itself as to the correctness of its tender. In the event that a Tenderer discovers an error in its tender after the tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. No request for adjustment or variation whatsoever will be allowed or entertained after the Tender Closing Date.
- (b) By signing the "Offer to be Bound", a Tenderer confirms that its offer has been made subject to the terms and conditions contained in the Tender Documents, and any variation or adjustment agreed with the Government and upon being accepted by the Government, be incorporated into and form part of the Contract.

16. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers may be destroyed three (3) years after the Contract has been constituted under Clause 10.

17. Complaints about Tendering Process

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 who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. Tenderers are to note that the Director of Agriculture, Fisheries and Conservation shall not consider a complaint that is lodged later than three (3) months after the award of Contract.

18. 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.

19. Personal Data Provided

- (a) The personal data of any individual provided by a Tenderer in the tender will be used for tender evaluation and contract award purposes.
- (b) A Tenderer shall ensure that, prior to disclosure in the tender, the relevant individual to whom the personal data belongs has acknowledged and consented that his/her personal data may be disclosed to the Government Representative and all parties responsible for tender evaluation in other Government bureaux, departments and non-Government organizations.
- (c) The individual to whom the personal data belongs has the right to access and make correction with respect to personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the personal data provided in the tender.
- (d) Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer (Deputy Secretary (General)) of AFCD.

20. Offering Gratuities

The Tenderer shall not and shall ensure that its agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer without knowing the breach, the Government shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred.

21. New Information

Tenderers should inform the Government in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Document. 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

The Government shall have the right to disclose, without further reference or notice to the successful Tenderer, whenever the Government considers appropriate or upon request (written or otherwise) by any third party information on the awarded Contract,

including the name and address of the successful Tenderer, description of the Services, wages levels and working conditions for the successful Tenderer's employees including those of its agents, and the Contract value and information in relation to the Demerit Points given to the Contractor for breaches of the specific contractual obligation under the Contract. In submitting a bid, each Tenderer irrevocably and unconditionally authorizes the Government to make and consents to the Government making any of the disclosure aforesaid. Furthermore, the Government shall have the right to require the successful Tenderer to display wage level and working conditions, including working hours, of its employees, ensuring that their employees (which shall also include those of the successful Tenderer's agents) are being informed of such. The mode of display shall be such as may be specified by the Government from time to time.

23. Contractor's Performance Monitoring

Tenderers are advised that should the Government award the Contract to the successful Tenderer, its performance of the Services under the Contract will be monitored and may be taken into account when the Government evaluates any tenders or quotations that the successful Tenderer may submit in future. A tender may be rejected if by the Tender Closing Date, the Tenderer is under suspension from tendering for government tenders.

24. Cancellation and Costs of Tender

- (a) Without prejudice to the Government's right to cancel this invitation to tender at its absolute discretion or for public interest reasons, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel this invitation to tender.
- (b) A Tenderer submits its tender proposal at its own cost and expense. The Government will not under any circumstances be liable to the Tenderers for any costs and expenses whatsoever incurred by the Tenderer in connection with the preparation and submission of its tender or in any related communication with the Government, whether before, on or after the Tender Closing Date.

25. Environmental Friendly Measures

The following environmental friendly measures are recommended in the preparation of the tender documents:

- (a) All documents should preferably be printed on both sides and on recycled paper. Paper exceeding 80gsm are not recommended as a general rule.
- (b) Excessive use of plastic laminates, glossy covers or double covers should be avoided as far as possible. Use of recyclable non-glossy art board paper as document covers is recommended.
- (c) Single line spacing should be used and excessive white space around the borders and in between the paragraphs should be avoided.

26. Tenderer's Enquiries

- (a) Any enquiries concerning the submission of tender procedure and technical issues such as Service Requirements, Schedules, tender briefing etc., please contact Mr. Alan TANG at telephone no. 2668 0295 [no later than three (3) working days prior to the Tender Closing Date]. 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 should not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government reserves the sole right to initiate any contact with Tenderers and all such contacts and subsequent responses from Tenderers shall be made in writing.
- (c) Unless otherwise expressly stated by the Government, any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Tenderer shall be for guidance and reference purposes only. The statement shall not be deemed to form part of these Terms of Tender and such statement or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as set out in these Terms of Tender or the Conditions of Contract.

27. Tenderer's Commitment

All tenders, proposals, information and responses submitted by each Tenderer must be in writing. The relevant provisions of this invitation to tender and documents so submitted shall be the representation of the Tenderer and may by law or at the Government's sole option be incorporated into and made part of the Contract between the Government and the successful Tenderer in such manner as the Government considers appropriate. The Government reserves the right to disqualify any Tenderer who submits a tender that directly or indirectly attempts to preclude or limit the effect of this requirement.

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 Guard at supervisory level to attend a tender briefing on **24 February 2022 (Thursday)** at 14:30 at Tai Lung Experimental Station. 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 Senior Field Officer/Plant Protection (SFO/PP) for registration (either via email: chipui_tang@afcd.gov.hk or fax (852) 2679 5443) on or **before 21 February 2022**. Each Tenderer may not nominate more than two representatives to attend the tender briefing session.

29. Tender Addenda

The Government reserves the right to clarify, amplify or amend this tender at any time prior to the Tender Closing Date. Any clarification(s) or amendment(s) on any aspect of this tender will be by way of an addendum and will be posted on the departmental

webpage. These addenda if comprising an amendment, clarification or adjustment to any provisions of the Contract, shall form part of the Contract and shall take priority over the documents previously issued. Tenderers are advised to check the said website from time to time for any issue of addendum and the contents thereof.

30. The Attachments

Tenderers should study all attachments to the 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 about the terms of its offer.

32. Counterproposal

Any counterproposal or any offer not in accordance with the terms of this tender on the part of a Tenderer may render its tender **NOT TO BE CONSIDERED**.

33. Government Discretion

- (a) Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
- (i) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Date or an order is made or a resolution is passed for the winding up of the Tenderer;
 - (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) a claim is made alleging or the Government has grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
 - (iv) the Tenderer has made significant or persistent breaches or deficiencies in the performance of any substantive requirement or obligation under any Government or other contracts;
 - (v) the Tenderer has been convicted of a serious crime or offence;
 - (vi) the Government has grounds to believe that the Tenderer is guilty of professional misconduct that adversely reflect on the commercial integrity of the Tenderer;
 - (vii) the Tenderer has failed to pay taxes to the Government; or
 - (viii) the Tenderer has attempted to limit or avoid its responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer/Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.
- (b) For the purposes of Clause 33(a), each Tenderer must provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:

- (i) details of any petition or proceeding mentioned in Clause 33(a)(i);
- (ii) details of conviction of the Tenderer in Hong Kong or any overseas jurisdictions in respect of (i) serious offences; and (ii) other crimes or offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of award;
- (iii) details of all infringement claims as mentioned in Clause 33(a)(iii); and
- (iv) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in Clause 33(a)(iv).

If none of the events as mentioned in Clauses 33(b)(i) to 33(b)(iv) above has ever occurred within the applicable period as mentioned above, the Tenderer must provide a statement to that effect at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 33(c) below.

- (c) In addition to the information mentioned in Clause 33(b), the Government reserves the right to request from a Tenderer and take into account all information about:
 - (i) the Tenderer itself;
 - (ii) any of the directors or management staff of the Tenderer who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer; and
 - (iii) any of the related persons of the Tenderer and of any directors and management staff of the related persons who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer,to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 33(a).
- (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 or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer.
- (e) In providing the information required under Clauses 33(b) and 33(c) above, the Tenderer may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract.
- (f) The expression "related person" of the Tenderer includes any one of the following:

- (i) a shareholder (corporate or individual) which directly or indirectly owns 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 of the Tenderer;
- (iv) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly owns 50 percent or more of its issued share capital or controls the composition of its board of directors.

The expressions “holding company” and “subsidiary” have the meanings given to them in the Companies Ordinance (Cap.622).

- (g) References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at the time of the incident referred to in Clauses 33(a)(iv), 33(a)(v), 33(a)(vi), 33(a)(vii) or Clause 33(b)(ii).

Appendix A**Information Schedule***(To be completed and returned together with the tender submission)*

Name of Tenderer: _____

Date: _____

Table A – Information and documents required

(a)	Name of the Tenderer	
(b)	Principal place of business of the Tenderer (in address form)	
(c)	Type of business entity of the Tenderer	company / sole proprietorship / partnership / statutory corporation / others* (*Please delete whichever is not applicable.)
(d)	Shareholders/partners/proprietor of the Tenderer and their percentage of ownership	
(e)	Length of business experience	
(f)	Names of the following: (i) managing director and other directors; (ii) partners; or (iii) sole proprietor	
(g)	Place and date of incorporation or formation	
(h)	Business profile information of the	

Terms of Tender

	Tenderer including the number and location of full time / contract employees, core business strategies and strength, and industry expertise	
(i)	Names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer	
(j)	A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Tenderer	Please attach if applicable.
(k)	(If the Tenderer is a company) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer	Please attach if applicable.

(l)	(If the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance, Chapter 622 of the Laws of Hong Kong) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents issued by the authority of the place of incorporation of the Tenderer	Please attach if applicable.
(m)	Employee's Compensation Insurance Policy Name of insurer: Policy no.: Expiry date:	
(n)	A certified extract board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering) the signatory of the Offer to be Bound,	Please attach if applicable.

	<p>or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be)</p>	
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Table B – Information required under Clause 33 of the Terms of Tender

- * (a) I/We confirm that none of the events as mentioned in Clauses 33(a)(i) to 33(a)(vii) of the Terms of Tender has ever occurred.
- * (b) I/We confirm that the following event(s) as mentioned in Clauses 33(a)(i) to 33(a)(vii) of the Terms of Tender has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

Table D – Other information which is required to be provided or disclosed in this Schedule (if any) or otherwise any information which the Tenderer wishes to provide

Appendix B

Information to be Submitted by the Tenderer

[Please refer to Clause 6 of the Terms of Tender]

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 Memorandum and Articles of Association, the Certificate of Incorporation and any other corporate documents evidencing business status.
- Copy of the licence within the meaning of the Security and Guarding Services Ordinance (Cap. 460).

Requirements of Experience and Qualification

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

Tenderer's Accreditation to ISO 9001 and/or ISO 14001 and/or OHSAS 18001 Standard.

- ISO 9001 ISO 14001 OHSAS 18001

- Experience and qualifications of managerial staff proposed for the Contract.

(Documentary proof is required to be provided for substantiation on the claim of experience and qualifications.)(Please indicate by as appropriate)

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 security guard 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 Contract Schedules 1.

(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 will score no mark in the relevant claim of experience.

Signature of Person

Authorized to sign Tender : _____

Name in Block Letter : _____

Name of Tenderer : _____

Tel. No. / Fax. No. : _____

Date : _____

Terms of Tender

Appendix C

Price Proposal
(Rates of Charges for the Provision of the Services)
 [Please complete and insert into the "Price Proposal Envelope".]

The amount of the monthly payment for the Services to be performed by the Contractor in full compliance with all requirements and specifications set out in the Contract, including without limitation the staff and duty hours requirements specified in Clauses 3 & 4 of Service Requirements shall be as follows: –

1. Unit Rates for Security Guard

a. Tai Lung Experimental Station & Tai Lung Veterinary Laboratory

	(A)	(B)	(C)
	Hourly Rate (HK\$)	No. of Working Hour per Shift	Total Amount per Shift (=A x B)
Security Guard	\$ per hour	12	

b. Tai Lung Construction Depot & Tai Lung Irrigation Office

	(A)	(B)	(C)
	Hourly Rate (HK\$)	No. of working hour per shift	Total Amount per Shift (=A x B)
Security Guard	\$ per hour	12	

Note: The unit rate shall be used for calculation of an addition or reduction of the number of Contractor's Employees to those specified in Contract Schedule 1 and other parts of the Contract.

