

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

*Tender Ref. : AFCD/SQ/1/26*

**TENDER FORM**

*Contract No. :*

**LODGING OF TENDER**

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked

**“Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

**(Tender Ref.: AFCD/SQ/1/26)”**

and addressed to the Chairman, Tender Opening Committee, Government Logistics Department

must be deposited in the Government Logistics Department

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

before 12:00 noon (time) on 26 March 2026 (date) (Hong Kong time). Late Tenders will not be accepted.

**PART I — INTERPRETATION  
PART II — TERMS OF TENDER  
PART III — CONDITIONS OF CONTRACT  
PART IV — SERVICES SPECIFICATIONS  
PART V — SCHEDULES  
PART VI — ANNEXES  
PART VII — OFFER TO BE BOUND  
PART VIII — MEMORANDUM OF ACCEPTANCE**

This Invitation to Tender is covered by the WTO GPA.

Dated this 13 day of February 20 26  
the \_\_\_\_\_ day of \_\_\_\_\_



\_\_\_\_\_  
(MAK Chu-wa)  
Government Representative

**Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

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**PART I  
INTERPRETATION**

1. In the documents issued by the Government in connection with this Invitation to Tender and the Contract that is made pursuant to this Invitation to Tender, unless otherwise defined or the context otherwise requires, the following expressions shall bear the same meanings as set out below:-

“Accepted Innovative Suggestion” means those Innovative Suggestions proposed by the Tenderer and accepted by the Government in the version attached to the Memorandum of Acceptance for identification purposes;

“AFCD” means the Agriculture, Fisheries and Conservation Department of the Government;

“Alternative Authentication Method” or “AAM” means the use of an Identification Code for the submission of a Tender via the e-Tender Box in lieu of the use of a digital certificate;

“Annex” means an annex attached to the Tender Form;

“Appendix” means an appendix attached to the Tender Form;

“Arbitration Ordinance” means the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong);

“Assessment Criteria” means the assessment criteria set out in Appendix to the Marking Scheme; and “Assessment Criterion” shall be constructed accordingly;

“Business Registration Ordinance” means the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong);

“Cleaners” means any one (1) or more the cleaners deployed by the Contractor pursuant to the Service Specifications for performing the general cleaning and related tasks;

“Cleaning Supervisor” means one of the Cleaners appointed by the Contractor as the Cleaning Supervisor pursuant to Service Specifications for performing the supervisory duties;

“Commencement Date” means the meaning given to it in Clause 1.1 of the Conditions of Contract, which may be postponed to another date specified by the Government in accordance with Clause 1.2 of the Conditions of Contract;

“Companies Ordinance” means the Companies Ordinance (Chapter 622 of the Laws of Hong Kong);

“Competition Ordinance”	means the Competition Ordinance (Chapter 619 of the Laws of Hong Kong);
“Conditions of Contract”	of means the Conditions of Contract referred to in Part III of the Tender, and in the form attached to, the Tender Form;
“Conditional Acceptance of Tender”	has the meaning given to it in Clause 23 of the Terms of Tender;
“Contract”	<p>means the contract between the Government and the Contractor comprising the following parts of the Tender Documents and other items as specified below:</p> <ul style="list-style-type: none"> <li>(a) the “Tender Form” (or the equivalent Tender Form in the case of Electronic Tendering), the “Interpretation”, the “Terms of Tender”; the “Conditions of Contract”; “Schedules” and the appendixes, annexures and attachments to these documents;</li> <li>(b) the “Offer to be Bound” in the Tender Form;</li> <li>(c) the “Memorandum of Acceptance” in the Tender Form</li> <li>(d) the Contract Schedules in the form as appearing in the Tender Documents and those which were submitted by the Contractor as part of its Tender for the Contract, and accepted by the Government;</li> <li>(e) the “Service Specifications”;</li> <li>(f) all other schedules, plans, drawings and other documents which form part of the Contractor’s Tender or are incorporated by reference in any of the above documents,</li> </ul> <p>in each case subject to such further changes as the Government may stipulate in exercise of its powers under the Terms of Tender, and/or otherwise subject to such further changes as the Government and the Contractor may agree. All of these documents shall be attached to the Memorandum of Acceptance to be issued under Clause 23.3 of the Terms of Tender for identification purposes.</p>
“Contract Areas”	means Sha Chau and Lung Kwu Chau Marine Park, The Brothers Marine Park, Southwest Lantau Marine Park, South Lantau Marine Park, Cape D’Aguiar Marine Reserve which are delineated on the plans contained in the Service Specifications and Appendix I in the Service Specifications;

“Contract Deposit”	means the sum of money deposited by the Contractor by cash or in the form of banker’s guarantee referred to in Clause 30 of the Terms of Tender and Clause 33 of the Conditions of Contract;
“Contract Manager”	means the individual appointed by the Contractor as Contract Manager pursuant to Clause 2 of Service Specifications and approved by the Government to be the duly authorized representative of the Contractor and to liaise with the Government for all purpose connected with the Contractor;
“Contract Period”	means, subject to early termination or extension provided for in the Contract, the period during which the Contract shall subsist and as specified in Clause 1.1 of the Conditions of Contract;
“Contracts (Rights of Third Parties) Ordinance”	means the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong);
“Contractor”	means the Tenderer whose Tender has been accepted by the Government;
“Contractor Personnel”	means the Contractor’s employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors, or any of them to perform the Services;
“Contract Price”	means in relation to the Services comprising one or more item(s), the actual amount payable for such Service(s) on and subject to the terms and conditions of the Contract and is to be calculated based on the Unit Rate(s) for such Item(s) as specified in the Price Schedule;
“Control of Exemption Clauses Ordinance”	means the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong);
“Copyright Ordinance”	means the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong);
“Crimes Ordinance”	means the Criminal Procedure Ordinance (Chapter 221 of the Laws of Hong Kong);
“Criminal Procedure Ordinance”	means the Criminal Procedure Ordinance (Chapter 221 of the Laws of Hong Kong);

- “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 10.1 of the Terms of Tender; or
  - (b) accumulation of three (3) or more Demerit Points over a rolling period of thirty-six (36) months, as provided under Clause 11 of the Terms of Tender;
- “Demerit Points” means the demerit point issued by any Government bureaux or departments of contractual obligations under a Non-skilled Worker Contract in respect of:
- (a) wages;
  - (b) holiday pay payable to Non-skilled Workers having been employed under a continuous contract for not less than one month;
  - (c) wages at a rate of at least 150% for Non-skilled Workers who are required to work when the typhoon signal no.8 or above is hoisted;
  - (d) daily maximum working hours;
  - (e) 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;
  - (f) 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);
  - (g) gratuity payable to Cleaners as provided under Clause 6.2 of the Conditions of Contract (where applicable);
  - (h) gratuity payable to Cleaning Supervisor as provided under Clause 6.2 of the Conditions of Contract (where applicable); and
  - (i) compliance with all of the provisions in the Heat Stroke Prevention Work Plan. For the avoidance of doubt, the Heat Stroke Prevention Work Plan is only applicable if the Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources.
- “Electronic Record” means the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
- “Electronic Tendering” means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;

“Employees Compensation Ordinance”	means the Employment Ordinance (Chapter 282 of the Laws of Hong Kong)
“Employment Ordinance”	means the Employment Ordinance (Chapter 57 of the Laws of Hong Kong);
“EPD”	means the Environmental Protection Department of the Government;
“Estimated Contract Value”	means in relation to an estimated number of working days, number of Cleaners required as quoted by the Tenderer multiplied by the unit rate per Cleaner per day in the Price Schedule;
“Estimated Total Contract Value”	means the estimated amount as quoted by Tenderer in the Price Schedule being the summation of the Estimated Contract Value for all Services;
“ESG Proposal”	means a proposed measure or arrangement that will improve environmental protection, sustainability or social responsibility or governance which may but need not be directly relevant to the procurement covered by this Invitation to Tender, but which can bring about positive value(s) and/or benefit(s) to the Government or the public at large;
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view Tender notices and Tender documents, and prepare and submit Tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“Execution Plan”	means the plan for execution of the Services to be proposed by the Tenderer in Schedule 6 and accepted (and modified where appropriate) by the Government;

“Force Majeure Event”	means:  (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or  (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in Clauses 26.6 and 26.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;  and which, in any case of (a) and (b) above, materially prevents the performance of the duties and obligations of any party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;
“General Holiday” or “Public Holiday”	means Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong);
“Good Industry Practice”	means the standards, practices, methods and procedures conforming to all laws and regulations, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
“Government Logistics Department” or “GLD”	means the Government Logistics Department of the Government;
“Government Property”	means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;

“Government Representative”	means the Director of Agriculture, Fisheries and Conservation acting for and on behalf of Government or any officer authorized by the Director of Agriculture, Fisheries and Conservation to act on his behalf for the purposes of the Contract.
	The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;
“Heat Stroke Prevention Work Plan”	means a plan to be known as the Heat Stroke Prevention Work Plan to be submitted by the Tenderer pursuant to Clause 9 of the Terms of Tender;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong dollars” or “HK\$”	means the lawful currency of Hong Kong;
“Hong Kong Waters” or “waters of Hong Kong”	has the meaning given it in Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
“Identification Code”	means a unique 8-character code generated by the ETB and sent to the email account registered by the ETB User with the PCMS (viz., “registered email account”) upon the request of the ETB User for the submission of a Tender through the use of such code;
“Information Schedule”	means a schedule attached to the Tender Form for completion of the Tenderer’s information;
“Innovative Suggestion”	means a Pro-innovation Proposal or an ESG Proposal;
“Inspecting Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract;
“Intellectual Property Rights”	means patents, trademarks, service marks, trade names, design rights, copy right, 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;
“Interpretation and General Clauses Ordinance”	means Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong);

“Invitation to Tender”	means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents;
“Items”	means the services specified in the column of the table with heading “Description of Services” in the Price Schedule with a unique item number and where applicable letter assigned to them in the first column of that same table in that Schedule, and shall be inclusive of all related services and subject matters specified in the Contract;
“Labour Department”	means the Labour Department of the Government;
“Management Plan”	means the proposed management plan, content requirements of which set out in Clause 3.1 of Schedule 6, to be submitted by the Tenderer as part of the Execution Plan, subject to approval of the Government;
“Marking Scheme”	means a scheme which collectively contains those procedures, requirements and criteria for the evaluation of such Price Proposal and Technical Proposal separately as set out in Annex 1;
“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;
“Minimum Wage Ordinance”	means the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong);
“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 3 of the Conditions of Contract subject to and after any deductions in respect of that month;
“Mandatory Provident Fund Schemes Ordinance”	means the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong);
“Non-collusive Tendering Certificate”	means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 34.2 of the Terms of Tender;

“Non-skilled Workers”		means all unskilled workers employed or to be employed by the Contractor and/or the sub-contractor to work under the Contract, and for the present purpose, include Cleaning Supervisor and Cleaners;
“Non-skilled Contract”	Worker	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;
“Occupational Retirement Ordinance”	Schemes	means the Occupational Retirement Schemes Ordinance (Chapter 426 of the Laws of Hong Kong);
“Official Ordinance”	Secrets	means the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong);
“Original Closing Date”	Tender	means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently;
“Paper-based Tendering”		means the making and submission of a Tender in paper form in the “Lodging of Tender” section of the Tender Form;
“Parties” (in upper or lower case)		means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;
“Personal (Privacy) Ordinance”	Data	means the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);
“Prevention of Bribery Ordinance”		means the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong);
“Price Proposal”		means the Price Schedule to be completed by the Tenderer;
“Price Schedule” or “Schedule 1”		means the price schedule attached to the Tender Form as Schedule 1 for completion of the Unit Price quotation(s) of the Services offered;
“Professional Accountants Ordinance”		means the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong);
“Pro-innovation Proposal”		means a proposal that adopts any one or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the Services;