2. Total Contract Value**Item 1 - Guard Services in TLES & TLVL (from 1 May 2022 to 30 April 2025):**

Services Description	No. of Security Staff per shift (a)	Services Period (Months) (b)	Monthly Rate (HK\$) (c)	Total Amount for 36 months (HK\$) (d) = (a) x (b) x (c)
<u>Shift A</u> Security Guard from 18:30 - 06:30 the following day (for Monday to Sunday and Public Holiday)	1	36		_____ (d1)
<u>Shift B</u> Security Guard from 06:30 – 18:30 (for Saturday, Sunday and Public Holiday)	1	36		_____ (d2)
Sub-Total for Item 1 [i.e. (d1) + (d2)] (HK\$):				_____ (e1)

Authorized Signature : _____

Name of Person Authorized to Sign Tender: _____

Name of Tenderer : _____

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

Terms of Tender

Appendix C

Price Proposal
(Rates of Charges for the Provision of the Services)
 [Please complete and insert into the "Price Proposal Envelope".]

Item 2 – Guard Services in TLCD & TLIO (from 1 May 2022 to 30 April 2025):

Description	No. of Security Staff per shift (a)	Services Period (Months) (b)	Monthly Rate (HK\$) (c)	Total Amount for 36 months (HK\$) (d) = (a) x (b) x (c)
<u>Shift A</u> Security Guard from 18:30 - 06:30 the following day (for Monday to Sunday and Public Holiday)	1	36		_____ (d3)
<u>Shift B</u> Security Guard from 06:30 – 18:30 (for Saturday, Sunday and Public Holiday)	1	36		_____ (d4)
Sub-Total for Item 2 [i.e. (d3) + (d4)] (HK\$):				_____ (e2)
Total Estimated Contract Value [i.e. (e1) + (e2)] (HK\$) for Items 1 & 2:				

*** Notes:**

1. Acceptance of offers will be on the **OVERALL** basis. Partial or incomplete offer will not be considered.
2. The Contractor shall be responsible for all costs and expense required for rendering the Services under the Contract, including but not limited to the equipment, materials and tools required to be provided under the Contract. Tenderers should take this into account when offering the unit rates.
3. The quotation price shall be included of the staff cost, MPF Contribution, administration fee, supervisory charge, and any other cost incurred throughout the contract period.
4. The Statutory Minimum Wage rate will be revised according to the Minimum Wage Ordinance (Cap.608). Contractors should take into account this factor when quoting your offered price for the service.
5. When quoting for the Monthly Rate, Tenderers must consider and take into account the number of Security Staff required as stated in Section 1 hereof and Clause 4 of the Service Requirements (Contract Schedule 1).

Authorized Signature : _____

Name of Person Authorized to Sign Tender: _____

Name of Tenderer : _____

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

Terms of Tender

Appendix C

Price Proposal
(Rates of Charges for the Provision of the Services)
[Please complete and insert into the "Price Proposal Envelope".]

4. Payment Discounts

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

Authorized Signature : _____

Name of Person Authorized to Sign Tender: _____

Name of Tenderer : _____

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

Terms of Tender

Appendix D**Proposal of Wages and Maximum Working Hours**

[Please refer to Clause 5 of the Terms of Tender and Clauses 3 & 4 of Service Requirements.]
(Please complete and insert into the "Technical Proposal Envelope")

Wages Proposal for Security Guard

Tenderers must propose in the given spaces below a monthly wage rate for a Security Guard and the basis on which such wage rate is calculated. The monthly wage rate proposed must comply with Clause 5 of the Terms of Tender. Tenderers are advised to read Clause 5 of the Terms of Tender carefully for the consequences of non-compliance of the wage requirements.

(i) Item 1 :

Type of Staff	Proposed Monthly Wage	Proposed Daily Maximum Allowable Working Hours (excluding meal break)	Working Day per Month
Security Guard Tai Lung Experimental Station and Tai Lung Veterinary Laboratory	HK\$ _____ (based on an hourly rate of \$ _____)	_____ hours	_____ Days

Authorized Signature : _____

Name of Person Authorized to Sign Tender: _____

Name of Tenderer : _____

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

Terms of Tender

Appendix D

Proposal of Wages and Maximum Working Hours

[Please refer to Clause 5 of the Terms of Tender and Clauses 3 & 4 of Service Requirements.]
 (Please complete and insert into the “Technical Proposal Envelope”)

(ii) Item2 :

Type of Staff	Proposed Monthly Wage	Proposed Daily Maximum Allowable Working Hours (excluding meal break)	Working Day per Month
Security Guard Tai Lung Construction Depot and Tai Lung Irrigation Office	HK\$ _____ (based on an hourly rate of \$ _____)	_____ hours	_____ Days

Authorized Signature : _____

Name of Person Authorized to Sign Tender: _____

Name of Tenderer : _____

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

Terms of Tender

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

To: Senior Field Officer / Plant Protection
Agriculture, Fisheries and Conservation Department

Fax: (852) 2679 5443

Registration Form for Attending Tender Briefing Session
Provision of Security Guard Services to Tai Lung Experimental Station
(Tender Ref.: AFCD/PPS/2/21)

Details of the Briefing Session

Date : 24 February 2022 (Thursday)

Time : 14 : 30

Venue : Conference Room, PB393, Tai Lung Experimental Station

Details of Registration

The following person(s) from our company will attend the Briefing Session: -

	Name	Post Title
(1)	_____	_____
(2)	_____	_____

Signature :	_____	Name :	_____
Post title :	_____	Company :	_____
Phone no.:	_____	Fax no. :	_____
E-mail address :	_____	Date :	_____

NOTE: This form should be completed and returned by fax or email (chipui_tang@afcd.gov.hk) to the Agriculture, Fisheries and Conservation Department on or before 21 February 2022.

[Please refer to Clause 12 of the Terms of Tender.]

Name of Tenderer: _____
Date: _____

Part I

Method of providing the Contract Deposit

If the Contract is awarded to us, we shall pay to the Government the Contract Deposit
*in cash/by way of a banker’s guarantee.

* Delete as appropriate.

N.B.: If a Tenderer does not complete this Part, it will be regarded to have undertaken to
pay the Contract Deposit to the Government in cash.

Part II

**Form of
Banker’s Guarantee**

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

WHEREAS

(A) By a contract (hereinafter called the “Contract”) dated the [day] of [month year] made
between «SUPPLIER_NAME» of «SUPPLIER_ADDRESS» (hereinafter called the “Contractor”)
of the one part and the Government of the other part (designated as Agriculture, Fisheries and
Conservation Department Contract No. «CONTRACT_NUMBER»), the Contractor agreed and

[Please refer to Clause 12 of the Terms of Tender.]

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 the Guarantor HEREBY AGREES with the Government as follows:

(1) Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them under the Contract.

(2) In consideration of the Government entering into the Contract with the Contractor:

(a) The Guarantor hereby irrevocably and unconditionally guarantees the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract.

(b) The Guarantor, as a primary obligor and as a separate and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.

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

[Please refer to Clause 12 of the Terms of Tender.]

- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as “the Contractor” or where “the Contractor” is a partnership, any change in the partners or in its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:
- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
 - (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
 - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;

[Please refer to Clause 12 of the Terms of Tender.]

(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 authorizes the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

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

(a) the date falling **six (6)** months after the expiry of the Contract (unless (b) is applicable); or

(b) in the case if at the time of expiry or termination of the Contract, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there remains any outstanding Government's rights and claims under the Contract or otherwise at law arising from antecedent breaches of the Contract by the Contractor or which have otherwise accrued or arisen prior to the termination of expiry, the date falling twenty four (24) months after the early termination or expiry of the Contract Period

whichever is the later.

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

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

[Please refer to Clause 12 of the Terms of Tender.]

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 Plant Protection Section, Tai Lung Experimental Station, Lin Tong Mei, Fan Kam Road, Sheung Shui, New Territories, marked for the attention of Director of Agriculture, Fisheries and Conservation, facsimile number 2679 5443;
- (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 dispatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

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

(15) The Guarantor hereby acknowledges that

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

[Please refer to Clause 12 of the Terms of Tender.]

Government) the terms and conditions of this Guarantee.

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

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

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

* Please delete as appropriate

@ See Powers of Attorney Ordinance Chapter 31

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 G

Tenderer’s Business Experience in Provision of Security Guard Services

(for evaluation under item 5 of the Assessment Criteria in Appendix I (Marking Scheme))

(please complete and insert into the “Technical Proposal Envelope”)

Experience in terms of an aggregate number of years in the provision of security guard services during the ten (10) years immediately preceding the original Tender Closing Date will be evaluated according to Assessment Criterion (5) of the marking scheme as set out in Appendix I to the Terms of Tender. Tenderers must provide description and history of their relevant experience in the provision of security guard services with clear indication on the number of years of relevant experience; and should provide documentary proof to substantiate claims of the relevant experience. (*Client name, Contract period, Place of Business, Areas served, Description of Business*). Failure to provide documentary proof to substantiate claims of the relevant experience may, at the absolute discretion of the Government, render the experience not to be counted.

Client Name	Contract Period	Place of Business	Areas served	Description of Business

Signature of Person Authorized to sign Tender : _____

Name in Block Letter : _____

Name of Tenderer : _____

Tel. No. / Fax. No. : _____

Date : _____

Terms of Tender

Appendix H

Statement of Convictions

[Please refer to Clause 3(b) of the Terms of Tender.]

(a) A Tenderer hereby declares if the following person(s) has/have obtained any conviction of the Relevant Offences (as defined in Clause 3(b) of the Terms of Tender) for a period of five years immediately preceding the Tender Closing Date :

- (i) the Tenderer itself;
- (ii) where applicable, each of its partners if it is a partnership or each of its shareholders if it is a company; and
- (iii) where applicable, its sub-contractor.

Yes/No **(Please delete as appropriate)**

If yes, please completed the following table:-

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

(Use separate sheets if required)

Name of Authorized Person
in Block Letter

Name of Tenderer

Tel. No. / Fax. No.

Date

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

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- (c) I/We hereby declare that all information given above and contained in any additional sheets attached hereto are correct. I/We understand that if any of the information contained in this Appendix is found to be correct, my/our tender will not be further considered, or my/our Contract will be terminated in accordance with Clause 20 of the Conditions of Contract if I am/we are awarded the contract.

- (d) I/We hereby authorized the Agriculture, Fisheries and Conservation Department to obtain information from all Government departments and given consent to the Government departments concerned to release and provide information of my/our record of conviction in respect of the Relevant Offences to to the Agriculture, Fisheries and Conservation Department for the purpose of evaluation of my/our tender in this tendering exercise and subsequent management of the Contract.

Name of Authorized Person : _____
in Block Letter

Name of Tenderer : _____

Tel. No. / Fax. No. : _____

Date : _____

Appendix I

**Provision of Security Guard Services for the Tai Lung Experimental Station
Tender Evaluation Procedures, Assessment Criteria and Marking Scheme
(Tender Ref. AFCD/PPS/2/21)**

Preamble

1. A two-envelope approach with a technical to price weighting of 50:50 will be adopted for this tender evaluation whereby the price assessment will be conducted separately and only upon completion of technical assessment. All tenders will be assessed in the following manner.

Stage 1 – Completeness Check

2. A completeness check will be conducted by checking whether all items stipulated in Clause 6(b) of the Terms of Tender have been submitted. **If a Tenderer fails to submit any of the documents as stipulated in Clause 6(b) of the Terms of Tender before the Tender Closing Date, its Tender will not be considered further.**

Stage 2 – Essential Requirement Assessment

3. Tenders passing Stage 1 will be checked to determine its compliance with all the essential requirements set out in Clause 3 of Terms of Tender. **Failure to comply with any of the essential requirements as stipulated in Clause 3 of the Terms of Tender will render the tender invalid and the tender will not be considered further.** Only Tenders which have passed this Stage 2 assessment will proceed to Stage 3 assessment.

Stage 3 – Technical Assessment

4. Tenders which have passed Stages 1 and 2 assessments will be further evaluated for their technical information as detailed in the marking scheme with assessment criteria set out in the table below. The maximum total technical marks which can be awarded to a Tenderer is 100 and are divided into seven assessment criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. However, there are passing marks of 4, 3 and 2 for Assessment Criteria 1, 2 and 3 respectively, which are 20% of the maximum mark of the respective Assessment Criteria. **Tenders that do not attain any of the aforementioned said passing marks for Assessment Criterion 1, 2 or 3 will not be considered further.**
5. The submission for Section (A) Execution Plan, excluding related annexes and documentary proof, **shall not be more than [100] pages in A4 size paper for text** (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit will be considered in the tender evaluation but 0.5 mark will be deducted from the total technical marks for each excessive page, subject to a maximum of [5] marks.

Assessment Criteria	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Marks Scored (M x S)	Passing Mark
			5	4	3	2	1	0		
I.	Technical Attributes									
(A)	Execution Plan									

Assessment Criteria		Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Marks Scored (M x S)	Passing Mark
				5	4	3	2	1	0		
(1)	Work Plan (See Notes 2 and 5)	20	4								4
(2)	Management Plan (See Notes 3 and 5)	15	3								3
(3)	Contingency Plan (See Notes 4 and 5)	10	2								2
(4)	Innovative suggestions (See Note 6)	12	6								–
Sub-total for (A)		57									–
(B) Experience, Certification and Qualification											
(5)	Tenderer's experience in the provision of Security Guard services (See Note 7)	8	2								–
(6)	Valid and relevant ISO and/ or OHSAS certifications(see Note 8)	3	1								–
(7)	Qualification and experience of contract manager(s)(see Note 9)	3	1								–
Sub-total for (B)		14									–
II. Labour Benefits											
(8)	Proposed monthly wages for Security Guards (See Note 10)	25	N.A.								–
(9)	Proposed daily maximum working hours for Security Guards (See Note 11)	4	4								–
Sub-total for (C)		29									–
Total Technical Mark		100									–

6. A tender which has passed Stage 3 assessment and has achieved the required passing marks for Assessment Criteria 1, 2, and 3 shall be considered as a “conforming tender”. A maximum weighted technical score of 50 will be allocated to the conforming tender with the highest total technical marks, while the weighted technical score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Technical Score} = 50 \times \frac{\text{Total technical mark of the conforming tender being assessed}}{\text{The highest total technical mark among all conforming tenders}}$$

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

Explanatory Notes for Stage 3 – Technical Assessment

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

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

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

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

For Assessment Criteria (4)

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

For Assessment Criterion (5)

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

For Assessment Criterion (6) & (7)

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

For Assessment Criterion (8)

See Note 10 below.

For Assessment Criterion (9)

Standard score of 1 or 0 will be awarded.

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

The Work Plan shall cover the following items:

- (a) a staff deployment plan setting out the distribution and responsibilities of all the staff members of the proposed workforce in meeting the performance requirements of the Contract;
- (b) daily/weekly/monthly work plans in meeting the work schedules and the performance requirements of the Contract in respect of the security services;
- (c) daily/weekly/monthly work plans in meeting the work schedules and the performance requirements of the Contract in respect of the irregularities finding and handling;
- (d) safety measures adopted for the performance of the Contract;
- (e) details of the arrangement of leave relief to cover staff on leave including the minimum qualification and experience requirement for the leave relief staff; and
- (f) details of the arrangement during transition-in and transition-out periods including implementation plan and timeline in arrangement of taking over/handing over of duties at pre-commencement and upon expiry of the Contract.

Note 3: for Assessment Criterion (2) – Management Plan

The Management Plan shall cover the following items:

- (a) an organisation chart showing the line of command and division of labour of the proposed workforce;
- (b) details of the professional qualifications and experience of the key personnel including Contract Manager, Executive Officer, etc. proposed by the Tenderer for the Contract;
- (c) details of the mechanism setting out the monitoring and appraisal system on daily supervision of the workers for ensuring delivery of quality service, dealing with unsatisfactory standard of performance/ conduct/ discipline of the workers and preventing recurrence of sub-standard services; and
- (d) details of the training programmes provided to staff for the performance of the Contract.

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

The Contingency Plan shall cover the following items:

- (a) details of the operational strategy during contingency or emergency situations including availability of additional resources, provision of emergency contact numbers/hotlines, commitment to mobilize additional manpower and redeployment of equipment within short notice, etc.;
- (b) a risk management plan setting out the deployment of resources and manpower to the spot speedily and responsively including the response time to each emergency situation for handling emergency situations.; and
- (c) details of mechanism for maintaining close communication with the Government Representatives when there are emergency situations.

Note 5: for Assessment Criteria (1) to (3)

- (a) Standard scores will be given to Assessment Criteria (1) to (3) in accordance with the following six-grade approach –
- 5** The proposed plan is **practical** with **detailed information** on **all** items as well as **offers exceeding the contract requirements** on **over half** of the items of the respective plan as required in Notes 2 to 4 above.
 - 4** The proposed plan is **practical** with **detailed information** on **all** items as well as **offer exceeding the contract requirements** on **one** of the items of the respective plan as required in Notes 2 to 4 above.
 - 3** The proposed plan is **practical** with **detailed information** on **all** items of the respective plan as required in Notes 2 to 4 above.
 - 2** The proposed plan is **practical** with **detailed information** on **over half** of the items and brief information covering the remaining items of the respective plan as required in Notes 2 to 4 above.
 - 1** The proposed plan is **practical** with **brief information** on **all** items of the respective plan as required in Notes 2 to 4 above.
 - 0** The proposed plan is **impractical** or **fails** to provide information on **any** of the items of the respective plan as required in Notes 2 to 4 above.
- (b) The meaning of “over half” of the items of the respective plan are as below –

	Work Plan	Management Plan	Contingency Plan
Over half	4	3	2

- (c) For the avoidance of doubt, “Offers exceeding the contract requirements” to be assessed under Assessment Criteria (1) to (3) will normally not alter the existing or conventional mode of service delivery, e.g. conducting more frequent inspection in addition to the requirements set out in the contract. “Innovative suggestions” to be assessed under Assessment Criteria 4 are suggestions that are not featured in the existing or conventional mode of service delivery.
- (d) All practical information included in the proposed plans submitted by the successful Tenderer under Assessment Criteria (1) to (3) shall form part of the Contract.

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

- (a) Marks will be given if the proposed innovative suggestions are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (b) Innovative suggestions may cover, but not limited to, the following items – Adoption of technology to enhance service delivery in security guard services e.g. mobile surveillance cameras, etc.
- (c) Standard scores will be given in accordance with the following rule:
- 2** **More than one (1) practicable** innovative suggestions are proposed covering any of the items as required in (b) of this Note above.
 - 1** **One (1) practicable** innovative suggestion is proposed covering any of the items as required in (b) of this Note above.
 - 0** **No practicable innovative suggestion is proposed.**
- (d) Para. (c) of Note 5 above is also applicable to this Note.
- (e) Tenderers shall highlight the proposed innovative suggestions and explain clearly what benefits/positive values, including items in (b) above, their proposed innovative suggestions can bring about in their submissions to

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facilitate tender evaluation.

- (f) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original tender submissions.
- (g) All practicable innovative suggestions accepted by the Government shall form part of the Contract.

Note 7: for Assessment Criterion (5) – Tenderer’s experience in the provision of Security Guard services

(a) Assessment will be based on the aggregate number of years of experience in providing security guard services to commercial, residential, government or educational premises in the **past ten (10) years** immediately preceding the original Tender Closing Date. Only experience for providing security guard services (each not less than one year) for a premises having a total Gross Floor Area (GFA) of **no less than 25 000 m²** shall be counted.

(b) Standard scores will be given to Assessment Criterion (5) in accordance with the following five-grade approach –

A Tenderer’s experience under different contracts with overlapping periods is to be counted in accordance with the following example: -

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	16.4.2003-15.4.2005	16.4.2003-15.4.2005	731 days
Contract B	1.10.2004-31.3.2006	16.4.2005-31.3.2006	350 days
Contract C	1.1.2005-31.12.2006	1.4.2006-31.12.2006	275 days
Contract D	1.5.2005-30.4.2007	1.1.2006-30.4.2007	484 days
		Total:	1,840 days

(c) Standard scores will be given to Assessment Criterion (5) in accordance with the following five-grade approach:

- 4** An aggregate of five (5) or more years’ experience.
- 3** An aggregate of four (4) to less than five (5) years’ experience.
- 2** An aggregate of three (3) to less than four (4) years’ experience.
- 1** An aggregate of two (2) to less than three (3) years’ experience.
- 0** An aggregate of less than two (2) years’ experience,
or failing to produce documentary proof to support its claim of experience.

Note 8: for Assessment Criterion (6) – Accreditation of Valid and Relevant ISO and / or OHSAS Certifications

- 3** Accredited to ISO 9001, ISO 14001 and OHSAS 18001 on provision of security / security guard services and supported with documentary proof of all certificates which are valid as at the Tender Closing Date.
- 2** Accredited to any two of ISO 9001, ISO 14001 and OHSAS 18001 on provision of security / security guard services and supported with documentary proof of all certificates which are valid as at the Tender Closing Date.
- 1** Accredited to any one of ISO 9001, ISO 14001 and OHSAS 18001 on provision of security / security guard services and supported with documentary proof of the certificate which is valid as at the Tender Closing Date.
- 0** Not accredited to ISO 9001, ISO 14001 and OHSAS 18001 on provision of security / security guard services as at the Tender Closing Date or failed to provide valid documentary proof.

Note 9: for Assessment Criterion (7) – Qualification and Experience of Contract Manager(s)

- 3** Manager(s) possessing at least two (2) years cumulative* managerial experience and all of the following qualifications with documentary proof which are valid as at the Tender Closing Date
- having served in the military or disciplinary services;
 - certificate of attending talk/course relating to fire fighting skills; and
 - Diploma in Safety & Health issued by a registered post-secondary institution awarded after its registration, or equivalent or valid first aid certificate.
- 2** Manager(s) possessing at least two (2) years cumulative* managerial experience as at the Tender Closing Date and any two of the above three qualifications with documentary proof.
- 1** Manager(s) possessing at least two (2) years cumulative* managerial experience as at the Tender Closing Date and any one of the above three qualifications with documentary proof.
- 0** Manager(s) possessing less than two (2) years cumulative* managerial experience as at the Tender Closing Date or unable to provide documentary proof of possessing any of the above three qualifications.

- [Remarks : (i) Standard score will be awarded according to the aggregate qualifications possessed by any manager(s) who has/have at least two (2) years cumulative* managerial experience.
- (ii) * All experience obtained is to be counted in days, i.e. “an aggregate of at least two (2) years” is equivalent to have accumulated not less than 730 (i.e. 365 x 2) days of experience (e.g. if the manager obtained experience during 1.1.2012 to 31.5.2013 in Company A and 1.6.2015 to 31.12.2016 in Company B, the cumulative experience will be counted as 3 years.)]