“refuse”	means all kinds of refuse: (a) any dirt, dust, ashes or paper; (b) any glass, glass fragments, china, earthenware or tin; (c) any plaster, concrete, mortar, wood, timber, sawdust, plastic, construction material, or excavated material; (d) any rubbish or debris, including domestic wastes (e.g. used take away boxes); (e) any filth, manure, dung, excreta and any other offensive, noxious or obnoxious matter or liquid; (f) any small animal carcass; (g) bulky items junk and any other articles abandoned or washed ashore from the sea; and (h) any substance likely to constitute a nuisance.
“Relevant Offences”	means the offences as defined in Clause 10 of Terms of Tender;
“Review Mechanism”	means the mechanism under which any person who is debarred from tendering for any Non-skilled Worker Contract due to conviction of any of the Relevant Offences may apply to the Central Tender Board of the Government to review the length of the Debarment Period. Details of the mechanism are set out in the homepage of the Treasury Branch of the Financial Services and the Treasury Bureau at <a href="http://www.fstb.gov.hk/tb/en/government-procurement-policy-procedures.htm">http://www.fstb.gov.hk/tb/en/government-procurement-policy-procedures.htm</a> . For the avoidance of doubt, the Review Mechanism does not apply to the Debarment Period imposed as a result of accumulation of Demerit Points;
“Services”	means the provision of cleaning services and refuse conveyance services at the Contract Areas and includes all other obligations, tasks and duties ancillary or incidental thereto in accordance with Service Specifications and subject to all the terms and conditions of the Contract;
“Service Specifications”	means the specifications referred to in Part IV of the Tender, and in the form attached to, the Tender Form; references to Service Specifications include those specifications offered by the Tenderer and accepted by the Government (if any);
“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 contracts to be entered into between the Contractor and its Non-skilled Workers, a copy of such contracts and its guidance notes can be downloaded from the following hyperlinks: < <a href="https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html">https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html</a> > for Chinese version or < <a href="https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html">https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html</a> > for English version;
“Statement of Convictions”	of means the Statement of Convictions in respect of the Relevant Offence in the form of Schedule 9;
“Sub-contractor’s Acknowledgement”	means the Sub-contractor’s Acknowledgement in the form of Schedule 10;
“Statutory Minimum Wage” or “SMW”	means the hourly wage rate as specified in Schedule 2 to the Minimum Wage Ordinance;
“SMW plus rest day pay rate”	has the meaning given to “statutory minimum wage plus rest day pay rate” in the Guidance Notes on Signing of Standard Employment Contract (SEC) for Employees of Contractors of Government Service Contracts, which may be downloaded at the hyperlink provided in Clause 9.1 of the Conditions of Contract;
“Supply of Services (Implied Terms) Ordinance”	means the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong)
“Technical Proposal”	means all proposals, information and documents required to be submitted as part of the Tender apart from the Price Proposal;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to this Invitation to Tender;
“Tender Closing Date”	means the date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government from time to time pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued by the Government for the purpose of the Invitation to Tender prior to the Tender Closing Date;

“Tender Form”	means:
	(a) in the case of a Tender submitted in paper form, the tender form issued for the Invitation to Tender; and
	(b) in the case of a Tender submitted electronically, the tender form available on the e-Tender Box for completion electronically;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to the Invitation to Tender; and
“Tender Validity Period”	has the meaning given to it in Clause 5.2 of the Terms of Tender;
“Terms of Tender”	means the Terms of Tender referred to in Part II of the Tender, and in the form attached to, the Tender Form;
“Theft Ordinance”	means the Theft Ordinance (Chapter 210 of the Laws of Hong Kong);
“Unit Rate”	means the rate/unit price proposed by the Tenderer for the provision of the Services as set out in Price Schedule and accepted by the Government for calculating remuneration for the Services chargeable by the Contractor to the Government;
“Unsolicited Electronic Messages Ordinance”	means the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong);
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer;
“Warranty”	has the meaning given to it Clause 12.2 of the Conditions of Contract;
“Work Plan”	means the proposed work plan, content requirements of which are set out in Schedule 6, to be submitted by the Tenderer as part of the Execution Plan, subject to approval of the Government; and
“WTO GPA”	means the Agreement on Government Procurement of the World Trade Organization.

2. In this document, unless the context otherwise requires, the following rules of interpretation shall apply: -

2.1 references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and shall include all subordinate legislation made

- under those statutes;
- 2.2 words importing the singular includes the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
  - 2.3 headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
  - 2.4 references to a document shall:
    - (a) include all schedules, appendices, annexes and other materials attached to such document; and
    - (b) mean the same as from time to time amended or supplemented;
  - 2.5 references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
  - 2.6 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;
  - 2.7 references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
  - 2.8 references to “laws” and “regulations” shall 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, regardless of the jurisdiction;
  - 2.9 any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
  - 2.10 references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
  - 2.11 references to a day refers to calendar day; and reference to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
  - 2.12 references to a month or a monthly period mean a calendar month;
  - 2.13 any negative obligation imposed on any party shall be construed as 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 shall be construed as if it were also an obligation to procure that the act or thing in question be done;
  - 2.14 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;
- 2.15 words importing the whole shall be treated as including a reference to any part of the whole;
- 2.16 the expressions “include” and “including” shall be construed without limitation to the words following;
- 2.17 words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- 2.18 references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, information which can be viewed on the e-Tender Box, and other modes of representing and reproducing words in a legible form;
- 2.19 reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature); and
- 2.20 where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
3. Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
4. All rights and powers of the Government under the Contract may be exercised by the Government. If any provision of the Contract provides for a determination of any matter by the Government, the determination made by the Government shall, in the absence of manifest error, final and conclusive.
5. Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

## **PART II TERMS OF TENDER**

### **1. Tender Documents**

1.1 These Tender Documents consist of one complete set of the documents in a bound booklet comprising:

1. Tender Form;
2. Part I – Interpretation;
3. Part II – Terms of Tender;
4. Part III – Conditions of Contract;
5. Part IV – Services Specifications;
6. Part V – Schedules
  - (i) Schedule 1 – Price Schedule;
  - (ii) Schedule 2 – Wage proposal and working conditions for cleaners;
  - (iii) Schedule 3 – Information Schedule;
  - (iv) Schedule 4 – Qualification requirements of the Contractor Personnel;
  - (v) Schedule 5 – Details of vessel(s) for cleaning services;
  - (vi) Schedule 6 – Execution Plan;
  - (vii) Schedule 7 – Tenderer’s experience in provision of relevant cleaning services;
  - (viii) Schedule 8 – Code of Conduct for the Contractor Personnel;
  - (ix) Schedule 9 – Statement of Convictions;
  - (x) Schedule 10 – Sub-Contractor’s Acknowledgement;
  - (xi) Schedule 11 – Tenderers’ declaration of being Government service contractor;
  - (xii) Schedule 12 – Government discretion;
  - (xiii) Schedule 13 – Details of bank account;
  - (xiv) Schedule 14 – Election of mode of payment of contract deposit;
  - (xv) Schedule 15 – Certification of heat stroke prevention work plan;
  - (xvi) Schedule 16 – Green guidelines for cleaning services; and
  - (xvii) Schedule 17 – Undertaking.
7. Part VI – Annexes
  - (i) Annex 1 – Marking Scheme and Assessment Criteria;
  - (ii) Annex 2 – Form of Banker’s Guarantee;
  - (iii) Annex 3 – Non-collusive Tendering Certificate;
  - (iv) Annex 4 – Registration Form for the Tender Briefing;
8. Part VII – Offer to be Bound; and
9. Part VIII – Memorandum of Acceptance.

1.2 Unless otherwise defined, each of the above documents constituting the Tender Documents or the Contract (as the case may be) shall be referred to in the Tender Documents or Contract using the terms of references appearing in quotation marks.

### **2. Invitation to Tender**

2.1 Tenders are invited for the provision of all Services, including but not limited to the Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters, subject to the terms and conditions set out in the Contract.

- 2.2 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 2.3 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 2.4 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 immediately so that the same can be rectified.
- 2.5 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 the Contract.
- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.
- 2.8 Without prejudice to Clause 2.7 above, the estimated requirement of the Services specified in Schedule 1 or Service Specifications is/are estimate(s) of the quantity of the Services that may be required by the Government. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Government and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.9 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

### **3. Tender Preparation and Submission**

- 3.1 Unless otherwise specified in the Terms of Tender, the Tenderer must bid for all Services specified in Schedule 1 by submitting the Unit Rate for each Item of the

Services. **Where a Tenderer fails to do so, its Tender will not be considered further.**

- 3.2 The Government is not responsible for Tenderer's costs for preparing the bids.
- 3.3 The Tenderer must submit all of the followings with its Tender before the Tender Closing Date, otherwise its Tender will **not** be considered further:
- (a) (i) (for Paper-based Tendering) a duly signed Part VII "Offer to be Bound" of the Tender Form in English or Chinese containing an original signature by or on behalf of the Tenderer. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part VII of the Tender Form or a printed copy from a softcopy of Part VII of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part VII of the Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further; or
  - (ii) (for Electronic Tendering) the box signifying the Tenderer's agreement with Part VII "Offer to be Bound" of the Tender Form must have been checked;
  - (b) the Price Schedule for all Services in Schedule 1;
  - (c) Qualification Requirements of the Contractor Personnel in Schedule 4;
  - (d) the Execution Plan in Schedule 6;
  - (e) Certification of Heat Stroke Prevention Work Plan in Schedule 15; and
  - (f) Heat Stroke Prevention Work Plan.
- 3.4 The Tenderer must submit all of the followings with its Tender before the Tender Closing Date or upon subsequent request after the Tender Closing Date, otherwise its Tender will **not** be considered further:
- (a) Schedules 2, 3, 5, 7, 9 -15, 17 and 18;
  - (b) (i) (if the Tenderer is the registered owner of the vessel) a copy of certificate of ownership issued under section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable laws shall be submitted for evidencing its ownership; or
  - (ii) (if the Tenderer is not the registered owner of the vessel)
    - (1) a copy of the purchase agreement or lease agreement whereby the Tenderer is to acquire the property in or the right to use the vessel for, inter alia, carrying out the Services during the Contract Period, or a legally binding agreement to enter into such purchase agreement or lease agreement; and

- (2) a copy of the certificate of ownership issued under section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable Laws evidencing the ownership; and
  - (c) Non-collusive Tendering Certificate (Annex 3) duly completed and signed
- 3.5 For all other proposals, documents and information which do not fall within Clause 3.3 or 3.4 above, the Government reserves the right to seek submission under Clause 15.1 of the Terms of Tender below or evaluate the Tender on an “as is” basis.
- 3.6 The Tenderer shall complete and submit all Schedules in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.
- 3.7 A two (2)-envelope system shall be adopted for this Tender. The Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal. A Tenderer shall submit, in one of the following manners, its completed Tender. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will **not** be considered.

Tender Submission:

(a) Paper-based Tendering

The Technical Proposal and the Price Proposal shall be completed in writing on hardcopy and shall be placed inside two (2) separate envelopes clearly marked in the following manner and shall be submitted in **triplicate** (i.e. one (1) original and two (2) identical copies):-

- (i) Documents relating to the price information (i.e. “Schedule 1” fully completed, signed, chopped and dated in **triplicate** (i.e. one (1) original and two (2) identical copies) must be enclosed in a sealed envelope clearly marked “Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters (Tender Ref.: AFCD/SQ/1/26) - Price Proposal”; and
- (ii) Documents relating to the technical information (i.e. all other remaining information, forms, schedules and documents required by this Invitation to Tender but without any indication on the prices for Provision of Services) in **triplicate** (i.e. one (1) original and two (2) identical copies) must be enclosed in another sealed envelope clearly marked “Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters (Tender Ref.: AFCD/SQ/1/26) - Technical Proposal”.
- (iii) The Tender comprising both “Price Proposal” and “Technical Proposal” shall be enclosed in a sealed envelope marked “Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters (Tender

Ref.: AFCD/SQ/1/26)” and addressed to the person specified in the “Lodging of Tender” section of the Tender Form and deposited to the Tender Box on or before the date and time stipulated in the Tender Form.

(b) Electronic Tendering

- (i) The Tenderer shall submit the Technical Proposal and the Price Proposal as separate attachment files through e-Tender Box before the Tender Closing Date.
- (ii) Transmission of a Tender through e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Date. Save as otherwise provided for in the Tender Documents, a Tender will **not** be considered if the relevant proposal, document or information is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Date.
- (iii) If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use and participation of the e-Tender Box and through the e-Tender Box through the use of any one type of digital certificates recognised by the e-Tendering System or through Alternative Authentication Method.