Note 10: for Assessment Criterion (8) – Proposed monthly wages for Security Guards for this Contract

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

- P = Proposed monthly wage for Security Guards of the conforming tender being assessed
- H = The highest proposed monthly wage for Security Guards among all conforming tenders
- C = **\$13,950**, i.e. the prevailing monthly wage rate of Statutory Minimum Wage (“SMW”) plus paid rest days for Security Guards derived on the basis of 31 days (i.e. twelve (12) hours of work per day and 27 working days plus four (4) paid rest days per month)

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

Illustrative Example for Tenderer's Proposed Monthly Wage for Security Guards	Marks Scored (Example)
P = HK\$14,500 H = HK\$15,000 C = HK\$13,950	$\begin{aligned} \text{Marks scored} &= \\ & 25 \times \frac{14,500 - 13,950}{15,000 - 13,950} \\ &= 13.10 \end{aligned}$

- (b) If H is equal to C, no marks will be given.
- (c) If a Tenderer fails to indicate any monthly wage or P is each less than C, the tender will be evaluated but the respective P₁, P₂ or P₃ will be deemed to be equal to C for the purpose of tender evaluation. Such presumption will be revoked immediately if the Tenderer fails to confirm their abidance by the SMW upon request by the Government Representative at any time before the tender exercise is completed. If the Tenderer offers a higher amount than the SMW in a subsequent clarification in writing, the tender will only be assessed on the basis that the monthly wage offered by the Tenderer is same as the SMW. However, the higher wage offered by this

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Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

- (d) The marks scored will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 4 above.

Note 11: for Assessment Criterion (9) – Proposed daily maximum working hours for Security Guard

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

- 1** Proposed daily maximum working hours for Security Guard are **twelve (12) hours** excluding meal break (i.e. net total) **or less**.
- 0** Proposed daily maximum working hours for all Security Guard are **more than twelve (12) hours** excluding meal break (i.e. net total).

- (b) If a Tenderer fails to indicate any daily maximum working hours, the tender will be evaluated but the respective working hours proposed will be deemed to be more than twelve (12) hours excluding meal break for the purpose of tender evaluation. If the Tenderer offers the daily maximum working hours of twelve (12) hours or less in a subsequent clarification in writing upon request by the Government Representative at any time before the tender exercise is completed, the tender will only be assessed on the basis that the daily maximum working hours offered by the Tenderer is more than twelve (12) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

Stage 4 – Price Assessment

7. Upon completion of Stage 3 assessment, price assessment will be conducted on the basis of the Total Estimated Contract Value as quoted in **Appendix C**.
8. A maximum weighted price score of 50 will be allocated to the conforming tender with the lowest Total Estimated Contract Value, while the weighted price score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Price Score} = 50 \times \frac{\text{The lowest Total Estimated Contract Value among all conforming tenders}}{\text{Total Estimated Contract Value of the conforming tender being assessed}}$$

[Note: The weighted price score of each tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 4 above.]

Stage 5 - Calculation of Combined Score

9. The combined score of a conforming tender will be determined by the following formula –

$$\text{Weighted Technical Score} + \text{Weighted Price Score}$$
10. Normally, the tender with the highest combined score, will be recommended for acceptance subject to the requirement that the Government is satisfied that the recommended tenders is fully (including technically, commercially and financially) capable of undertaking the Contract, and that the recommended tender is the most advantageous to the Government in accordance with the tender provisions. If two or more tenders obtain the same highest combined score, the tender which obtains the highest weighted technical score will be recommended for acceptance.

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Appendix J

To: Director of Agriculture, Fisheries and Conservation

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.

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3. Clause 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 sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 8(a) of the Terms of Tender, the Government may exercise any of the rights under Clauses 8(c) to 8(e) of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

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6. Under the Competition Ordinance (Cap. 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

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 :

Appendix K

Management Service Plan and Innovative Suggestions (Executive Plan)

(please complete and insert into the “Technical Proposal Envelope”)

[Please refer to Clause 6(e) of the Terms of Tender.]

(a) Management Plan

Name of Authorized Person in Block Letter : _____

Name of Tenderer : _____

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

Appendix K

Execution Plan

(please complete and insert into the “Technical Proposal Envelope”)

[Please refer to Clause 6(f) of the Terms of Tender.]

(b) Work Plan

Name of Authorized Person in Block Letter : _____

Name of Tenderer : _____

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

Appendix K

Execution Plan

(please complete and insert into the “Technical Proposal Envelope”)

[Please refer to Clause 6(f) of the Terms of Tender.]

(c) Contingency Plan

Name of Authorized Person in Block Letter : _____

Name of Tenderer : _____

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

Appendix K

Execution Plan

(please complete and insert into the “Technical Proposal Envelope”)

[Please refer to Note 6 of the Appendix I.]

(d) Innovative Suggestions

Name of Authorized Person in Block Letter : _____

Name of Tenderer : _____

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

Terms of Tender – Appendix K

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PART 2
CONDITIONS OF CONTRACT

1. Contract Period

- (a) The Contractor shall provide the Services to the Government, for a period of thirty six (36) months from the Commencement Date subject to any provision for sooner determination or extension of the Contract as is provided for in the Contract.
- (b) Notwithstanding Clause 1(a) above, the Government may by serving a written notice on the Contractor of no less than one (1) month prior to the expiry of the Contract Period at its sole discretion extend the Contract Period for a continuous period of not more than six (6) months, commencing immediately upon expiry of the Contract Period on the same terms and conditions herein except this Clause 1(b).
- (c) The Contractor shall continue to perform the Contract throughout the extension period under Clause 1(b) when Government exercises its right to extend the Contract.

2. Services to be Provided and Variation of Services

- (a) The Contractor shall during the Contract Period provide the Services to the Government in accordance with the terms and conditions of the Contract (including but not limited to the Service Requirements as laid down in Contract Schedule 1, the Conditions of Contract and the Contract Schedules) at such time and in such matter as the Government may specify from time to time and to the satisfaction of the Government Representative.
- (b) The Contractor must observe and comply with any directions or instructions given by the Government Representative.
- (c) Each Contractor's Employee must devote all of his or her respective time, attention and energy to carrying out of the Services and subject to any directions as may be given by the Government from time to time.
- (d) The Contractor's Employees may be required to work over-time or in places other than the Contract Venue as may be directed by the Government Representative or as driven by the demands of work, urgency of task or operational needs.
- (e) The Contractor must not extend the Services beyond the requirements specified in the Contract except as directed in writing by the Government Representative. However, the Government Representative may at any time during the Contract Period by notice in writing require the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor must carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Contract.
- (f) Where a variation has been made to the Contract, the amount to be added to or deducted from the Monthly Fee in accordance with that variation is determined in accordance with the rates specified in Contract Schedule 3 (Price Schedule) so far as the same may be applicable. Where rates are not contained in Contract Schedule 3 (Price Schedule), or are not applicable, such amount will be such sum as is reasonable in the circumstances.

- (g) Without prejudice to Clauses 2(e) and 2(f) above, the Government may at any time during the Contract Period: -
- (i) by giving three (3) days' notice in writing require the Contractor to provide additional Security Guard at such places, in such manner and at such times as the Government Representative may specify; and
 - (ii) by giving two (2) days' prior verbal notice (to be properly documented subsequently) to the Contractor, require the Contractor to provide additional Security Guard to carry out emergency or other special services at any location in the Contract Venue, for such duration and in such manner as may be directed by the Government Representative and the Contractor shall provide such Services accordingly.
- (h) The Government will pay for the Services provided by the Contractor including those provided under Clause 2(g) above in accordance with the rates specified in Contract Schedule 3 (Price Schedule).

3. Contractor's Acknowledgement, Obligations and Contract Performance

- (a) The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Service Requirements and other provisions of the Contract.
- (b) The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract. Save to the extent expressly set out in the Contract, the Contractor does not expect, and the Contractor agrees that it is unnecessary for, the Government to do anything to facilitate or assist the Contractor's provision of the Services and the performance of its obligations under the Contract.
- (c) The Contractor shall perform its obligations under the Contract:
- (i) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
 - (ii) in accordance with Good Industry Practice.
- (d) The Contractor shall comply with all applicable laws and regulations. In particular, the Contractor shall:
- (i) comply with the Employment Ordinance (Cap. 57) and the Immigration Ordinance (Cap. 115). 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 (Cap. 485); and
 - (iii) comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509) 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.
- (e) The Contractor shall:
- (i) duly and unconditionally secure, obtain and maintain throughout the Contract Period all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are or may be required or necessary to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where the Contractor's procedures so require, the consent of its parent company) ("Consents");
 - (ii) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Contract Period; and
 - (iii) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.
- (f) The Contractor shall, through the Government Representative, keep the Government informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the Government Representative.
- (g) The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.
- (h) To the extent that the Government considers it reasonably necessary and that the information (in whatever media) is in the possession of the Government and is not subject to any confidentiality restriction, the Government may at the request initiated by the Contractor (but not otherwise required in the Contract), provide all such information for the Contractor's

guidance in the execution of the Contract free of charge provided such request from the Contractor is made in a timely manner to avoid any delay on the part of the Contractor to perform the Contract. If required by the Government, the Contractor shall return all such information (in whatever media) to the Government upon the expiry or early termination of the Contract or at the time specified by the Government.

- (i) The Contractor shall be responsible for the completeness and accuracy of all drawings, documents and information supplied by the Contractor to the Government in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the Government in accordance with Clause 16(b) of the Conditions of Contract in connection with, any discrepancies, errors or omissions therein.
- (j) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the Government free of charge but shall be returned to the Government on completion of the Contract.
- (k) The Contractor acknowledges that it does not have the right to provide the Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

4. **Warranties and Representations**

- (a) The Contractor warrants, represents and undertakes that:
 - (i) the Contractor and its sub-contractors, their employees and agents shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
 - (ii) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
 - (iii) the Services shall conform in all respects to the Service Requirements 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 all its obligations under the Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, its authorised users, assigns and successors-in-title in accordance with Clause 17 of the Conditions of Contract;

- (vi) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
 - (vii) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
 - (viii) throughout the Contract Period, 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;
 - (ix) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (x) throughout the Contract Period, 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; and
 - (xi) throughout the Contract Period, 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 4(a) above and in Clause 17(a) of the Conditions of Contract and in other provisions of the Contract (including without limitation the Conditions of Contract and Clause 8(a) of the Terms of Tender), and those made by the Contractor in its Tender for the Contract including all Schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as "Warranties", and each, a "Warranty".
- (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.

5. Contractor's Obligations Relating to Employment of Contractor's Employees

- (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. They shall include but not limited to the following:
- (i) At least one (1) Contract Manager; and
 - (ii) At each location as specified in Contract Schedule 2, sufficient number of Security Guards as specified in Clause 4 of Contract Schedule 1.
- (b) The Contractor shall ensure that they all fulfill the respective qualifications to carry out their responsibilities and duties as stipulated in Clause 3 of Contract Schedule 1.
- (c) The Contractor shall pay or shall ensure to be paid to each Security Guard during the Contract Period a wage not less than: -
- (i) the monthly wage as specified in Contract Schedule 4; or
 - (ii) a monthly wage 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.
- (d) The Contractor shall promptly pay or shall ensure prompt payment of wages to the Contractor's Employees in accordance with the Employment Ordinance (Cap. 57), failure to do so will entitle the Government to terminate the Contract. The Contractor shall use autopay for payment of wages to the Security Guard (payment by cheque is only allowed upon termination of employment contract and is made at request of the Security Guard concerned).
- (e) Without the prior approval of the Government Representative, the Contractor shall not allow any Security Guard to work each day for more than the maximum allowable working hours per day as specified in the Standard Employment Contract.
- (f) The Contractor shall allow each Security Guard not less than one hour meal break each day. The period of meal break of each Security Guard shall be specified in the Standard Employment Contract.
- (g) The Contractor shall ensure and procure that its contracts with its permitted sub-contractor shall contain a clause to the same effect as this Clause. The Contractor shall ensure that any default of the said clause by its permitted sub-contractor shall be readily remedied. Any failure of its permitted sub-contractor to observe the aforesaid contractual clause shall be deemed to be a breach of the Contract on the part of the Contractor under this Clause entitling the Government to terminate Contract forthwith.

6. Performance of Contractor's Employees

- (a) The Contractor shall ensure the good conduct of each of the Contractor's 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 employee : –

- (i) is fit for his or her tasks;
 - (ii) maintains the standard of discipline, courtesy, behaviour and consideration in performing the Services;
 - (iii) does 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 Clause 4 of Contract Schedule 1 as applicable to the post set out therein for which the Contractor's Employee 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 or agents engaged or deployed for the purpose of the Contract.
- (i) Any employee or agent 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 Contract Venue of this Contract.
- (b) The Government shall in no circumstances be liable to the Contractor, its employees and agents 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 or agents.
- (c) 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 Security Guard in performing the Services.
 - (v) if required by the Government Representative, deliver to the Government within such

period as specified by the Government Representative, copies of record showing in detail the Service performed each day for the Government's retention;

- (vi) 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
- (vii) if required by the Government Representative, prepare a written report on any aspect of the Services as instructed by the Government Representative.

7. Personnel Records

- (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 enter into written Standard Employment Contract (if the contractual period exceeds seven (7) days) with accompanying guidance notes with each and all of the Employees in accordance with Clause 4(e) above, 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.
- (c) 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.
- (d) 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.
- (e) Any breach of the undertaking in sub-clause (a) 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) If requested by the Government Representative, the Contractor shall produce evidence to satisfy the Government Representative that the terms and conditions specified in the Standard Employment Contracts have been complied with. The Government Representative may at any time during the Contract Period approach the Contractor's Employees to verify the

information provided by the Contractor. If requested by the Government Representative, the Contractor shall make arrangement for any or all of the Contractor's Employees to meet the Government Representative or the representatives of the Labour Department.

- (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.
- (i) All records stated in this Clause shall be readily available for inspection by the Government Representative at any time.

8. Debarment Mechanism and Demerit Point System

- (a) If the Contractor or any sub-contractor engaged by 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/sub-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) The Contractor shall be fully liable for acts of default or neglect of any sub-contractor or employees of the sub-contractor. If any sub-contractor engaged by the Contractor to perform this Contract 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 each of the Contractor and the sub-contractor. Both the Contractor and the sub-contractor concerned will each receive one demerit point for the breach.
- (d) Each default notice issued under Clause 8(b) or 8(c) above attracts one Demerit Point. The Demerit Point(s) will be taken into account in the assessment of the Contractor/sub-contractor's offer (as the case may be) in future tender or quotation exercises.

9. Performance Monitoring of the Contractor

Without prejudice to Clause 8 hereof, the performance of the Contractor shall be monitored and may be taken into account in the tender evaluation of the Contractor's future bids for Government service contracts.

10. Illegal Workers

In the performance of the Contract, the Contractor shall not employ any person who may not lawfully undertake employment in Hong Kong. Any employment by the Contractor in breach of this Clause shall entitle the Government to terminate the Contract pursuant to Clause 20 hereof.

11. No Assignment and Sub-contracting

- (a) This Contract is personal to the Contractor. The Contractor shall not sub-contract, assign or otherwise transfer or dispose of the Contract or any part thereof any rights and obligations hereunder without the prior written consent of the Government. When giving any consent hereunder, the Government Representative shall be entitled to impose such conditions, restrictions or stipulation as he consider necessary.
- (b) The sub-contracting of any part of the Services shall not relieve the Contractor from any liability or obligation under the Contract. The Contractor shall be responsible for the acts, defaults and neglects of any sub-contractor or agent, employees or workmen of any sub-contractor or agent as fully as if there were the acts, defaults and neglects of the Contractor.

12. Inspection and Rejection

- (a) In connection with the carrying out of the Services, the Government Representative shall at any time be entitled to inspect the performance of the Contractor. The Government Representative shall be entitled to interview any member of the Contractor's Employees or sub-contractor (if any) and to inspect all records relevant to the Services and to obtain copies of such records from the Contractor free of charge.
- (b) The Services performed before payment shall be subject to inspection by the Government Representative who may withhold payment unless the Services have been performed in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative. The Government Representative shall have the right not to accept unsatisfactory performance of the Services and suspend payment until the Contractor has rectified the defects.
- (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 forty-eight (48) 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 12(c) or fails to provide required number of staff in accordance with the Service Requirements in Contract Schedule 1, 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.

13. 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 and the Contractor having provided to the Government Representative a monthly statement, in a form as that provided in **Annex A to the Conditions of Contract**, certified by a certified public accountant (practicing) or a corporate practice registered under the Professional Accountants Ordinance (Cap. 50), the Government shall pay to the Contractor the Monthly Fee in accordance with the following formula: -

Monthly Fee payable to Contractor =						
(Monthly Rate)	+	(total charges for additional Services/additional Security Guard provided by the Contractor, under Clause 2(g) of the Conditions of Contract, calculated on the basis of the applicable rates of charges as set out in Contract Schedule 3)	-	(Total deductions calculated under Clause 14 of the Conditions of Contract)	-	(such other sums the Government is entitled to deduct pursuant to other provisions of the Contract)

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 tools 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; the fees payable to any sub-contractors or agents in connection with the performance of the Services.
- (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 shall 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.
- (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 28. 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.

- (f) Separate invoices for Item 1 and Item 2 stipulated in Part 3 of the Service Requirements in Contract Schedule 1 shall be submitted by the Contractor to the Government representatives at the following addresses for arranging payment:

Item 1 :

Tai Lung Experimental Station, Lin Tong Mei, Sheung Shui, N. T.
Attn : Senior Field Officer/Plant Protection

Item 2 :

Tai Lung Construction Depot, Tai Lung Experimental Station, Sheung Shui, N. T.
Attn : Clerk of Works/ Construction & Maintenance

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

14. Deduction in Monthly Fee

- (a) The Contractor shall ensure the Security Guards employed for the work are not less than the number stipulated in Clause 4 of the Service Requirements in Contract Schedule 1. 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) for each Contractor's Employee absent shall be calculated in the following sub-Clauses.

$$\text{i.e. } \textit{Hourly Rate as quoted in Contract Schedule 3} \quad X \quad \textit{Duration of absence (in hours)}$$

- (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 Security Guard is found to be less than that specified in Clause 4 of the Service Requirements in Contract Schedule 1;

- (ii) the Security Guard 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 duties;
- (iii) Security Guard fails to obey instructions, supply required equipment, dress in proper attire, and any other minor infringement of his or her specified duties;
- (iv) a staff's absence from duty exceeding 15 minutes will be counted as one hour. Deduction shall be calculated in terms of one hour unit. The deduction sum (to be rounded to the nearest dollars) shall be calculated in terms of one hour unit.

In case of dispute, the decision of the Government Representative shall be final and binding.

15. Suspension of Services

The Services at the Contract Area shall be suspended as instructed by the Government Representatives if Tropical Cyclone Warning Signal No. 8 or above, or Black Rainstorm Warning Signal is hoisted by Hong Kong Observatory during the service hour. Deduction of fee in accordance with Clause 14 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.

16. Liability and Indemnity

- (a) Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of: -
 - (i) any loss of or damages to any of the Contractor's property or that of the Contractor's Employees, sub-contractors or agents however caused (whether by any negligence of the Government or any of its employees or agents or otherwise); and
 - (ii) any injury to or death of any of the Contractor's Employees or those of its sub-contractors or agents save and except any such injury or death caused by the negligence of the Government or any of its employees or agents.
- (b) Without prejudice to any other provision of the Contract, the Contractor must indemnify each of the Government and its employees or agents (each an "Indemnified Person") against
 - (i) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part) actions, investigations, demands, proceedings, or judgments, joint or several, threatened, brought, or established against an Indemnified Person ("Claims"); and
 - (ii) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage

sustained by or an injury to or death of any person in consequence of any negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with or out of:

- (i) the negligence, recklessness, tortious acts or willful misconduct of the Contractor, the Contractor's Employees or any of the Contractor's sub-contractors or agents;
 - (ii) the breach or the non-performance or non-observance of any of the provisions, warranties and undertakings, obligations or conditions of the Contract by the Contractor, the Contractor's Employees or any of the Contractor's sub-contractors or agents;
 - (iii) any default, unauthorized act of the Contractor, the Contractor's Employees or any of the Contractor's sub-contractors or agents; or
 - (iv) any loss, damage, injury or death referred to in Clause 16(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);
 - (v) 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, agents and sub-contractors;
 - (vi) the non-compliance of any applicable laws and any requirement or regulation of any competent authority or agency in connection with the performance of the obligations under the Contract by the Contractor, the Contractor's Employees or any of the Contractor's sub-contractors or agents.
- (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 (Cap. 71).
- (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, or in supervising or controlling the Contractor's operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Contractor, the Contractor's Employees or any of the Contractor's sub-contractors or agents.

17. Intellectual Property Rights

- (a) The Government shall be the exclusive owner of the Materials. Except for the Third Party Materials, all the Intellectual Property Rights in the Materials shall vest in the Government immediately upon creation. Subject to Clause 17(c) below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.
- (b) The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. "Use" includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Cap. 528).

- (c) If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract (“Third Party Materials”), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Cap.528) the Third Party Materials.
- (d) The Contractor warrants that:
- (i) prior to the use and incorporation of the Third Party Materials into the Materials or in providing the Services, the Contractor shall have obtained from the third party Intellectual Property Rights owners the grant of all necessary clearances and licences for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;
 - (ii) the provision of the Materials, Services and Third Party Materials by the Contractor and the use or possession by the Government, its authorised users, assigns and successors-in-title of the Materials and the Third Party Materials for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights or any other rights of any person; and
 - (iii) the exercise of any of the rights granted under the Contract by the Government, its authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights or any other rights of any person.
- (e) The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of the Materials or upon the grant of the licence to the Government, its authorised users, assigns and successors-in-title or upon the delivery of the Third Party Materials to the Government (as the case may be).
- (f) The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licences, documents and instruments and do or procure the doing of any further things as may be required by the Government to give full effect to this Clause and shall provide all such assignments, deeds, licences, documents and instruments to the Government within fourteen (14) days from the date of the

Government's written request or such longer period as may be agreed by the Government in writing.

- (g) The provisions of this Clause 17 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

18. Public Liability Insurance

- (a) The Contractor shall at its own costs take out and maintain and renew upon expiry, a public liability insurance policy for this Contract throughout the Contract Period with an indemnity amount of not less than Ten Million Hong Kong Dollars (HK\$10,000,000) per incident and for an unlimited number of claims arising during the Contract Period from injury to or death of any persons and for loss of 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 or any of its sub-contractors or agents.
- (b) The public liability insurance policy shall: -
 - (i) be for the benefit and in the joint names of the Contractor and the Government; and
 - (ii) contain a clause whereby the insurer shall irrevocably and unconditionally waive any right of subrogation or any other right or claim against the Government.
- (c) The insurance policy shall be issued by one or more insurance companies authorized to carry on the relevant insurance business under the Insurance Ordinance (Cap. 41).
- (d) Upon issuance of the public liability insurance policy, the Contractor shall forthwith furnish a copy each of the same to the Government Representative for keeping.
- (e) Upon expiry of the public liability insurance policy during the Contract Period, the Contractor shall renew the same on and subject to the original terms and conditions or otherwise such revised terms and conditions as the Government Representative may stipulate. Upon issuance of the renewed public liability insurance policy, the Contractor shall forthwith furnish a copy of the same to the Government Representative for keeping.
- (f) Under no circumstances whatsoever shall the Government be responsible for the premium payable under the public liability insurance policy or the premium payable for the renewal thereof.
- (g) The Contractor shall conform to the terms and conditions of the public liability insurance policy and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby the public liability insurance policy shall be rendered void or voidable, or which would otherwise amount to a breach of the public liability insurance policy. The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Contractor to observe and comply with this Clause.

19. Set Off

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

at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Government to the Contractor under this Contract or any other contracts.