3.8 The Government may **not** consider a Tender (or will **not** consider a Tender where it is expressly so stated) if:

- (a) false, inaccurate or incorrect information is given in the Tender; or
- (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.

3.9 When completing the Tender Documents (including the Offer to be Bound section of the Tender Form), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

- (a) if the Tenderer is a company incorporated in Hong Kong:
  - (i) the Certificate of Incorporation of the Tenderer;
  - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
  - (iii) its business name as shown in the current business registration certificate of the Tenderer;
- (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Cap. 310); or

- (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 3.9(a)(i), (a)(ii), (a)(iii) or 3.9(b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

### 3.10 Execution and Submission of Tenders

#### (a) Paper-based Tendering

- (i) A Tender submitted through Paper-based Tendering 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 VII “Offer to be Bound” of the Tender Form is signed in the following applicable manner:
  - (1) 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;
  - (2) 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
  - (3) 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.

#### (b) Electronic Tendering

- (i) A Tender submitted through Electronic Tendering 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 it is submitted in any one of the following ways:
  - (1) submission of the Tender via the e-Tender Box through the use of an Identification Code; or
  - (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate which is issued in its name as appearing in the applicable document mentioned in Clause 3.9(a), (b) or (c) above; otherwise the Tender will **not** be considered further. In the case that the Tenderer is a partnership, the Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will **not** be considered

further.

(ii) If any attachment to a Tender submitted by a Tenderer via the e-Tender Box:

- (1) does not comply with the terms and conditions of use of the PCMS and the e-Tender Box;
- (2) is found to be contaminated with Virus; or
- (3) is corrupted or otherwise not readable or printable into readable text by the Government,

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 3.3(a)(ii), 3.3(b) or 3.3(c) above by the Tender Closing Date, the Tender will **not** be considered further and its Tenderer will be notified of such.

(iii) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of a Tenderer's digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.

(iv) A Tender will **not** be considered further if the digital certificate used by a Tenderer for submission of Tender via the e-Tender Box is found invalid (i.e. expired, revoked, or it is not a digital certificate recognised in the e-Tender Box for submission of Tenders) upon verification.

### 3.11 Tender Closing Date

(a) (i) Paper-based Tendering

A Tender must be deposited in the Specified Tender Box before the Tender Closing Date. A Tender deposited in the Specified Tender Box at or after the Tender Closing Date, or a Tender not deposited in the Specified Tender Box, will **not** be considered.

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Date. Save as otherwise provided for **not** in the Tender Documents, a Tender will **not** be considered if the relevant proposal,

document or information as described in Clause 3.3(a)(ii), 3.3(b) or 3.3(c) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Date.

- (b) In case Tropical Cyclone Signal No. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 0900 and 1200 noon (Hong Kong Time) on the date specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be postponed to 1200 noon (Hong Kong Time) on the first working day after the Tropical Cyclone Signal No. 8 is lowered or the Black Rainstorm Warning Signal or the “extreme conditions” announced by the Government has / have ceased to be in force.
- (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 noon (Hong Kong Time) on the Tender Closing Date, the Government will announce extension of the Tender Closing Date until further notice. Following removal of the blockage, the Government will announce the extended Tender Closing Date 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>).
- 3.12 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>).
- 3.13 If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e Tender Box as set out in or referred to in the e-Tender Box.
- 3.14 Modification of Tender
- (a) Before the Tender Closing Date, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
- (b) Paper-based Tendering

Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be

initialled by the Tenderer in manuscript.

(c) Electronic Tendering

In case of modification to the submitted Tender, the Tenderer shall submit either a complete set of the revised Tender superseding the original Tender, or just the revisions to the original Tender. Either way, this shall be stated clearly in the submission.

3.15 Apart from Part VII “Offer to be Bound” of the Tender Form (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Clause 3.3(a)(i) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Clause 3.15(a)(i) or (ii) below to be submitted as part of the Tender,

- (a) in the case of Paper-based Tendering, (i) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Clause 3.10(a)(i) above; (ii) in the case of any certificate which is required to be issued by a recognised certification body (if applicable), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (iii) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (i) or (ii) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be considered further if the certified true copy is not provided; and
- (b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 3.15(a)(i) or 3.15(a)(ii) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. The Tender may not be considered further if the certified true copy (hardcopy) is not provided.

**4. Acceptance of Innovative Suggestions**

- 4.1 The Government may, at its absolute discretion, accept one or more of the Innovative Suggestions submitted by the successful Tenderer in its Tender. The Accepted Innovative Suggestions as found in the Innovative Suggestion Schedule in Annexes attached to the Memorandum of Acceptance shall form part of the Contract.
- 4.2 The Tenderers are at liberty to decide whether or not to submit Innovative Suggestions. Should the Tenderer provide Innovative Suggestions, those Innovative Suggestions shall be submitted as part of its Tender before the Tendering Closing Date or otherwise the Government will evaluate the Tender on an “as is” basis. However, the Government may, but is not obliged to, request clarification or submission of any factual information or document to support any claim or proposal in respect of the Innovative Suggestions under Clause 14.1 below.

## 5. Tenders to Remain Open

- 5.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By submitting a Tender, the Tenderer shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.
- 5.2 It is a requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of **one hundred and fifty (150) days** after the Tender Closing Date (“Tender Validity Period”).
- 5.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 5.2 above, or if it rejects the Tender Validity Period prescribed in Clause 5.2 above, its Tender will **not** be further considered.

## 6. Prices

- 6.1 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the prices for each Item in Schedule 1 in Hong Kong dollars only. The prices quoted by the Tenderer for an Item shall be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for or concerning or in relation to such Item. Under no circumstances will the Government compensate the Contractor for any loss incurred in the fluctuation of the currency in which the prices are quoted.
- 6.2 Prices quoted by a Tenderer shall only be shown in Schedule 1.
- 6.3 A Tenderer must quote fixed prices for all Items and the same price for the same Item regardless of the quantity. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will **not** be considered further.
- 6.4 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by all prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment to its Tender after the Tender Closing Date on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Clause 15 of the Terms of Tender below, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer’s clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Date) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.
- 6.5 Without prejudice to the generality of these Terms of Tender, the Government may require a Tenderer who in the opinion of the Government has submitted an

unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out and completing the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government's satisfaction.

## 7. Essential Requirements

7.1 The Tenderer, when preparing its Tender, must ensure that it complies with all the essential requirements stipulated in Clause 3.3 of the Terms of Tender, Clauses 9 of the Terms of Tender, Clauses 2 of the Service Specifications, Schedule 4 and Schedule 15. If a Tenderer proposes in its Tender that a sub-contractor be appointed to carry out any of the Services, the proposed sub-contractor must also comply with all of the essential requirements. **A Tender will not be considered further if any of the essential requirements is not complied with.**

## 8. Company/Business Organisation Status

8.1 The Tenderer shall provide the information as set out in Table A of the Information Schedule.

8.2 If a Tenderer is incorporated, formed or established outside Hong Kong, 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, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government may be requested by the Government. The legal opinion, if required, should be made available upon request during the Tender Validity Period. Upon such request, the Tenderer shall provide such legal opinion covering the following issues and any other issues as may be required by the Government:

- (a) the Tenderer is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Tenderer's incorporation, formation or establishment 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. By "validly existing and in good standing", it is meant that no event mentioned in any of the Clauses 26.1(a) to (g) of the Conditions of Contract or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer;
- (b) the Tenderer has the full power, authority and legal capacity to:
  - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
  - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to Clause 19 of the Terms of Tender, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms; without prejudice to the generality of the

foregoing, where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied legality, validity or enforceability on the sole ground that an Electronic Record was used for that purpose;

- (d) the submission of its Tender and the 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, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract.

8.3 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer and acceptable to the Government on any other matters arising from its Tender. Where the opinion on the question specified in Clause 8.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Clause 8.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer ("additional opinion on arbitration"). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees

that Clause 40 of the Conditions of Contract shall be replaced by the arbitration clause in Paragraph 8.4 below.

- 8.4 The opinion on the question specified in Clause 8.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in Clause 8.3 above, Clause 41 of the Conditions of Contract shall be deemed deleted and replaced by the following:

“40.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

40.2 If the said dispute or difference is not settled by mediation according to Clause 40.1 above, the said dispute or difference shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Clause 26.1 of the Terms of Tender”.

## **9. Heat Stroke Prevention Work Plan**

- 9.1 Since this Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources, the Tenderer shall submit a Heat Stroke Prevention Work Plan which shall cover at least the following proposals by the Tender Closing Date:
- (a) making suitable work arrangement such as rescheduling work to cooler periods and cooler places:
  - (b) carrying out measures by making reference to the Labour Department’s “Guidance Notes on Prevention of Heat Stroke at Work” published on 15 May 2023 at [https://www.labour.gov.hk/common/public/oh/Heat\\_Stress\\_GN\\_en.pdf](https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf) (as may be updated from time to time) covering at least the following:
    - (i) to conduct heat stress risk assessments of heat stress for the specific work taking account of the environmental (such as airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatisation of employees);
    - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers/ shelters; providing ventilation equipment, and providing sheltered/ventilated resting places) based on the risk assessment results; and

- (iii) to arrange hourly rest breaks as appropriate for Non-skilled Workers working outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources, based on the recommendations and criteria provided in the “Guidance Notes on Prevention of Heat Stroke at Work”, when the Heat Stress at Work Warning issued by the Labour Department is in force;
  - (c) providing potable water at all times during work;
  - (d) providing uniforms with dry-fit properties; and
  - (e) providing wide-brimmed hats, arm sleeves or umbrellas.
- 9.2 The Heat Stroke Prevention Work Plan as specified in Clause 9.1 above must be certified by a registered safety officer who has valid registration as at the Tender Closing Date with the Labour Department under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z) using the form set out in Schedule 16 to the Terms of Tender (“Safety Officer Certification”). Details of registered safety officers are available on the Labour Department’s homepage at [https://www.labour.gov.hk/eng/faq/oshq8\\_whole.html](https://www.labour.gov.hk/eng/faq/oshq8_whole.html). **A Tenderer which has failed to submit the Safety Officer Certification signed by a safety officer as aforesaid by the Tender Closing Date will be disqualified and its Tender will not be considered further.**
- 9.3 Since this Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources, **it is an essential requirement that the Tenderer shall submit as part of its Tender the Heat Stroke Prevention Work Plan as specified in Clause 9.1 above by the Tender Closing Date otherwise the Tender will not be considered further.** If the Invitation to Tender covers more than one Group, and that the Tenderer submits Tender for more than one (1) Group, it shall be deemed that the same Heat Stroke Prevention Work Plan and the certification submitted under Clause 9.2 shall apply to each such Group unless otherwise expressly specified by the Tenderer.

## 10. **Debarment on Convictions**

### Past Convictions

- 10.1 A Tenderer who is convicted of any offence under the following Ordinances (such offences are collectively referred to as “Relevant Offences”) is subject to the Debarment Period of a maximum of five (5) years from the date of the Tenderer’s last conviction, during which period the Tenderer is debarred from bidding for this Contract. The length of the Debarment Period is determined in accordance with Clause 10.4 and 10.5 below and may be reviewed under the Review Mechanism in Clause 10.6 below. The Relevant Offences are as follows:
- (a) any offence under Employment Ordinance (Cap. 57) or the Employees’ Compensation Ordinance (Cap. 282), 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); or

- (b) sections 17I(1) or 38A(4) of the Immigration Ordinance (Cap. 115); or
- (c) 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
- (d) sections 7, 7A, 7AA, 43B(3A), 43BA(5) or 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
- (e) 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).

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

- 10.2 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.
- 10.3 For the avoidance of doubt,
- (a) 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 Tender evaluation is conducted; and
  - (b) 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 from bidding for any Non-skilled Worker Contract.
- 10.4 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.
- 10.5 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

- 10.6 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 bidding for this Contract for a period determined in accordance with Clause 10.4 and 10.5 above in regard to that subsequent conviction.