20. Contract Deposit

- (a) The Contractor shall have before the commencement of the Services deposited with the Government a Contract Deposit in cash, cheque or cashier's order or in the form of a banker's guarantee issued by a bank that holds a valid banking licence under the Banking Ordinance (Cap. 155) and on terms approved by the Government the Contract Deposit by way of security for the due and proper performance of and observance by the Contractor of the terms and provisions of the Contract.
- (b) The Contract Deposit if in the form of cash, cheque or cashier's order, shall be retained by the Government, or if in the form of a banker's guarantee, shall come into effect on the date of the commencement of the Contract Period and remain in force until the date specified in (i) or (ii) below, whichever is applicable and the later:
- (i) the date falling six (6) months after the expiry of the Contract Period or sooner termination of the Contract; or
- (ii) upon early termination or expiry of the Contract Period, there remains any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding claim or right of the Government, the date on which all such obligations, liabilities, rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than twenty-four (24) months after the expiry or early termination of the Contract Period, whichever is the later. The aforesaid period (depending whichever is applicable) is hereinafter referred to as "Guarantee Period".
- (c) If the Contractor shall be in breach of any provisions of the Contract, the Government may, without prejudice to any other rights the Government has or may have against the Contractor, deduct from the Contract Deposit (and in the event that the Contract Deposit is paid by way of banker's guarantee, to call on the banker's guarantee the amount) of any and all costs, losses, damages or expenses, incurred or suffered by the Government as a result of (whether direct or indirect) a breach of the Contract by the Contractor, and any sums that are due to the Government under the Contract whether or not demand has been made.
- (d) The Contract Deposit (whether paid in cash, cheque or cashier's order or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owed by the Contractor to the Government.
- (e) 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 expiry or termination of the Contract, the Contractor shall, within fourteen (14) days of such deduction, 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 of and form part of the Contract Deposit. If the Contractor is

required to provide a further banker's guarantee under this Clause, the further deposit must comply with the requirements in Clause 12(c) of the Terms of Tender and shall come into effect on the date of its execution.

- (f) If the Contractor fails to replenish the Contract Deposit in accordance with sub-clause (e) above, without prejudice to any other rights and remedies which the Government has or may have against the Contract, the Government may terminate the Contract forthwith by notice in writing to the Contractor.
- (g) Only upon the expiry of the Guarantee Period, the Contract Deposit (if in the form of cash and if any is remaining) will be refunded to the Contractor without interest; or in the form of banker's guarantee shall be discharged or released.

21. Termination of Contract

- (a) Without prejudice to other provisions of the Contract and to any other rights, actions or remedies available to the Government, if the Contractor or any sub-contractor engaged by the Contractor (where applicable) to perform this Contract –
 - (i) is convicted of any of the Relevant Offences arising from this Contract; or
 - (ii) has accumulated three or more Demerit Points arising from this Contract over a rolling period of 36 months,

the Government may terminate the Contract immediately.

- (b) In addition to sub-clause (a) above and without prejudice to any rights and claims of the Government under the Contract or otherwise at law, 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 carry out the whole or any part of the Services or to observe or perform any of the terms and conditions of the Contract, or to pay any of the sums payable by the Contractor under the Contract, or is in breach of its warranties or undertakings under the Contract or (in the case of a breach capable of being remedied) the Contractor has failed within fourteen (14) days or such other period as provided in this Contract or as the Government may allow after the receipt of a request in writing from the Government Representative (such request to contain a warning of the Government's intention to terminate the Contract) so to do, to remedy the breach; or
 - (ii) the Contractor shall pass a resolution or the court shall make an order for its liquidation or a petition is filed for the winding up of the Contractor's business otherwise than for the purpose of a reconstruction or amalgamation that is previously approved by the Government in writing or the Contractor becomes insolvent or makes any composition or arrangement with creditors; or
 - (iii) a receiver has been appointed over any of the Contractor's assets or a distress or execution shall be levied or enforced upon or taken out against any of the Contractor's chattels, properties or assets and shall not be discharged or stayed or in good faith contested by action within thirty (30) days thereafter; or

- (iv) the Contractor stops payment to creditors generally or is unable to pay its debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or shall cease or threaten to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction); or
 - (v) the Contractor assigns or purports to assign any or all the burden or benefits of this Contract without the prior written consent of the Government; or
 - (vi) the Contractor is in material breach of and/or has committed repeatedly breaches of any of its obligations under the Contract; or
 - (vii) any warranties, undertakings, representations or information made or given by the Contractor to the Government in connection with the Tender or the Contract is incomplete, false or misleading; or
 - (viii) the Contractor is found to have made false declaration or untruthful revelation in, including but not limited to, its record of conviction of offences under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115), the Criminal Procedure Ordinance (Cap. 221) or the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as stated in the tender submission by the Contractor during the tendering process; or
 - (ix) the Contractor is found to have employed any person who is forbidden under the laws of Hong Kong or not permissible for whatever reasons to undertake any employment in Hong Kong, whether for this Contract or any other contracts, or to have aided and abetted another person to breach his condition of stay; or
 - (x) the Contractor obtains three Demerit Points under this Contract; or
 - (xi) the Contractor is convicted of any offence under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115), the Occupational Safety and Health Ordinance (Cap. 509), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Occupational Retirement Schemes Ordinance (Cap. 426) in relation to this Contract; or
 - (xii) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government; or
 - (xiii) the Contractor fails to make up the deduction in accordance with Clause 19(d) of the Conditions of Contract; or
 - (xiv) the Contractor ceases to hold a valid Security Company Licence or the Security Company Licence is being suspended, revoked, expired, terminated or rendered invalid for whatever reason.
- (b) Any termination of the Contract howsoever occasioned shall not affect any accrued right or liabilities of either party.
- (c) Notwithstanding anything herein to the contract, the Government may at any time during the Contract Period, at its option and without cause, terminate the Contract by giving the Contractor one month's prior written notice of such termination. The Government shall not be responsible for any loss or damage to the Contractor arising from such termination of

Contract.

22. Consequences of Termination

- (a) In the event of early termination of the Contract for whatever reason, including pursuant to Clause 20(a), the Government shall, subject to any right of set-off or counterclaim, only be required to pay the Contractor for Services rendered up to the effective date of termination in accordance with Clause 13 hereof.
- (b) If the Contract is terminated by the Government (other than pursuant to Clause 20(c)) and the Government makes other arrangements for the provision of any Services, the Government may recover from the Contractor: (a) any amount in excess of the Estimated Total Contract Value (which would have been payable to the Contractor had the Contract not been terminated) incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 20(a). If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments will be made by the Government to the Contractor for the Services provided by the Contractor prior to termination.
- (c) On the expiry or termination of the Contract for any reason, the Contractor must:
 - (i) immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Services;
 - (ii) assist and co-operate with the Government to ensure an orderly transition of the provision of the Services to such person specified by the Government Representative and/or the completion of any work-in-progress;
 - (iii) 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
 - (iv) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Services have been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence.
- (d) Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) will be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.
- (e) In the event of termination of Contract for whatever reason, the Government shall not be

required to make any further payment to the Contractor in accordance with Clause 13 of hereof.

23. 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 as a result of the Contractor's action or inaction while in the possession or control of the Contractor or its employees or agents, the Contractor shall pay to the Government a sum which equals to the total replacement cost of such property plus relevant reasonable cost that may be incurred by the Government arising therefrom. A count of the articles or materials 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.

24. 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 Area 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 upon 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.

25. Non-Exclusivity

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

26. Confidentiality and Protection of Personal Data

- (a) The Contractor must treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor's knowledge or be accessible by the Contractor in the course of carrying out the Services and all advices, recommendations, documents, materials and data given by the Contractor to the Government under the Contract ("Confidential Information").
- (b) Without prejudice to any other provision of the Contract, the Contractor must indemnify and keep the Government and its authorised users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
- (i) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
 - (ii) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
 - (iii) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).
- (c) The Contractor must use the Confidential Information solely for the purposes of the Contract. The Contractor must not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent. Contractor shall not use any space provided to it by the Government for conducting any fee-charging activities.
- (d) The Contractor must not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to

know the same for the purposes of the Contract.

- (e) The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- (f) The Contractor must comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- (g) The Contractor must ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 25 and the Official Secrets Ordinance (Cap. 521).
- (h) The provisions of this Clause 25 will survive the expiry or termination of the Contract and will continue in full force and effect notwithstanding such expiry or termination.

27. Corrupt Gifts

- (a) The Contractor shall prohibit its employees, agents, and sub-contractors 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, its agents or sub-contractors 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.

28. Publicity

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's or the Government Representative's or the AFCD's name is mentioned or language used from which a connection with the Government or any of the afore-mentioned entities can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material in relation to the Contract without the prior written consent of the Government Representative.

29. 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:	PB2, Plant Protection Section, Tai Lung Experimental Station, Lin Tong Mei, Fan Kam Road, New Territories.	(852)2679 5443
(ii) the Contractor:	As stated in Appendix A of Terms of Tender	As stated in Appendix A of 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

30. Site Record, Return and Report

- (a) The Contractor shall maintain an occurrence book for record of events happened in each work shift containing details including incidents, accidents, unauthorised vehicular entry, emergencies, damages, maintenance, disturbances and the like. Such record books shall be readily made available for the inspection of the Government Representative upon demand.
- (b) The Contractor shall maintain a day-to-day attendance record of the Contractor's Employees on site. Such records shall be readily made available for the inspection of the Government Representative upon demand.
- (c) The Contractor shall submit the Standard Employment Contract of each employee on site.
- (d) The Contractor shall submit the monthly wage slip/receipt of each employee to the Government Representative. .
- (e) The Contractor shall provide any other information and documentation in as may be requested by the Government Representative relating to the provision of the Services.
- (f) 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.

- (g) The Contractor shall keep and maintain the Government's site records properly.
- (h) The Government Representative may prescribe the form of the Contractor's reports, records and schedules required under Clause 29(a) – 29(f) and the Contractor shall adopt the prescribed form in preparing such reports, records and schedules.

31. Monies or Valuables Found by the Contractor's Employees

All monies or other items of value found by the Contractor or Contractor's Employees or its sub-contractors or agents (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.

32. Entire Agreement

The Contract supersedes all prior agreements, arrangement and undertakings between the parties and constitutes the entire Contract between the parties relating to the subject matter hereof. Unless the terms of the Contract provide to the contrary, no addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties hereto for and on its behalf.

33. Relationship of the Parties

The Contractor enters into the Contract with the Government as an independent contractor only and shall not represent itself and shall ensure the Contractor's Employees and all its other employees, sub-contractor (if any) and agents shall not represent themselves, as employee, servant, agent or partner of the Government.

34. Jurisdiction

The Contract shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region and the parties hereby irrevocably submit themselves to the jurisdiction of the courts of the Hong Kong Special Administrative Region.

35. Compliance with Laws and Regulations

- (a) The Contractor shall use all vehicles, equipment, materials and tools in the performance of the Services in such manner as to comply with the provisions of the Contract, the manufacturer's instructions or guidelines, Road Traffic Ordinance (Cap. 374) and its subsidiary legislation, Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation (Cap. 311U), Air Pollution Control (Volatile Organic Compounds) Regulation (Cap.311W), Noise Control (Motor Vehicles) Regulation (Cap 400 I), Public Cleansing and Prevention of Nuisances

Regulation (Cap. 132BK), Code of Practice for the Lighting, Signing and Guarding of Road Works published by the Highways Department, and other code of practice issued by relevant authorities and legislation of the Laws of Hong Kong which may be applicable to the Contract.

- (b) The Contractor shall conform in all aspects with the provisions of any enactment and regulations or by-laws of any local or other duly constituted authority which may be applicable to this Contract and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Government indemnified against all penalties and liability of every kind for breach of any such enactment, regulations, by-laws or rules.
- (c) Licensing Requirements:
- (i) This Contract does not confer exemption from licensing requirement pertaining to the Services, if any. The Contractor should undertake to approach the relevant authorities for obtaining all licences, permits and certificates, if any, required by law for the execution and operation of the Services.
 - (ii) The Contractor should forthwith obtain and on or before the due date for renewal renew all licences, permits and certificates, if any, required by law for the execution of the Services, and shall not provide any service for which the licence, permit or certificate is so required without first obtaining such licence, permit or certificate.

36. Waiver and Severability

No failure by either party to exercise and no delay by either party in exercising any right, power or remedy available to it under the Contract or in 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 or remedy; and the rights and remedies of each party herein contained shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity. Without limiting the foregoing, no waiver by either 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. If at any time, any provision of the Contract is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the remaining provisions of the Contract shall not be affected or impaired thereby.

37. Disputes

If disputes arises between any officer of AFCD 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.

38. 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 (Cap. 623).

39. 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 true intent and meaning of the Tender Form, the Terms of Tender in Part 1, the Conditions of Contract in Part 2 and the Contract Schedules in Part 3;
- (b) as to the quality of materials and workmanship;
- (c) 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;
- (d) as to the assessment/judgement on the quality of the Services;

40. 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 clauses and follow the examples of illustration therein.

41. Holiday Pay to Non-skilled Workers

- (a) 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.
- (b) If the Employee is employed by the Employer to work under more than one government service contract, details of the holiday pay payable is set out in Clause 4 of the Schedule of the Standard Employment Contract.

42. 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.

43. Contractual Obligations under the Standard Employment Contract

- (a) The Contractor shall enter into a written Standard Employment Contract with each of its Non-skilled Workers employed for the performance of this Contract if the employment period exceeds seven (7) days. A Standard Employment Contract is still required for a temporary relief worker if the employment period is longer than seven (7) days.
- (b) 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.
- (c) Without prejudice to the generality of Clause 43(b) above, the Contractor shall, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:
 - (i) paying wages;
 - (ii) paying holiday pay payable to the Non-skilled Workers having been employed under a continuous contract for not less than one month;
 - (iii) paying 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;
 - (iv) paying wages by means of autopay to the Non-skilled Workers (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);
 - (v) paying the gratuity to the Non-skilled Workers with no less than one year of service under a continuous contract; and
 - (vi) not allowing the Non-skilled Workers to work beyond the committed daily maximum working hours under the Contract.

- (d) In the event that the Contractor engages a sub-contractor (the engagement of which is subject to the Government's prior written approval), it shall ensure that its sub-contractor shall also observe and comply with Clause 43(a) to Clause 43(c) above, as if references to "Contractor" read "sub-contractor".
- (e) If the Contractor or the sub-contractor fails to comply with any of its obligations in Clause 43(a) to Clause 43(c) above, without prejudice to any other rights, actions or remedies available to the Government including but not limited to the issuance of one or more Demerit Points to the Contractor and/or the sub-contractor, the Government may terminate the Contract immediately.

44. Admission of Contractor Personnel to Government Premise

- (a) Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.
- (b) The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- (c) The Contractor shall require all Relevant Personnel, save for those exempted, to present vaccination record of at least the first dose of COVID-19 vaccine prior to their entry into indoor government premises which are their places of work, or for work-related purposes (including for meetings and for fulfillment of duties). The number of vaccine doses required may be revised by prior written notice from the Government to the Contractor in the light of the development of COVID-19 epidemic situation.
- (d) Exemption from the requirement to present vaccination record will be granted to (a) those who are medically unfit for COVID-19 vaccination as supported by a valid medical certificate; and (b) pregnant staff with prior exemption to be granted by the Government on a case-by-case basis. The exempted categories of Relevant Personnel mentioned in this Clause may be revised by prior written notice from the Government to the Contractor.
- (e) For the purpose of Clauses 44(c) and 44(d), the Contractor shall comply with the entry requirement of Government premises, implementation approaches, requirement on the vaccination record and other relevant documentations to be presented, consequence of non-compliance, maintenance and updating of the register of vaccination status, and all other necessary requirements as determined by the Government by prior written notice from the Government to the Contractor.

- (f) The Contractor shall ensure that the Relevant Personnel will have given consent to the Contractor to pass the personal data in relation to Clauses 44(c) and 44(d) above to authorised persons of the Government for the purposes of the provisions of this Clause 44 and other provisions of the Contract.
- (g) The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.
- (h) In the event that the Contractor fails to comply with this Clause 44 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract or partially terminate the Contract pursuant provisions of the Contract.

45. 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 3 days after the occurrence of a Force Majeure Event, the Contractor must notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the event of an occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this Clause is hereinafter referred to as the "Suspension Notice".
- (c) Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor must keep the Government informed at reasonable intervals, and upon the request of the Government, of:
 - (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 45(e) below, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented (“Cessation Date”). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor must forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

- (e) During the suspension of any obligations under Clause 45(d) above:
 - (i) the Contractor must use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor’s performance of the obligations under the Contract;
 - (ii) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
 - (iii) the Contractor will not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.
- (f) As soon as the relevant Force Majeure Event has ended, the Contractor must forthwith notify the Government of the Cessation Date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor must immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Cessation Date, the Government’s decision will be final in the absence of manifest error.
- (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 will be entitled to terminate the Contract forthwith.

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

47. Retention of Records

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.

48. Order of Precedence

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

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

PART 3
CONTRACT SCHEDULES

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Contract Schedule 1

Service Requirements and Personal Protection Equipment to Security Guard

1. Introduction

Contractor is required to provide two groups/items of security guard services from 1 May 2022 or the date as advised in the Letter of Conditional Acceptance.

2. Description of Work and Services

The Contractor shall provide for the following items of security guard services:

Item 1 – at Tai Lung Experimental Station and Tai Lung Veterinary Laboratory at Lin Tong Mei, Fan Kam Road, Sheung Shui, New Territories, Hong Kong (hereinafter referred as the TLES & TLVL). The total areas of TLES & TLVL is approximately 16 hectares (Appendix I).

Item 2 – at Tai Lung Construction Depot and Tai Lung Irrigation Office (TLIO) at Lin Tong Mei, Fan Kam Road, Sheung Shui, New Territories, Hong Kong (hereinafter referred as the TLCD & TLIO). The areas of TLCD & TLIO is approximately 2 hectares (Appendix I).

The security guard services are required two separate groups including:

2. Work and Services

The patrolling of all areas within Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO. The Contractor shall provide two groups of Security Guard(s) to patrol all areas within the boundary of Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO, including but not limited to the building (including its offices, toilets, switch room, store room, workshop and laboratory rooms), vehicle parking areas, outdoor footpaths, trial fields, greenhouses and the perimeter of TLES & TLVL and Item 2 – TLCD & TLIO at a frequency of not less every 2 hours (or as otherwise specified by the Government Representative) following the routes and manners to be determined and agreed by the Government Representative. Each Security Guard shall carry out patrols on foot and shall carry a watchman's clock (this clock together with all accessories at check points shall be provided at the Contractor's expenses) or other patrol monitoring equipment to be approved by the Government Representative to record his patrols at various check points agreed by the Government Representative. These check points will be shown on a diagrammatic drawing to be provided by the Government Representative. The registration tape of the watchman's clock or patrol record shall be removed by an authorized representative of the Contractor (hereinafter referred as the Contractor Representative) in the presence of an Authorized Officer. Such tape or record shall be affixed to A-4 sized analysis sheets on site by the Contractor Representative and be checked by him/her immediately. It shall then be handed over to the Authorized Officer for action and shall become the property of the Government.

3. Duties and Responsibilities

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The duties and responsibilities of Contractor's Employees shall include the following: –

- (i) Security Guard :
 - (a) To immediately report to an Authorized Officer and the Security Control Centre on any person who acts suspiciously inside Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO by means of portable radio transceivers or other kinds of mobile communication system, all of which are to be provided by the Contractor at his own expense;
 - (b) To safeguard all properties in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO against theft, burglary, vandalism, sabotage and fire;
 - (c) To immediately report to an Authorized Officer and the Security Control Centre on any illegal activities including but not limited to disturbing plants, tapping of electricity, unauthorized connection to water supply point, tampering with Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO, unauthorized activities in the parking areas/trial fields/open areas, etc. inside the premises;
 - (d) To stop any person who carries out or attempts to carry out any activity which may endanger the security of Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO or any of the illegal activities specified in sub-clause 3.2(c) above;
 - (e) To immediately report to an Authorized Officer and the Security Control Centre on any fire outbreak and security related incidents and record such incidents in an Occurrence Book as stated in sub-clause 3.2(m) below;
 - (f) To operate and control all security surveillance equipment installed in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO, to report on any alarm or emergency and to carry out checks if directed by an Authorized Officer.
 - (g) To open and close any gate for Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO before and after opening hours respectively, to direct road traffic inside Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO if instructed by an Authorized Officer,
 - (h) To order and escort the unauthorized person or vehicles to leave the grounds or buildings forthwith;
 - (i) To ensure that all fire resisting doors and emergency exits are kept closed at all times and that fire fighting equipment is in the designated location. In the event of fire, to inform the Fire Services Department (dial telephone number: 999) and, if the fire is a major outbreak, to alert all persons in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO. Before the arrival of the firemen, the Security Staff shall endeavour (only when situation allows and the action would not post any risk to him) to fight and prevent the spread of fire with fire-fighting equipment installed. The Security Staff should take necessary precautions against any risk to himself before attempting to fight and prevent the spread fire.
 - (j) To report to a Government Representative immediately on all instances of loss of personal property and damage found in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO. If any damage is known to have been caused by any person,

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including any visitor to Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO, the Security Staff shall, if possible, obtain all particulars of the persons causing the damage and assist the Authorized Officer in further investigation;

- (k) To report to a Government Representative immediately for investigation and further action on all instances where any person inside Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO is seen to contravene any rules and regulations, e.g. disposing of rubbish in an improper manner, unauthorized parking, etc. The Government Representative will provide details of these rules and regulations.
- (l) In the event of a rainstorm or a No.3 (or higher) Typhoon Signal, to ensure that all windows and doors in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO are secured throughout the rainstorm or the typhoon;
- (m) To maintain on site one Attendance Book to record the times of arrival and departure of Security Guard, their names and staff numbers, and one Occurrence Book set out in a manner to be determined by the Government Representative. The following information shall be recorded in the Occurrence Book:
 - (i) Details of each patrol and supervisory visit;
 - (ii) Details of all incidents, emergencies, damages, disturbances and the like; and
 - (iii) Any other information as requested by an Authorized Officer;
 - (iv) To perform any other duties related to security and traffic control as assigned by a Government Representative.
- (ii) Contract Manager: –
 - (a) To conduct regular inspections and surprise inspections to monitor the performance of all Guard under this Contract and to ensure that the Services provided fully complies with all the requirements of this Contract up to the satisfaction of the Government Representative. In conducting the inspections, the Contract Manager shall check the attendance records of all Guard and endorse on the attendance book. The frequency of surprise inspection shall not be less than once every seven (7) service days.
 - (b) The Contract Manager shall be reached by phone at all times to receive on behalf of the Contractor directions and instructions from the Government Representative with respect to the Services required to be provided by the Contractor under this Contract.
 - (c) The Contract Manager is required to meet the Government Representative regularly during office hour for discussion on the performance and arrangement for improving the service quality of the Security Guard and rectifying any irregularities detected. Upon the request of the Government Representative, the Contract Manager shall attend a monthly meeting or any ad-hoc meeting to discuss any issues related to this Contract.