Statement of Convictions

- 10.7 The Tenderer shall submit as part of the Tender the Statement of Convictions in Schedule 9 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:

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

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

- 10.8 If the Tenderer is found to have made false declaration or untruthful revelation in the Statement(s) 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.
- 10.9 The signatory of the Statement of Convictions authorizes AFCD to obtain information from all Government bureau / departments and give consent to the Government bureau / departments concerned to provide information about the conviction records of the Tenderer and the persons mentioned in Clause 10.7 above in respect of the Relevant Offences to AFCD for the purposes of assessment of the Tenderer's offer under this Tender exercise and subsequent management of the Contract.

**11. Demerit Points**

- 11.1 If a Tenderer has accumulated three (3) or more Demerit Points over a rolling period of thirty-six (36) months, it shall be debarred from bidding for this Tender 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.**
- 11.2 The record of Demerit Point(s) of a Tenderer will be evaluated under the separate criterion to be known as "Record of Demerit Point(s)" as part of the technical

assessment in the Marking Scheme. Based on the Tenderer’s records of Demerit Points in the period of thirty-six (36) months immediately preceding the Tender Closing Date, the Tenderer will be accorded marks (if any) under this criterion in accordance with the following scale:

<b>Demerit Point accumulated by the Tenderer in the period of thirty-six (36) months immediately preceding the Tender Closing Date</b>	<b>Marks gained under the “Record of Demerit Point(s)” criterion</b>
No Demerit Point	100% of the total marks assigned to the “Record of Demerit Point(s)” criterion
One (1) Demerit Point	50% of the total marks assigned to the “Record of Demerit Point(s)” criterion
Two (2) Demerit Points	0% of the total marks assigned to the “Record of Demerit Point(s)” criterion

11.3 Any Demerit Point which is under appeal to the procuring department of the Government which issued the same will still counted for the purpose of Clause 11.2 above.

## **12. Conviction and Demerit Points of Sub-Contractors**

12.1 If the Tenderer proposes in its Tender that a sub-contractor be appointed to carry out any of the Services:

- (a) the Tenderer shall ensure that the sub-contractor proposed in the Tender has not been debarred due to conviction of any of the Relevant Offences in Clause 10.1 above and has not accumulated of three (3) or more Demerit Points in Clause 11 above; and
- (b) the Tenderer shall submit as part of its Tender a Sub-contractor’s Acknowledgement duly signed by the proposed sub-contractor,

otherwise its Tender may not be considered further.

## **13. Sub-Contractors**

13.1 If any obligations of the Contractor are proposed to be performed by a sub-contractor, the Tenderer shall submit in the Information Schedule information of the sub-contractor. Details of the obligations to be performed by the proposed sub-contractor shall be submitted.

13.2 The information required in the Information Schedule for each proposed sub-contractor shall cover the information as required in Clause 8 of the Terms of Tender as if references to Tenderer shall mean the proposed sub-contractor.

13.3 The Government reserves the power to request the Tenderer to withdraw any sub-contracting proposal in the Information Schedule whereupon should the Tenderer refuse to do so, its Tender may not be considered further.

- 13.4 The Tenderer shall submit with its Tender a legally binding undertaking executed by its proposed sub-contractor in the form set out in Schedule 18.

**14. Level of Wages of Employee(s)**

- 14.1 The proposed monthly wage for each Cleaner shall not be less than the mandatory wage, i.e. **HK\$10,440.80**, which corresponds to thirty-one (31) days (i.e. twenty-seven (27) working days plus four (4) paid rest days per month) and eight (8) normal hours of work per day at the Statutory Minimum Wage (“SMW”) Rate of **HK\$42.10** per hour with effect from 1 May 2025.
- 14.2 If the proposed monthly wage offered by the Tenderer is less than the mandatory wage, such wage will be deemed to be not less than the mandatory wage for the purpose of tender evaluation. Such presumption will be revoked immediately if the Tenderer fails to confirm their abidance by the mandatory wage upon request by the Government Representative at any time before the completion of the tender exercise or such other time as specified by the Government Representative. If the Tenderer offers a higher amount than the mandatory wage in 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 mandatory wage. However, the higher wage offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.
- 14.3 During the Contract Period, the monthly wage payable to each Cleaner shall not be less than (i) the monthly wage committed by the Tenderer; or (ii) any adjusted wage level brought about by future revisions of the statutory minimum wage, whichever is the higher.

**15. Request for Information**

- 15.1 Notwithstanding anything herein to the contrary, in the event that the Government determines that:
- (a) clarification in relation to any part of the Tender is necessary; or
  - (b) certain document or a piece of information, other than those specified in Clause 3.3 above or those which failure of submission will result in automatic disqualification, is missing from any Tender,

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

- 15.2 Any excess proposal or information submitted by a Tenderer which goes beyond what has been requested by the Government in Clause 15.1 above will be ignored for the purposes of the Tender evaluation or will entitle (but not oblige) the Government **not** to consider the Tender further.

15.3 (Applicable to Paper-based Tendering) For the avoidance of doubt, if the original signature is missing from Part VI “Offer to be Bound” of the Tender Form or the entire Part VI “Offer to be Bound” is missing from the Tender, the Tenderer will be disqualified and no request for resubmission will be made. Otherwise, for any other missing information to be completed in Part VI “Offer to be Bound” or in relation to any ambiguity (including in relation to the signature), the Government may, but is not obliged to, seek clarification from the Tenderer under Clause 15.1(a) above. In the case that the date is missing from the Offer to be Bound, it shall be deemed that the date shall be the Tender Closing Date and no request for clarification will be made.

## **16. Tenderer’s Counter-Proposals**

16.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (b) those additional provisions which are not permitted to be subject to any counter-proposal as identified in these Terms of Tender.

16.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Schedules.

16.3 If a Tenderer fails to comply with Clause 16.1 or 16.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.

16.4 Counter-proposal to other provisions of the Tender Documents not specified in Clause 16.1 or 16.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Clause 16.1 or 16.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:

- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part VII “Offer to be Bound” of the Tender Form; or
- (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
- (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
- (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
- (d) if it is an addition, the additional provisions shall be underlined;
- (e) words to be deleted shall be crossed out by a single line only; and

- (f) an explanation shall be given below the alteration or deletion and put in square brackets “[ ]”.

16.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in Clause 16.4 above will **not** be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer’s Tender on this basis.

16.6 Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer’s Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

## **17. Tenderer’s Enquiries**

17.1 Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to the Government no later than three (3) working days before the Tender Closing Date. The request shall be submitted in the manner specified in Clause 21 below.

17.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.

17.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether expressed or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

## **18. Cancellation of the Invitation to Tender Exercise**

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

## **19. Tenderer’s Commitment**

19.1 All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate.

**20. Negotiations**

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

**21. Communication with the Government**

21.1 All communications in relation to the Invitation to Tender shall be conducted directly between the Government and the Tenderer unless the Government elects to contact any proposed sub-contractor or customer or client of the Tenderer directly.

21.2 Without prejudice to the requirements in Clause 23 below concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other Party in the manner provided in Clause 46 of the Conditions of Contract at the address, facsimile number or email address specified in Schedule 3, save that in the case of lodging any enquiries under Clause 21.1 above, the Tenderer shall lodge such enquiries by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Schedule 3 and shall note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

**22. Tender Assessment and Award of Contract**

22.1 Tenders will be evaluated based on price as well as technical competence of the Tenderer, understanding of the Government's requirements, relevant job experience and quality of work.

22.2 The Tenders will be assessed using the Marking Scheme and Assessment Criteria set out in Annex 1.

22.3 Subject to the other provisions of the Tender Documents, 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 (i) the Tenderer's Technical Proposal and Price Proposal have respectively passed the completeness check under the Marking Scheme, (ii) the Tenderer and its Technical Proposal conform with all the essential requirements stipulated in the Tender Documents (if any); and any passing mark in the technical evaluation stage (if any), (iii) the Tenderer has not been disqualified (or having its Tender not being considered further) for failing to comply with any other requirements set out in the Tender Documents, and (iv) the Tenderer's Price and Technical Proposals have attained the highest combined score amongst all the Tenders which fulfil the evaluation criteria as specified in (i) to (iii) above based on the Marking Scheme. The foregoing evaluation criteria (i) to (iv) (as further elaborated in the remaining paragraphs of this Clause 22) shall be deemed to be

incorporated into the Marking Scheme and in the event of any inconsistency, the foregoing shall prevail.

- 22.4 The term “completeness check” referred to in Clause 22.3 above shall mean the checking of (a) whether or not all proposals, documents and information which are, as per provisions in the Tender Documents, required to be submitted before the Tender Closing Date (and failing which the Tender will not be considered further), have been so submitted; and (b) whether or not those which are, as per the provisions in the Tender Documents, required to be submitted before the Tender Closing Date or upon subsequent request (and failing which the Tender will not be considered further), have been so submitted before the Tender Closing Date, or upon such request if a subsequent request has indeed been made by the Government.
- 22.5 Notwithstanding anything herein to the contrary, the Government is not bound to accept the Tender with the lowest price offer or the Tender with the highest combined score or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.

### **23. Acceptance**

- 23.1 The successful Tenderer will be notified in writing by a conditional acceptance in writing within the Tender Validity Period (“Conditional Acceptance of Tender”) and send it either by post or facsimile transmission to the successful Tenderer’s address or facsimile number (as the case may be) specified in the Schedule 3. Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall, within twenty-one (21) days of the notification or such later date as the Government may allow, be obliged to:
- (a) deliver the Contract Deposit as required in Clause 30 below to the Government;
  - (b) comply with other conditions as the Government may specify therein.
- 23.2 Only upon completion of the actions specified in Clause 23.1 above by the successful Tenderer to the satisfaction of the Government, the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance in Clause 23.3 below. The Contract will incorporate the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents). In the event that the successful Tenderer fails to satisfy the conditions as mentioned in Clause 30.1 above (unless and save to the extent they are waived by the Government, if any) by the deadline specified in Clause 30.1 above, the Conditional Acceptance of Tender will lapse and will be of no further force and effect, and the Government may disqualify the Tenderer concerned. The Government may, but is not obliged to, award the Contract to another Tenderer.
- 23.3 The successful Tenderer who has complied with Clause 23.1 above to the satisfaction of the Government will receive as an indication of unconditional acceptance the Memorandum of Acceptance in the form set out in Part VIII from the Government. A binding Contract between the Government and the successful Tenderer is only constituted upon issuance of the Memorandum of Acceptance by the Government. Tenderers who do not receive any notification within the Tender Validity Period shall

assume that their Tenders have not been accepted. A copy of each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.

23.4 Without prejudice to the rights and powers under these Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance in Clause 23.3 above to the successful Tenderer, there will be no binding Contract with that Tenderer.

#### **24. Offer to be Binding**

24.1 All parts of these Tender Documents submitted and offered by the Tenderer shall 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 shall be allowed or entertained after the Tender Closing Date.

24.2 By signing the Part VII – Offer to be Bound, a Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender Documents, and any variation or adjustment agreed with the Government and upon acceptance by the Government will be incorporated into and form part of the Contract.

#### **25. Negotiation**

25.1 The Government reserves the right to negotiate with any Tenderer about the terms of its Tender and the Contract.

#### **26. Government Discretion**

26.1 Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision has been made by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government has grounds to believe there is or will be such IPR infringement;

or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;

- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in Clauses 22.6 and 22.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied (“Contract Default(s)”); and the Government in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;
- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;
- (f) professional misconduct or acts or omissions has or have been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (g) the Tenderer has failed to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; or

The grounds specified in Clauses 26.1(a) to 26.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

- 26.2 For the purposes of Clause 26.1 above, each Tenderer shall provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:
- (a) details of any petition or proceeding mentioned in Clause 26.1(a) above;
  - (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 26.1(c) above;
  - (c) details of all Contract Defaults as mentioned in Clause 26.1(d) above;
  - (d) details of conviction as mentioned in Clause 26.1(e) above in Hong Kong or any overseas jurisdiction;
  - (e) details of any professional misconduct or act or omission as mentioned in Clause 26.1(f) above; and
  - (f) details of any failure to pay taxes as mentioned in Clause 26.1(g) above.

If none of the events as mentioned in Clauses 26.1(a) to 26.1(g) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing Schedule 12 at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification in Clause 26.3 below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 26.3 In addition to the information mentioned in Clause 26.2 above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 26.1 above.
- 26.4 If the Tenderer fails to comply with the request made by the Government in Clause 26.3 above within such time as required by the Government, the Government may disqualify the Tenderer in Clause 15 above. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer in Clause 26.1(b) above.
- 26.5 In providing the information required under Clauses 26.2 and 26.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 26.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.