4. **The number of Security Guard required**

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- (a) The number of Security Guard for **Item 1** is required as follows:

Working Days & Service Hours	Weekdays (Monday to Friday)	Saturdays, Sundays and Public Holidays	
	<u>Evening Shift (Shift A)</u> 18:30 to 6:30 of the following day	<u>Day Shift (Shift B)</u> 06:30 to 18:30	<u>Evening Shift (Shift A)</u> 18:30 to 6:30 of the following day
No. of Security Guard	1	1	1

- (b) The number of Security Staff for **Item 2** is required as follows:

Working Days & Service Hours	Weekdays (Monday to Friday)	Saturdays, Sundays and Public Holidays	
	<u>Evening Shift (Shift A)</u> 18:30 to 6:30 of the following day	<u>Day Shift (Shift B)</u> 06:30 to 18:30	<u>Evening Shift (Shift A)</u> 18:30 to 6:30 of the following day
No. of Security Guard	1	1	1

- (c) The Contractor shall provide at least 1 Security Guard to **Item 1** – TLES & TLVL and **Item 2** – TLCD & TLIO in each of Shift A (from 18:30 to 06:30 of the following day) and Shift B (from 06:30 to 18:30) on each day including lunch/rest time, failing which shall result in the deduction of payment in accordance with Clause 14 of Special Conditions of Contract.
- (d) If at any time any of the event stipulated in Clause 14 of Conditions of Contract occurred resulting in savings in service charges, the Government Representative shall have the discretion to increase the daily number of Security Staff required at subsequent months in the light of operational needs provided that the service charges incurred shall not, as a consequence, exceed the total savings effected as aforesaid.

5. Employment of Contractor Employees and Manner of Superintendence

- (a) The Contractor shall ensure that all Security Guards provided by him to execute security duties in Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO covered by this Contract are competent and efficient employees with knowledge of Chinese adequate to communicate with an Authorized Officer on matters concerning their duties. The Contractor shall provide supervisory staff with working experience in military/disciplined service/law enforcement institution to give proper training, supervision of and instructions to the Security Guards;
- (b) Each of the Security Guards shall possess the following qualities and minimum qualifications:-
- (i) Be in possession of a valid Security Personnel Permit (B) issued by the Commissioner of Police under the authority of the Security and Guarding Services Ordinance (Chapter 460);

- (ii) Be in good health and of good physique;
 - (iii) Be able to deal politely but firmly with visitors;
 - (iv) Have the determination and courage to investigate any suspicious incidents and to deal with any persons acting suspiciously;
 - (v) Have completed primary education and be able to speak reasonable fluent Cantonese and simple English;
 - (vi) Have basic knowledge of fire-fighting, first-aid and life-saving technique;
 - (vii) Have had previous experience in building security of similar service; and
 - (viii) Preferably have working experience in military/disciplined/law enforcement agencies.
- (c) All Security Guards must have attended an initial training course organized by the Contractor before they take up the required duties;
- (d) All Security Guards provided by the Contractor shall carry valid Security Personnel Permit (B) and truncheon at all times and should be in uniform while on duty (N.B. Photocopies of Security Personnel Permit will not be accepted). The Security Staff shall be registered in the name of the Contractor's company;
- (e) The Contractor should provide a list of the Security Guards to an Authorized Officer, giving the name, age, address and Hong Kong Identity Card number of each Security Guards and advise the Authorized Officer of any proposed changes at least 2 working days before;
- (f) The Security Guards provided by the Contractor shall each wear an identity card bearing the name and photo of its holder for easy identification and the Contractor shall provide a sample of such card to the Government Representative for reference;
- (g) The Contract Manager shall be reached by phone at all times at the Security Control Centre to receive on behalf of the Contractor directions and instructions from the Government Representative with respect to the services required to be provided by the Contractor under this Contract;
- (h) The Security Guards provided by the Contractor shall not cause any undue inconvenience or annoyance to visitors, and shall not enter any area of Item 1 - TLES & TLVL and Item 2 - TLCD & TLIO other than those necessary for the performance of the services;
- (i) The Contractor shall replace from Item 1 - TLES & TLVL and Item 2 - TLCD & TLIO any Security Guards to whom the Government Representative has notified his objection on the execution of security duty, medical or other good and sufficient grounds;
- (j) The Contractor shall be responsible for all costs and expenses required for rendering the services under this Contract, including but not limited to a VHF portable

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transceiver for each Security Gaurd on duty and for an Authorized Officer, uniforms, truncheons, torches, safety helmets, raincoats, lockers, vehicle for patrol, all salaries and fringe benefits and workmen compensation given to the Security Guard and all his employees. The Government shall not make any payment to the Contractor other than the service charge for provision of Security Services to Item 1 - TLES & TLVL and Item 2 – TLCD & TLIO; and

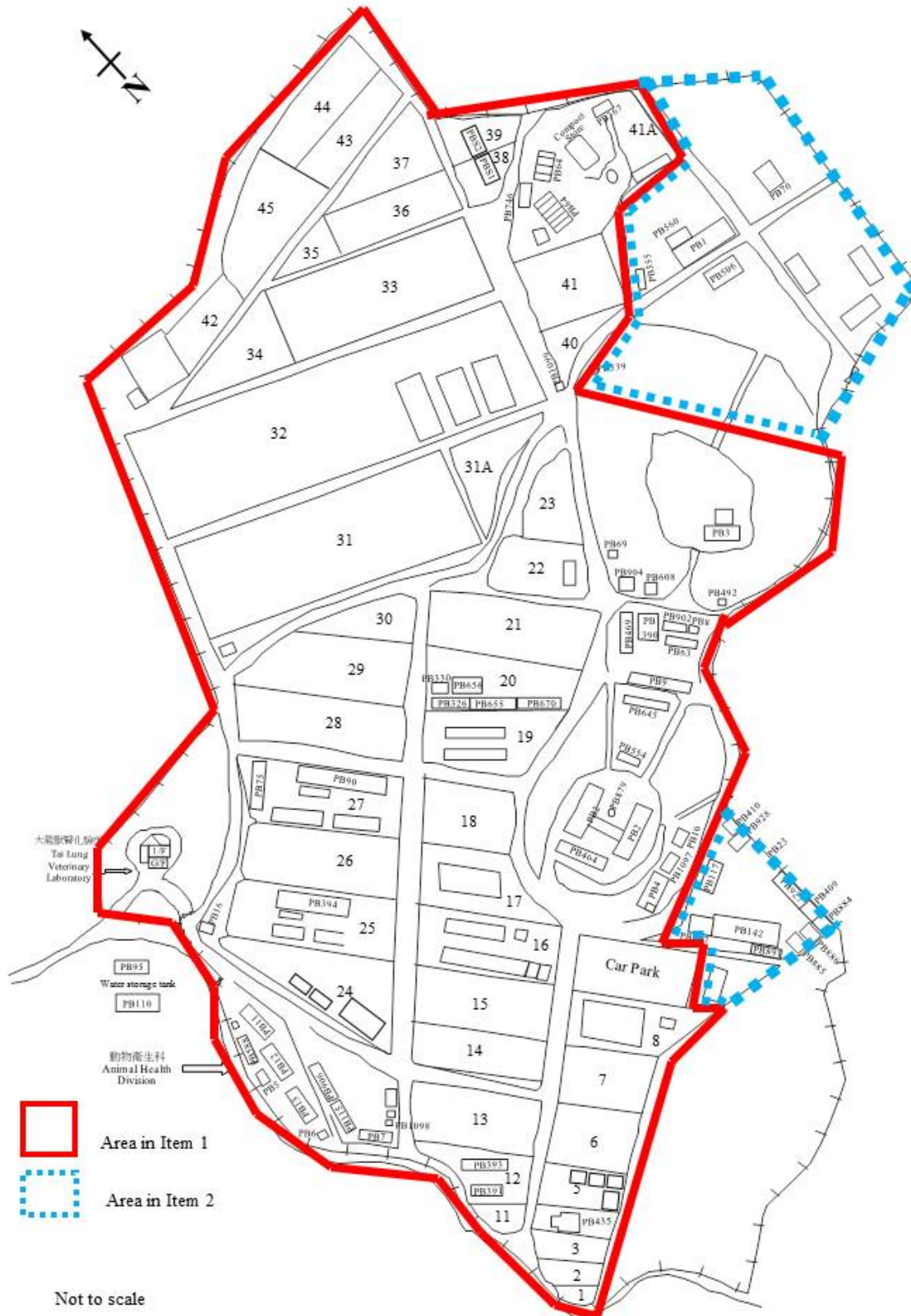
For the purpose of this Contract any act neglect or default of the Contractor's employees or his sub-contractor's employees, as the case may be, shall be deemed to be the act neglect or default of the contractor.6.

Personal Protective Equipment to Security Guard

- (a) For security guards who need to undertake outdoor security patrol work at the Site, the Contractor shall provide the security guard with umbrellas or wide-brimmed hats for protecting 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 with Ultraviolet Protection Factor of at least 50.
- (b) The clothing provided by the Contractor should be light-coloured, air permeable and loose-fitting to enhance heat dissipation. For security guards who need to undertake outdoor work in summer, the Contractor shall provide them with uniforms made of dry-fit fabric with moisture management treatment. The fabric must be thin knitting fabric providing good water vapour permeability and ultraviolet protection function. The shirt shall be light-coloured and loose-fitting. (*The shirt shall have retroreflective strips. The design and specification of the shirt shall conform to BS EN ISO 20471: 2013 Class 2 or later version or equivalent standard.)
- (c) For security guards who need to undertake outdoor security patrol work, at the Site, the Contractor shall provide each of these security guards, upon request, with a portable fan to increase air flow to the security guards.
- (d) If the Contractor has a duty under this contract to provide portable fans or both portable fans and cooling arm sleeves to specified security guard upon request, the Contractor shall also inform such security guards of the availability of portable fans and cooling arm sleeves accordingly for their use upon their request.
- (e) The Contractor should fully provide the security guards with training and information on prevention of heat stroke. The Contractor shall provide the security guards with face masks and hand sanitizers for protecting them in epidemic outbreak period.

Contract Schedule 2

Tai Lung Experimental Station, Tai Lung Veterinary Laboratory, Tai Lung Construction Depot and Tai Lung Irrigation Office



Contract Schedule 3
Price Schedule – Rates of Charge for the Provision of the Services
(to contain the successful Tenderer’s price proposal subject to
such modification as may be agreed with the Government)

Contract Schedule 4

Staffing Schedule and Monthly Wage for Security Guard

(to contain the successful Tenderer's proposal on the staffing and wages proposal for Security Guard subject to such modification as may be agreed with the Government)

(It is an essential contractual requirement of this Contract that each Security Guard be paid not less than the monthly wage of HK\$13,950 derived from the Statutory Minimum Wage (SMW) on the basis of thirty-one (31) days (twenty-seven (27) maximum number of normal working days plus four (4) paid rest days) per month and twelve (12) hours of work per day.)

Contract Schedule 5
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) idling and chatting;
 - (b) preparing and eating meals without permission from the Government Representative;
 - (c) vandalising any Government Property or misusing any equipment/facility provided by the Government;
 - (d) gambling, stealing or committing any criminal offence;
 - (e) fighting or causing any disorder, disturbance or nuisance;
 - (f) using foul language or drinking liquor;
 - (g) behaving in a manner likely to endanger himself/herself or any other person or causing damage to Government Property;
 - (h) indulging in poor timekeeping for work or absent from duty without approval or good cause;
 - (i) indulging in smoking, sleeping or any audio/visual entertainment;
 - (j) reading newspaper/magazine or playing mobile devices;
 - (k) committing fraud or dishonest acts;
 - (l) 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; and
 - (iii) a protective clothing and equipment when working at site;
 - (m) hanging and/or drying of clothing and/or around Government premises; and
 - (n) committing any act that will bring the Government into disrepute or embarrassment.
4. The Contractor's Employees shall not disclose any information/data collected during the

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service period, including verbal and written records in any format, by any means to any unauthorized third party.

5. The Contractor's Employees shall not solicit or accept any money, gift or advantages from, or offer any money, gift or advantages to any Government employee, building user, visitor or member of the public. The Contractor's Employees shall also avoid accepting lavish or frequent entertainment from persons whom they may have contract in performing the Services under the contract.
6. The Contractor's Employees shall avoid any situation where their private interest conflicts with the discharge of their duties under the Contract or the perception of such conflicts. When actual or potential conflict of interest arises, the Contractor's Employee shall make a written declaration to the Government's Representative for approval.