26.6 If the Tenderer is a company, the expression “related person” of the Tenderer includes any one of the following:

- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer (“majority shareholder”);
- (b) a holding company or a subsidiary of the Tenderer;
- (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
- (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

26.7 If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Tenderer (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

26.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-clause of Clause 26.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.

26.9 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

## **27. Provision of Services**

27.1 The Contractor does not have any exclusive right to provide the Services by virtue of the Contract.

## **28. Tender Addenda**

28.1 Should the Government require any amendments, clarifications or adjustments to be made to the Tender Documents before the Tender Closing Date, the Government may do so by issuing numbered addenda giving full details of such amendment, clarification or adjustment. The Tenderer shall acknowledge receipt of these addenda. These addenda if comprising an amendment, clarification or adjustment to any provisions of the Contract, shall form a part of the Contract and shall take priority over the documents previously issued.

**29. New Information**

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

**30. Contract Deposit and Financial Vetting**

30.1 If the Estimated Total Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.36 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 a Contract Deposit of an amount equivalent to two percent (2%) of the Estimated Total Contract Value specified in Schedule 1 for the entire Contract Period as security for the due and faithful performance of the Contract by the successful Tenderer.

30.2 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall submit the following documents for financial vetting to demonstrate their financial capability:

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
  - (i) the audited accounts must be prepared in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622);
  - (ii) the latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Closing Date;
  - (iii) the audited accounts must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income statement), statement of changes in equity, statement of cash flows and notes to the accounts;
  - (iv) all such accounts must have been audited by a certified public accountant (practising) or a corporate practice as registered in the Professional Accountants Ordinance (Cap. 50) or for a non-Hong Kong company, by

- auditors recognised by its local law of the place of the company's establishment;
- (v) if any such accounts are prepared in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided; and
  - (vi) if the Tenderer is a joint venture or partnership, audited accounts for each of the members/participants of the joint venture or partnership must be submitted if the members are incorporated bodies;
- (b) management accounts up to a period of not more than three (3) months before the Tender Closing Date shall be provided if this has not been covered by the latest audited accounts;
  - (c) unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required or the Tenderer is a newly established company where the first accounts are not yet available;
  - (d) the management accounts or unaudited accounts mentioned in Sub-clauses (b) and (c) above must be certified by the sole proprietor, partners, directors of the Tenderer or by certified public accountants or other accountants acceptable to the Government;
  - (e) projected profit and loss accounts and cash flow statements of the Contract and for each contract year and the pre-operating period (if applicable) complying with the following requirements:
    - (i) for a company, they shall be certified by the company's director or company secretary. For a joint venture or partnership, separate certification from each of the director of the members/participants of the joint venture or a partner of the partnership is required;
    - (ii) the assumptions used in preparing the projections shall be reasonable and must be clearly stated. All the supporting schedules and detailed calculations shall also be provided;
    - (iii) the projections shall at least include the projected revenue, details of operating expenses, capital expenditure including the initial investments and sources of finance, and other particulars showing how the Tenderer will deal with the Contract; and
    - (iv) the assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections;
  - (f) copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorized and issued share capital, name of shareholders and directors if the Tenderer is an overseas company;
  - (g) copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings

or returns of allotment of shares to support injection of capital, where applicable;

- (h) original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
- (i) written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable; and
- (j) Tenderers shall upon the request in writing by the Government provide any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.

30.3 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to not more than two percent (2%) of the Estimated Total Contract Value (if it passes the financial vetting as stipulated in Clauses 30.2 above) or not more than five percent (5%) of the Estimated Total Contract Value (if it is unable to submit adequate financial information for a meaningful assessment or fails in the financial vetting as stipulated in Clauses 30.2 above) as security for the due and faithful performance of the Contract by the successful Tenderer.

30.4 The Contract Deposit shall be payable within twenty-one (21) days from the date of the Conditional Acceptance of Tender or such later date as the Government may allow and either in cash or in the form of a bank guarantee in the form attached at Annex 2 issued by a bank holding a valid banking licence under the Banking Ordinance (Cap. 155).

30.5 If the successful Tenderer elects to pay the Contract Deposit by way of a bank guarantee, the proposed guarantor and the form and substance of the bank guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the bank guarantee must comply with the following:

- (a) 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;
- (b) unless otherwise agreed by the Government, it must be on the terms set out at Annex 2, and any authorisation used by the bank for the execution of the bank guarantee shall be acceptable to the Government; and
- (c) the bank guarantee shall come into effect on such date as may be directed and stated by the Government in the Conditional Acceptance of Tender until three (3) months after the expiry of the Contract Period or the date upon which all of the Contractor's obligations shall have been performed and discharged to the satisfaction of the Government, whichever is the later.

- 30.6 A Tenderer is required to elect the method of providing a Contract Deposit it prefers by completing the Offer to be Bound at Part VII. In the event that a Tenderer fails to elect which method of providing a Contract Deposit it prefers, it will be assumed that the Tenderer will pay the Government the Contract Deposit by way of cash.

**31. Documents of Unsuccessful Tenderers**

- 31.1 This Invitation to Tender is covered by the WTO GPA. The Government may destroy all documents submitted by unsuccessful Tenderers three (3) years after the date the Contract has been awarded.

**32. Complaints About Tender Process or Contract Award**

- 32.1 This Invitation to Tender is governed by the WTO GPA, and all relevant provisions of the WTO GPA shall apply to this Invitation to Tender. Tenderers are hereby notified that the Government has established a Review Body on Bid Challenges under the WTO GPA (“Review Body”) to address challenges made against alleged breaches of the WTO GPA.
- 32.2 Tenderers are advised that the procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (“Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department of the Government, or which may be obtained upon request.
- 32.3 In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may lodge a challenge to the Review Body within ten (10) working days after the Review Body knew or reasonably shall have known the basis of the challenge. The challenge that filed later than thirty (30) working days shall not be considered. However, Tenderers are encouraged to seek resolution of their complaints in consultation with the AFCD (for and on behalf of the Government) before lodging a complaint with the Review Body. In such instances, the AFCD shall give impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.
- 32.4 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 head of the Procuring Department who will personally examine the complaint and refer it to the approving authority or relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

**33. Personal Data Provided**

- 33.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract, resolution of any dispute arising from the Invitation to Tender, and the disclosure pursuant to Clause 34 below).
- 33.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his

consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 33.1 above, or the disclosure pursuant to Clause 34 below.

- 33.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 33.4 Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections shall be addressed to Personal Data Privacy Officer of the AFCD.

#### **34. Consent to Disclosure**

- 34.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer,
- (a) a brief description of the Services provided or to be provided by the successful Tenderer;
  - (b) the Estimated Total Contract Value and any other fees, cost and expense payable to the successful Tenderer pursuant to the Contract;
  - (c) the engagement by the Government of the successful Tenderer under the Contract and the name and address of the successful Tenderer; and
  - (d) the date of award of the Contract.
- 34.2 Nothing in Clause 34.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not specified in Clause 34.1 above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
  - (b) the disclosure of any information already known to the recipient;
  - (c) the disclosure of any information which is public knowledge (including because of any disclosure under Clause 34.2(a) above);

- (d) the disclosure of any information in circumstances where such disclosure is required in any laws of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 34.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

**35. Contractors' Performance Monitoring**

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

**36. Costs of preparing the Tender**

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

**37. Warning against Bribery**

- 37.1 The offer of an advantage to any public officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.
- 37.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

**38. Warranty against Collusion**

- 38.1 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 Clause 3 of Annex 3 (Non-collusive Tendering Certificate) referred to in Clause 38.2 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.
- 38.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex 3) as part of its Tender.
- 38.3 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 38.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 38.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Tenderer's Tender;
  - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
  - (c) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract under Clause 18.1 of the Conditions of Contract.
- 38.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties and/or undertakings in Clause 38.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 38.2 above.
- 38.5 A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 38.1 above may prejudice its future standing as a Government contractor or tenderer.
- 38.6 The rights of the Government under Clauses 38.3 to 38.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

### **39. Briefing Session**

- 39.1 A Tender briefing session will be held. Tenderers are strongly advised to attend the Tender briefing session before submitting their Tenders in order to fully acquaint themselves with the requirements of the Government and to determine the scale and costs of the Services to be provided. Details of the briefing session are as follows:

Time: 10:00

Date: 27 February 2026 (Friday)

Venue: Room 2209 - 4

Unit 2209, 22/F, CDW Building,

388 Castle Peak Road, Tsuen Wan,  
New Territories.

Tenderers wishing to attend the briefing session must complete and return by facsimile (fax no. 2314 2866) the registration form at the Annex 4 on or before 25 February 2026.

- 39.2 Each Tenderer is advised to send no more than two representatives to attend the Tender briefing session due to limited seating capacity.
- 39.3 In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force for any duration between 0900 (Hong Kong time) and 1700 (Hong Kong time) on the Tender briefing session as originally scheduled, the Tender briefing session will be cancelled, and rescheduled to later date and time. The tenderer will be notified of the new schedule of Tender briefing session. The Government shall not be held liable for any loss or damage incurred as a result of the rescheduling of the Tender briefing session caused by above-mentioned adverse weather event.

## **PART III CONDITIONS OF CONTRACT**

### **1. Contract Period**

- 1.1 The Contract shall be for a term of thirty-six (36) months effective from 1 September 2026 or the date of the Memorandum of Acceptance, whichever is later, subject to any provision for extension or sooner termination of the Contract as provided for in the Contract (“Contract Period”).
- 1.2 The Government shall have the option to extend the Contract Period for additional period(s) of not more than six (6) months in aggregate by giving the Contractor a written notice not less than one (1) week prior to the expiry of the original Contract Period (or the expiry of the last extended Contract Period, as the case may be) on the same terms and conditions as set out in the Contract. The extended Contract Period will commence immediately upon expiry of the original Contract Period (or the expiry of the last extended Contract Period, as the case may be).
- 1.3 There is no limit on the number of times the Government exercises its option to extend or the period of each extension in Clause 1.2 above provided that the maximum extended period(s) (excluding the original period of thirty-six (36) months) do not exceed six (6) months.
- 1.4 Upon the Contract Period is extended in Clause 1.2 above, the Contract shall continue to be in full force and effect (including this Clause 1) on and subject to the same terms and conditions.

### **2. Inspection and Rejections**

- 2.1 All Services performed will be subject to inspection by the Government Representative who may withhold payment when the Services have not been performed in accordance with the requirements of the Contract. If the Contractor fails to observe or comply with any terms or provisions of the Contract including failure to comply with the requirements set out in Service Specification, or to perform the Services to the satisfaction of the Government Representative, the Government Representative shall have the right to reject the Services or any part thereof that is performed by the Contractor and to withhold payment until the defects have been rectified by the Contractor.
- 2.2 The Contractor shall take immediate and necessary action to rectify such rejected Services within twenty-four (24) hours after being notified in writing to the rejection of any of such Services.
- 2.3 If the Contractor fails to rectify such rejected Services in accordance with Clause 2.2 above, AFCD may, without prejudice to any other rights and remedies available to AFCD, carry out and complete such Services by its own resources or by engaging other contractor. All costs and expenses whatsoever which may be incurred by AFCD thereof shall be recoverable in full from the Contractor forthwith.

- 2.4 All costs incurred by the Contractor in complying with this Clause 2 shall be borne by the Contractor and shall not be chargeable to the Government unless and to the extent otherwise expressly specified in the Price Schedule.

### 3. Payment for Services

- 3.1 Monthly invoices shall be sent by the Contractor to the Government Representative or as otherwise directed. Payment shall be made after the Services have been performed and that the Services have, in all respects, been performed in accordance with the requirements of the Contract and to the satisfaction of the AFCD. The Government Representative may, at his/her discretion, order such payments to be made as he/she may consider desirable.
- 3.2 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 and to the satisfaction of the AFCD, the AFCD shall pay to the Contractor a service charge on a monthly basis (the “Monthly Fee”) in accordance with the following formula, subject to and after any deductions in respect of that month:

Monthly Fee payable to Contractor

Summation of the fee payable to Contractor for each Item, which is calculated using the formula below:

$$\text{Unit Rate for an Item} \quad \times \quad \text{Actual no. of working days of Service completed in the month} \times \text{Number of Cleaners actually involved in the month}$$

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

### 4. Level of Wages for Employee

- 4.1 The Contractor undertakes and warrants that the Contractor will pay each of its Cleaners deployed for this Service the wage not less than specified by it in Schedule 2.
- 4.2 During the Contract Period, the monthly wage payable to each Cleaner shall not be less than (i) the monthly wage committed by the Contractor or (ii) any adjusted wage level brought about by future revisions of the statutory minimum wage, whichever is higher.
- 4.3 Any breach of the level of wages in this Clause 4 would be constructed as a material breach of the Contract and AFCD shall be entitled to terminate the Contract.

### 5. Employment Contract and Payment to Contractor’s Employee

- 5.1 The Contractor shall engage the Cleaners to be deployed for this Contract as its direct employees as defined by in the Employment Ordinance (Cap. 57) and undertakes and warrants that it shall enter into a written employment contract with his employee(s).
- 5.2 The Contractor shall provide the Government Representative with a copy of the employment contract at its own costs within two (2) weeks from the commencement of the Contract. In the event that there is any change of staff and/or of the terms of the 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 employment contract entered into with the new Cleaner or any employment contract as amended, as the case may be, at its own costs.
- 5.3 The Contractor shall pay monthly salary to each Cleaner not lower than the rate specified in Schedule 2 for the whole duration of the Contract. Subject to Clause 4.2 above, the Contractor shall pay wages to Cleaner through bank autopay and furnish to the Government Representative the monthly records of wage disbursement for checking.

## **6. Gratuity to Cleaners and Cleaning Supervisor**

- 6.1 The Contractor shall pay a gratuity to a Cleaner upon the expiry or termination of the Standard Employment Contract for reason(s) other than in accordance with section 9 of the Employment Ordinance, provided that the Non-skilled Worker has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance) 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.
- 6.2 Notwithstanding Clause 6.1 above, for each Cleaner or each Cleaning Supervisor who has been employed by the Contractor under the Standard Employment Contract in respect of this Contract for a period of service of less than twelve (12) months immediately before the termination of the Standard Employment Contract (and yet still satisfying the requirement of continuous contract under the Employment Ordinance), the Contractor shall still have to pay a gratuity to the Cleaner or Cleaning Supervisor in respect of that shorter period of Service provided that the Standard Employment Contract is terminated by the Contractor and the termination of the Standard Employment Contract is due to the termination by the Government of this Contract or is timing wise after the issue of the termination notice by the Government for the termination of this Contract (regardless of whether or not such termination by the Government is due to the default of the Contractor or otherwise). For the avoidance of doubt, for the purpose of this Clause 6.2, where the termination of the Standard Employment Contract is due to reason(s) in accordance with section 9 of the Employment Ordinance or due to the Cleaner or Cleaning Supervisor terminating the Standard Employment Contract, no gratuity shall be payable in respect of the period of service of less than twelve (12) months. In addition, for this Clause 6.2 to apply, this Contract shall originally be scheduled to have a contract duration of not less than twelve (12) months had it not been the termination by the Government.
- 6.3 If a Cleaner or a Cleaning Supervisor is entitled to the gratuity in Clause 6.1 or Clause 6.2 above, the amount of gratuity shall be a sum equivalent to six percent (6%) of the

total wages earned by the Cleaner or the Cleaning Supervisor during the period of service as mentioned therein.

- 6.4 The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance and may be offset against the severance payment or long service payment in accordance with the Standard Employment Contract. Detailed requirements on the gratuity payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.

## **7. Holiday Pay to Non-skilled Workers**

- 7.1 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 Employment Ordinance (Cap. 57) in respect of this Contract for not less than one (1) 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. The gratuity shall be paid to the Employee not later than seven (7) days after the expiry or termination of the Standard Employment Contract.

## **8. Extra Wages to Non-skilled Workers for Working Under Typhoon Signal No. 8 or Above**

- 8.1 This Clause is applied if Non-Skilled Workers are requested to work when the Typhoon Signal No. 8 or above is issued.
- 8.2 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.

## **9. Contractual Obligations Under Standard Employment Contract**

- 9.1 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 copy of such contracts and its guidance notes can be downloaded from the following hyperlinks:

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

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

- 9.2 The Contractor shall strictly observe its contractual obligations under the Standard Employment Contract, including, the contractual obligations the breach of which would attract a Demerit Point.
- 9.3 Without prejudice to the generality of Clause 9.2 above, the Contractor shall, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:
- (a) paying wages;
  - (b) paying holiday pay payable to the Non-skilled Workers having been employed under a continuous contract for not less than one (1) month;
  - (c) 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;
  - (d) 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 Non-skilled Worker concerned); and
  - (e) not allowing the Non-skilled Workers to work beyond the committed daily maximum working hours under the Contract.
- 9.4 In the event that the Contractor engages a sub-contractor (the engagement of which is subject to AFCD's prior written approval), it shall ensure that its sub-contractor shall also observe and comply with Clauses 9.1 to 9.3 above, as if references to "Contractor" read "sub-contractor".
- 9.5 The Contractor or the sub-contractor fails to comply with any of its obligations in Clauses 9.1 to 9.3 above, without prejudice to any other rights, actions or remedies available to AFCD including the issuance of one or more Demerit Points to the Contractor and/or the sub-contractor, AFCD may terminate the Contract immediately.

## **10. Debarment Mechanism and Demerit Point System**

- 10.1 Under the Debarment Mechanism, 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 the 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.
- 10.2 Under the Demerit Point System, if the Contractor is in breach of any of the following contractual obligations in one (1) separate incident (or two (2) separate incidents in the case of Clause 10.2(f) below over any continuous period of twelve (12) months within the Contract Period), AFCD is entitled to issue one (1) Demerit Point to the Contractor:
- (a) wages;

- (b) holiday pay payable to Non-skilled Workers having been employed under a continuous contract for not less than one (1) month;
  - (c) wages at a rate at least 150% for Non-skilled Workers who are required to work when the Typhoon Signal No. 8 or above is hoisted;
  - (d) daily maximum working hours;
  - (e) 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 (payment by cheque is only allowed upon termination of employment contract and is made at the request of the Non-skilled Worker concerned); and
  - (f) compliance with all of the measures in the Heat Stroke Prevention Work Plan. For the avoidance of doubt, the Heat Stroke Prevention Work Plan is only applicable if the Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources.
- 10.3 For the purpose of each of Clauses 10.2(a) to 10.2(f) above, whether there is one (1) separate incident of breach of the contractual obligations referred to therein shall be determined by the Government. For the purpose of each of Clauses 10.2(a) to 10.2(e) above, for every separate incident of non-compliance with the contractual obligations referred to therein, AFCD is entitled to issue one (1) Demerit Point to the Contractor. For the purpose of Clause 10.2(f) above, whether a non-compliance with the Heat Stroke Prevention Work Plan is a substantiated complaint or breach with respect to the Heat Stroke Prevention Work Plan shall be determined by AFCD. For every two (2) separate incidents of non-compliance with the Heat Stroke Prevention Work Plan by the Contractor under this Contract over any continuous period of twelve (12) months within the Contract Period, AFCD is entitled to issue one (1) Demerit Point to the Contractor.
- 10.4 If any sub-contractor engaged by the Contractor to perform this Contract is in breach of any contractual obligations referred to Clause 10.2 above, the Government is entitled to issue one Demerit Point to each of the Contractor and the sub-contractor in accordance with Clauses 10.2 and 10.3 above.
- 10.5 The Demerit Point(s) will be mandatorily taken into account in the assessment of the Contractor / sub-contractor's offer (as the case may be) in future tender or quotation exercises.

## **11. Contractor's Acknowledgement and Obligations**

- 11.1 The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to supply to the Government the Services, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract.
- 11.2 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of Services and the performance of its

obligations under the Contract. The Contractor acknowledges and agrees that save to the extent expressly set out in the Contract, it is neither expected nor necessary that the Government will have to provide any assistance or perform any act or do anything whatsoever to ensure the provision of the Services and performance of its obligations in the Contract.

11.3 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
- (b) in accordance with Good Industry Practice.

11.4 The Contractor shall comply with all applicable laws and regulations. In particular, the Contractor shall:

- (a) 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;
- (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
- (c) 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.

11.5 The Contractor shall:

- (a) 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");
- (b) 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
- (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.

11.6 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.

- 11.7 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.
- 11.8 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.
- 11.9 Without prejudice to the deadline delivery dates and other time requirements to be observed and complied with by the Contractor, whenever any approval or agreement or instruction or direction is sought by the Contractor from the Government in accordance with the requirements of the Contract, the Government is entitled to a reasonable period of time for considering whether any such agreement or approval should be given, and a reasonable period of time to specify such direction or instruction. It will use its reasonable endeavours to give notification to the Contractor of its decision and where applicable any work to be done in order for such approval or agreement or direction or instruction to be given within a reasonable period of time.
- 11.10 In the light of the foregoing, the Contractor will not be entitled to any extension of time or additional payment or exemption from any obligation or liability on the alleged ground (a) that the Contract contains insufficient or unclear or inconsistent or out-of-scope specifications or requirements; or (b) that the Government has not provided any assistance or performed any act to ensure performance by the Contractor of its obligations; or (c) that the Contractor has to expend time and resources reporting to the Government on the progress; or (d) that any non-compliance with any obligation or delay is due to the manufacturer or any other person; or (e) that the Government has not provided or otherwise in a timely manner any direction, instruction, information or approval which is not otherwise expressly required under the Contract; or (f) for any approval or agreement which is stated to be required in the Contract, that the Government abstains from giving any such approval or agreement.
- 11.11 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 Clause 16.2 below in connection with, any discrepancies, errors or omissions therein.
- 11.12 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.

**12. Contractor's Warranties and Representations**

12.1 The Contractor warrants, represents and undertakes that:-

- (a) the Contractor and Contractor Personnel shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
- (c) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
- (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform all its obligations under the Contract;
- (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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
- (k) 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.

12.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 12.1 above and in other provisions of the Contract (including without

limitation the Conditions of Contract and Clause 38.1 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”.

- 12.3 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.
- 12.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a Tenderer and the rights conferred on the party contracting with the Tenderer under the Supply of Services (Implied Terms) Ordinance (Cap. 457) apply to bind the Contractor and the Government respectively.

### **13. Occupational Safety and Health**

- 13.1 The Contractor shall comply with the Government’s prevailing policies, guidelines and procedures safeguarding occupational safety and health of the Contractor Personnel deployed for the Services.
- 13.2 The Contractor must ensure that whenever it is so required, comprehensive assessment and management of risks to occupational safety and health of the Contractor Personnel deployed for the Services will be undertaken. Based on such assessment, adequate measures must be taken to guard against such risks.
- 13.3 The Contractor must only provide experienced supervisory staff to give proper training, supervision and instructions to its Contractor Personnel. The Contractor must ensure that all Contractor personnel provided by it to execute the Services:
- (a) are properly trained, competent and efficient in carrying out the duties as stipulated in the Execution Plan, including management plan and work plan;
  - (b) shall be fully aware of any potential risks that may exist through the undertaking of their duties and to follow policies and guidelines that may be in force from time to time concerning occupational safety and health;
  - (c) take all reasonable measures to avoid causing danger to the Contractor Personnel in the discharge of their duties;
  - (d) stay alert, listen to and observe all relevant bulletins regarding the weather and the state of the Hong Kong Waters;
  - (e) is mandatory for all incidents and dangerous occurrences to be reported promptly to the Government.
- 13.4 In the event that the Contractor fails to comply with any of the Clauses 13.1 to 13.3 or is unable to meet any relevant safety standards, it may be disqualified from participating in any future Tender or quotation exercises conducted by the Government.

**14. Contacts for Emergency**

14.1 The Contractor shall provide the Government with an updated list of staff's contact names and telephone numbers. The list shall be readily available in the event of any emergency that occurs outside of normal working hours. The Contractor shall ensure that sufficient staff can be mobilized promptly to adequately address any such emergency.

**15. Failure to carry out Accepted Innovative Suggestions**

15.1 The Contractor undertakes and warrants that it shall carry out all Accepted Innovative Suggestions. In the event that the Contractor fails to carry out in full any of the Accepted Innovative Suggestions in relation to any supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys or otherwise not relating to any Services, (in each case a "non-complied Accepted Innovative Suggestion), the Contractor shall, subject to Clauses 15.2 to 15.4 below, pay to the government a sum of money calculated according to the applicable formula as liquidated damages for **EACH** of such non-complied Accepted Innovative Suggestions:

(a) Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion in relation to the Services or any part thereof during a billing period **(L1)**:

$$L1 = C1 \times W(T) \times \frac{M(IS)}{M(TP)}$$

where C1 = the Estimated Total Contract Value payable during the relevant billing period for the Services or any part thereof in respect of which the Contractor fails to carry out the relevant Accepted Innovative Suggestion (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)

W(T) = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme

M(IS) = the marks that would be given to one (1) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the Marking Scheme (regardless of whether marks are actually given to the non-complied Accepted Innovative Suggestion)

M(TP) = the maximum technical marks for the Technical Proposal in the Marking Scheme

(b) Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion which is not related to the Services **(L2)**

$$L2 = C2 \times W(T) \times \frac{M(IS)}{M(TP)} \times \frac{P}{CP}$$

- where
- C2 = the Estimated Total Contract Value payable under the whole of the Contract (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)
- W(T) = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme
- M(IS) = the marks that would be given to one (1) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the Marking Scheme (regardless of whether marks are actually given to the non-complied Accepted Innovative Suggestion)
- M(TP) = the maximum technical marks for the Technical Proposal in the Marking Scheme
- P = duration of time expressed in number of days during which the Contractor fails to fully carry out the relevant Accepted Innovative Suggestion within the Contract Period up to the day the amount of the liquidated damages is determined for the time being or up to the end of the Contract Period as the case may be
- CP = Contract Period expressed in number of days

The amount calculated in the above formulae represents a reasonable sum proportionate to the Government's legitimate interest in the enforcement of the relevant Accepted Innovative Suggestion.

- 15.2 The number of Accepted Innovative Suggestions which are Pro-innovation Proposals that the Contractor fails to fully carry out and upon which liquidated damages are payable under the applicable formula in Clause 15.1 above shall not exceed the minimum number of Pro-innovation Proposals to which full marks could be awarded to a Tenderer in the Marking Scheme. The same for those Accepted Innovative Suggestions which are ESG Proposals. However, there is no limit on the number of billing periods in respect of which liquidated damages shall be payable under the first formula of Clause 15.1 above.
- 15.3 The aggregate amount of liquidated damages payable in the first formula and the second formula in Clause 15.1 above may not exceed **5.5 per cent** of the Estimated Total Contract Value.
- 15.4 The liquidated damages payable in the first formula in Clause 15.1 above may be deducted from the Estimated Total Contract Value payable in respect of Services over the billing period to which the non-complied Accepted Innovative Suggestion relates or from any other Estimated Total Contract Value payable during the Contract Period. The Government reserves the right to demand the payment of the liquidated

damages from time to time including the time when the invoice in respect of the relevant billing period is to be settled or in respect of any subsequent billing period or at the end of the Contract Period whether by setting off from any invoiced amount or from the Contract Deposit (if any). The liquidated damages payable in the second formula in Clause 15.1 above may likewise be deducted in the same manner from any Estimated Total Contract Value or from the Contract Deposit. Alternatively, any such amount shall be settled by the Contractor in cash as per the demand of the Government within seven (7) days.

- 15.5 For the avoidance of doubt, for any billing period during which the Services should be performed that an Accepted Innovative Suggestion is not complied with, liquidated damages shall be calculated separately under Clause 15.1 for each such billing period.

## **16. Liability and Indemnities**

- 16.1 Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its Contractor Personnel however caused (whether by any Negligence of the Government or any of its Contractor Personnel or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its Contractor Personnel, save and except any such injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).

- 16.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (each an "Indemnified Party") from and against:

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a "Claim") and everything stated in Clause 16.2(a) above incurred or suffered by an Indemnified Party in all and any such Claims,

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

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor Personnel;

- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the materials or third party materials infringes the Intellectual Property Rights or any other rights of any person;
- (v) the non-compliance by the Contractor Personnel with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor Personnel, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in Clause 16.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (viii) 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 the Contractor Personnel.

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

- 16.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government.
- 16.4 For the purposes of this Clause 16, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).
- 16.5 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.

## **17. Policy of Insurance and Compensation**

- 17.1 The Contractor shall effect and keep in force, and renew immediately upon expiry, throughout the Contract Period at its sole costs policies of insurance in relation to the use of labour by the Contractor for performing the Services with an insurance company authorised under the Insurance Ordinance (Cap. 41) and on such terms and conditions as shall be approved by the Government. The policies of insurance shall

include a level of coverage that is deemed sufficient with regards to all risks that may be incurred by the Contractor for performing the Services. The coverage must include, but not limited to, death, personal injury, loss or damage to property, or any other loss.

- (a) a public liability insurance policy in the joint names of (i) the Contractor and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 or such other amount as stated in the Conditions of Contract for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property.

- 17.2 The Contractor shall maintain the employees’ compensation insurance policy in compliance with the Employees’ Compensation Ordinance (Cap. 282) throughout the Contract Period.
- 17.3 Upon expiry of any of the policies of insurance required under Clause 17 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 may stipulate. Upon issuance of the renewed insurance policy, the Contractor shall forthwith furnish a copy to the Government for keeping.
- 17.4 Under no circumstances whatsoever shall the Government be responsible for the premium payable under any of the policies of insurance required under this Clause 17 or the premium payable for the renewal thereof. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.
- 17.5 The Contractor shall conform to the terms and conditions of any of the policies of insurance required under this Clause 17 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 any of the policies of insurance required under Clause 17 shall be rendered void or voidable, or which would otherwise amount to a breach of such policy(ies). 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 17.
- 17.6 If any of the policies of insurance required under this Clause 17 provides that the payment of certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment.
- 17.7 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor shall lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage.

- 17.8 If the Contractor fails to effect and keep in force any of the insurance policies required under this Clause 17, or any other insurance which it may be required to effect under the terms of this Contract then and in any such cases without prejudice to the liability of the Contractor under other applicable laws, the Government may effect and keep in force any such insurance and/or make such alternative arrangements as it considers appropriate to protect its interests and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 17.9 In the event of any Cleaner or other person employed in connection with the Contract whether in the employment of the Contractor or a sub-contractor suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form as the Commissioner for Labour may require and shall forward one (1) copy of such notification to the Government Representative.
- 17.10 No provision within any insurance policy or the amount of coverage provided therein shall serve to absolve the Contractor of any liability under the Contract. It is the sole responsibility of the Contractor to determine the level of insurance coverage that are sufficient for the Contractor in fulfilling any liability that may arise under the Contract.
- 17.11 For the purposes of obtaining the Government's approval of the terms and conditions of the insurance policy mentioned in Clause 17.1 above, before taking out the same, if required by the Government, the Contractor shall submit the draft insurance policy to the Government for review no later than one (1) week after the date of the Memorandum of Acceptance.

## **18. Process Agent**

- 18.1 Where the Contractor does not have a place of business in Hong Kong, the Contractor shall irrevocably appoint the person whose name and address are set out in Schedule 3 as its process agent to receive on its behalf service of process of any legal action or proceedings arising out of or in connection with the Contract in Hong Kong. Service upon the process agent shall be good service upon the Contractor whether or not it is forwarded to and received by the Contractor. If, for any reason, the process agent ceases to be or ceases to be able to act as process agent, or no longer has an address in Hong Kong, the Contractor shall appoint a substitute process agent with an address in Hong Kong acceptable to the Government and to deliver to the Government a copy of the substitute process agent's acceptance of that appointment within thirty (30) days. In the event that the Contractor fails to appoint a substitute process agent, or fails to notify the Government of the name and address for service of that substitute process agent, it shall be effective service for the Government to serve the process upon the last known address in Hong Kong of the last known process agent for the Contractor notified to the Government notwithstanding that such process agent is no longer found at such address or has ceased to act or has ceased to be able to act.

## **19. Termination of Contract**

- 19.1 Without prejudice to other provisions of the Contract and to any other rights, actions or remedies available to AFCD, in the event that:

- (a) the Contractor or any of its permitted sub-contractor engaged by the Contractor is convicted of any the Relevant Offences arising from this Contract;
- (b) has accumulated three (3) or more Demerit Points arising from this Contract over a rolling period of thirty-six (36) months;
- (c) any Services are rejected in the Contract;
- (d) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (e) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (f) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (g) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (h) the Contractor, any officer (including director) and Contractor Personnel 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;
- (i) the Contractor abandons the Contract in whole or in part;
- (j) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government;
- (k) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of the Conditions of Contract:-
  - (i) Clause 33.6 (Contract Deposit);
  - (ii) Clause 25.3 (Probity);
  - (iii) Clause 31.3 (Force Majeure);
  - (iv) Clause 23 (Illegal Workers);
  - (v) Clause 40.4 (Admission of Contractor Personnel to Government Premises); or
  - (vi) Clause 38.3 of the Terms of Tender (Warranty Against Collusion).

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

- 19.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:
- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
  - (b) if the Contractor is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
  - (c) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
  - (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
  - (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
  - (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
  - (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
  - (i) the Government reasonably believes that any of the events mentioned above is about to occur.
- 19.3 Separate from the event mentioned in Clause 19.1(k)(iii) above and Clause 31.3 below, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole in Clause 31.7 below. In case of partial termination of any part but not the whole of the Contract under this Clause 19.3 (including the partial termination of the Contract in relation to one or more Items of the Services), the partial termination shall be referred to as "Partial Termination Due to Force Majeure".
- 19.4 Notwithstanding anything therein to the contrary, the Government may at any time and from time to time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination. In the case of suspension, the written notice shall specify the period of the suspension ("Suspension Period") and the scope of the suspension (viz., the Items(s) of the Services to be suspended, which may be all or any of the Items(s) of the Services or any part of it) ("Suspended

Services”). In case of partial termination of any part but not the whole of the Contract under this Clause (including the partial termination of one or more Item(s) of the Services), the partial termination shall be referred to as “Partial Termination by Notice”.

19.5 Instead of terminating the Contract in relation to all Services in Clauses 19.1 or 19.2 above, the Government may elect, but is not obliged, to terminate the Contract in relation to any one or more Item(s) only (“Partial Termination Due to Default”). The term “Partial Termination” may mean a Partial Termination Due to Force Majeure or a Partial Termination by Notice or a Partial Termination Due to Default and in each case a “Partial Termination”. The Item(s) of the Services to which a Partial Termination relates are referred to as “Terminated Services”. The Terminated Services may cover all or any Item(s) of the Services which have not been accepted up to the time of the Partial Termination.

19.6 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 19.1 to 19.5 above and in each Sub-clause of Clauses 19.1 and 19.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

## **20. Termination Consequences**

20.1 Upon expiry or early termination of the Contract (howsoever occasioned) (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to;
  - (i) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
  - (ii) the rights and claims which have accrued to a Party prior to the Termination; and
  - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including Clauses 16 to 20, 23 to 25, 27 to 31, 33 to 37, 39 to 43, 47 to 51 of the Conditions of Contract, the Interpretation and such other provisions as specified in the Conditions of Contract);
- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 16.2 above, in the event of the Termination under Clause 19.1 or 19.2, the Contractor shall be liable for all

losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amount in excess of the Total Estimated Service Price incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 19.1 or 19.2 above. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;

- (d) the Contractor shall immediately return to the Government all Government Property which is supplied or in respect of which access is granted to the Contractor by the Government for the purposes of or in relation to the Contract;
- (e) the Contractor shall provide all such assistance as the Government may request from time to time after the Termination to ensure an orderly and effective transition of the provision of the Services to the Government or another contractor to be appointed by the Government Representative and/or completion of any work-in-progress;
- (f) the Contractor shall within twenty-eight (28) days of the date of Termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of Termination; and
- (g) at the request of the Government, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

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

20.2 Upon a Partial Termination pursuant to Clause 19.3 or 19.4 or 19.5 above:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Services shall be of no further force and effect, but without prejudice to:

- (i) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
    - (ii) the rights and claims which have accrued to a Party prior to the Partial Termination; and
    - (iii) the continued existence and validity of all remaining provisions of the Contract; and
  - (b) all of the consequences specified in Clause 20.1 above (apart from Clause 20.1(a) above) shall apply save that (i) references to “Termination” shall mean “Partial Termination”; references to “Services” shall mean the “Terminated Services”; and (ii) for Clause 20.1(c), it shall apply to a Partial Termination Due to Default.
- 20.3 Upon the issue of a suspension notice pursuant to Clause 19.4 above in relation to the Suspended Services for the Suspension Period specified therein (“Suspension”):
- (a) the Contract in relation to the Suspended Services shall be of no force and effect during the Suspension Period but subject to the same provisions set out in Clauses 20.1(a)(i) to (iii) above save that references therein to Termination shall mean Suspension;
  - (b) the Contract in relation to the Suspended Services shall resume immediately upon expiry of the Suspension Period (or such other date as the Government may subsequently stipulate by varying the Suspension Period by serving at least fourteen (14) days’ notice on the Contractor);
  - (c) unless and to the extent waived by the Government Representative in writing, Clauses 20.1(b) and (e) shall apply in the case of a Suspension save that references therein to Termination shall mean Suspension;
  - (d) the Government has no obligation to pay any outstanding Contract Price (or any part thereof) to the Contractor for any Suspended Services performed but unpaid as at the date when the Suspension comes into effect or at any time during the Suspension Period; and any such obligation shall only resume as the Contract resumes pursuant to Clause 20.3(b) above but strictly on and subject to the terms and conditions of the Contract; any Contract Price paid in advance of the Suspension need not be refunded; no Contract Price shall be payable during the Suspension Period; and
  - (e) the Contractor shall not and has no obligation to perform its obligations in relation to the Suspended Services as at the date when the Suspension comes into effect or at any time during the Suspension Period; and save as directed by the Government in relation to any uncompleted part of the Contractor’s obligations in relation to the Suspended Services as at the date of the Suspension, any such obligation will resume as the Contract resumes pursuant to Clause 20.3(b) above whereupon the Contractor shall resume its obligations in relation to the Suspended Services strictly on and subject to the terms and conditions of the Contract.

**21. Government Property**

21.1 When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay an amount equal to its replacement costs plus all administrative costs incurred by the Government for replacing such lost or damaged property. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

**22. Government Premises / Contractor Premises**

22.1 The Contractor, shall ensure that all persons engaged by it in carrying out this Contract remain at such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

22.2 Where the Services are carried out on the Contractor's premises, such premises shall be open to inspection by the Government at all reasonable times.

22.3 The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto Government premises, public piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, public piers or wharves.

**23. Illegal Workers**

23.1 The Contractor undertakes not to employ illegal workers in the execution of any Government contracts including this Contract. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may, by notice, terminate the Contract pursuant to Clause 19.1(k) above or partially terminate this Contract pursuant to Clause 19.5 above.

23.2 The Contractor shall be liable for all reasonable expenses incurred by AFCD as a result of the termination of this Contract.

**24. Confidentiality**

24.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government data, any other information report, document, plan, record, data (including any personal particulars records and personal data (as defined under the Personal Data (Privacy) Ordinance (Cap. 486), database, code or particulars (i) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor or any of Contractor Personnel; or (ii) otherwise is accessible by or available to the Contractor or any of the Contractor Personnel in the course of performing the Services (collectively "Confidential Information"), provided that the restrictions on disclosure contained in this Clause 24.1 shall not apply to the disclosure of any Confidential Information if:

- (a) such disclosure to any person employed, used or engaged by the Contractor in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor for the performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the Confidential Information to a third party;
  - (b) such Confidential Information is already known to the recipient other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
  - (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
  - (d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
  - (e) with the prior consent in writing of the Government.
- 24.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 16.2(a) and 16.2(b) above which the Government (or any of its assigns or successors-in-title or authorised users) may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:
- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any other member of the Restricted Group;
  - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
  - (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).
- 24.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 24.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.
- 24.4 When requested by the Government, the Contractor shall forthwith require any of its officers or employees or agents or sub-contractors as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 24.1 above,

to execute a written undertaking in favour of the Contractor and the Government in a form to be determined by the Government agreeing to the restrictions attached to the Confidential Information set out in this Clause 24 and the Contractor agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

- 24.5 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 24.6 The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).
- 24.7 The Contractor shall 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 24 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 24.8 The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 24.
- 24.9 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 24 and/or specific performance ensuring the compliance of this Clause 24 in light of any threatened or actual breach of this Clause 24, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 24.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 24.11 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 24 and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

**25. Probity**

25.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of the Contractor and Contractor Personnel are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200); and
- (b) the soliciting or accepting of advantages, as defined under the Prevention of Bribery Ordinance (Cap. 201) is not permitted.

25.2 The Contractor shall inform its officers, employees (whether permanent or temporary) and the Contractor Personnel that the soliciting or accepting of advantages (as defined under the Prevention of Bribery Ordinance, Cap. 201) is not permitted. The Contractor shall also caution its Contractor Personnel against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

25.3 The Government may terminate the Contract immediately pursuant to Clause 19.2 above or partially terminate the Contract pursuant to Clause 19.5 above if the Contractor or the Contractor Personnel is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

25.4 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-contractor (if any), or any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 25.2 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

**26. Heat Stroke Prevention Work Plan**

26.1 For non-skilled workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources under this Contract, the Contractor shall implement the Heat Stroke Prevention Work Plan as submitted in the Tender which shall at least cover the following proposals applicable to all such non-skilled workers:

- (a) making suitable work arrangement such as rescheduling work to cooler periods and cooler places;
- (b) adopting measures included in the Heat Stroke Prevention Work Plan by making reference to Labour Department's latest "Guidance Notes on

Prevention of Heat Stroke at Work” published on 15 May 2023 (as may be updated from time to time) which shall cover at least the following:

- (i) to conduct risk assessments of heat stress for the specific work taking account of the environmental (such as airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatisation of employees);
  - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers / shelters; providing ventilation equipment, and providing sheltered / ventilated resting places) based on the risk assessment results. Such measures shall complement the Marine Parks environment and shall not obstruct, disturb or interrupt visitors the Marine Parks; and
  - (iii) to arrange hourly rest breaks as appropriate for non-skilled workers working outdoors, in indoor environment without air-conditioning and / or in the vicinity of heat sources, based on the recommendations and criteria provided in Labour Department’s latest guidelines, when the heat stress at working warning issued by Labour Department is in force;
- (c) providing potable water at all times during work;
  - (d) providing uniforms with dry-fit properties; and
  - (e) providing wide-brimmed hats, arm sleeves or umbrellas.

26.2 The Contractor shall keep written records of (i) heat stress risk assessments for its non-skilled workers exposed to heat stress at work by using the Labour Department’s sample form as set out in “Guidance Notes on Prevention of Heat Stroke at Work” published on 15 May 2023 at [https://www.labour.gov.hk/common/public/oh/Heat\\_Stress\\_GN\\_en.pdf](https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf) (as may be updated from time to time) as provided in Clause 7.1 of Terms of Tender; and (ii) the performance of all of the requirements set out in Clause 26.1 above.

26.3 The Contractor shall provide the Cleaners with training and information on prevention of heat stroke at work.

## **27. Relationship of the Parties**

27.1 Nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. The Contractor shall not (without the consent in writing of the Government) commit the Government to any obligation whatsoever.

27.2 The Contractor enters into this Contract with Government as an independent contractor only and shall at all times remain as an independent contractor throughout the Contract Period.

27.3 For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

27.4 Unless otherwise expressly provided for in the Contract, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party.

**28. Assignment and Sub-contracting**

28.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be deemed to be personal to it. Any person purportedly appointed by the Contractor as agent shall be treated sub-contractors for the purpose of this Clause 28 and for the whole of the Contract.

28.2 Acceptance of the Tender does not signify the Government's acceptance of any sub-contracting proposal set out in the Tender.

28.3 The Government may impose conditions either to be complied with by the Contractor and/or any proposed sub-contractors before giving any approval under Clause 28.1 above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of the Government in such form and substance to be prescribed by the Government. Where the Government requests the same, a certified copy of the sub-contract shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.

28.4 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees and agents of any such sub-contractor as if they were its own.

**29. Disclosure of Information**

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

- (a) a brief description of the Services provided or to be provided by the Contractor;
- (b) the Estimated Total Contract Value and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor; and
- (d) the date of award of the Contract.

29.2 Disclosure may also be made by the Government under any of the circumstances specified in Clause 34.2 of the Terms of Tender in relation to any information concerning or relating to the Contractor or the Contract or the Services or the Materials, recorded in whatever media.

- 29.3 Nothing in this Clause 29 or in Clause 34.2 of the Terms of Tender shall imply or be construed that the Government owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Services or the Materials.
- 29.4 For the avoidance of doubt, the provisions in Clause 29 of the Terms of Tender (Personal Data Provided) shall also apply to the personal data provided by the Contractor from time to time during the Contract. References to “Invitation to Tender” in Clause 29.1 of the Terms of Tender include the Contract and references to “Tenderer” include the successful Tenderer (viz., the Contractor). The purposes for which such personal data will be used will be those as set out in Clause 29.1 of the Terms of Tender, and also for enforcement and administration of the Contract, and payment. Disclosure of such personal data may also be made under Clause 29.2 above.

### **30. Publicity**

- 30.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the Government’s name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 30.2 Subject to Clause 30.1 above, the Contractor shall submit to the Government for approval all the proposed advertising or other publicity material relating to the Contract, the Services or other services provided or other work done in connection with the Contract wherein the Government’s name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.
- 30.3 Notwithstanding any consent or approval given under Clause 30.1 or 30.2 above, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

### **31. Force Majeure**

- 31.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- 31.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- 31.3 Provided the Government is satisfied with the Contractor’s claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed

between the Parties (“Suspension due to Force Majeure”). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract under any applicable Sub-clause of Clause 19.1 or Clause 19.2 above or partially terminate the Contract under Clause 19.5 above.

- 31.4 Without prejudice to the generality of Clause 31.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event (“Affected Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
  - (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
  - (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
  - (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
  - (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 31.5 Following the issue of a notice by the Contractor under Clause 31.1 above which has led to Suspension due to Force Majeure under Clause 31.3 above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
  - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
  - (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.
- 31.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected

Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected 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 Resumption Date, the Government’s decision shall be final in the absence of manifest error.

- 31.7 Should a Suspension due to Force Majeure subsist for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract (whether in whole or in part) in Clause 19.3 above (depending on the election of the Government).

## **32. Disclaimer**

- 32.1 The Contractor acknowledges to the Government that it has not relied on or been induced to enter into the Contract by any Warranty, representation, forecast, estimate, or projection given by the Government or any of its officers, employees, agents or advisers.
- 32.2 The Contractor shall not in any way be relieved from any obligation under the Contract nor shall it be entitled to claim against the Government on grounds that any information, whether obtained from the Government or otherwise (including information made available by the Government), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of all such information.

## **33. Contract Deposit**

- 33.1 The Contractor shall pay the Contract Deposit in accordance with Clause 30 of the Terms of Tender.
- 33.2 If the Contractor fails to comply with Clause 33.1 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 19.1 above or partially terminate the Contract pursuant to Clause 19.5 above.
- 33.3 If:
- (a) the Contractor fails to comply any provision of the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the bank guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or
  - (b) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the bank guarantee, to recover the amount due to payable,

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

- 33.4 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 33.5 If any deduction is made by the Government from the Contract Deposit or a call is made on the bank guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the Government, deposit a further sum or provide a further bank guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further bank guarantee under this Clause 33.6 below, the further bank guarantee must comply with the requirements in Clause 30.5(a) to (c) of the Terms of Tender.
- 33.6 Where the total Contract Price payable for all Services to be procured under the Contract for the whole of the Contract Period is likely to exceed the original Estimated Total Contract Value, the Government may, by written notice to the Contractor, require the Contractor to submit to the Government such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to two percent (2%) or five percent (5%) if any, whichever is the higher, if the Contractor failed in the financial assessment under Clause 30 of the Terms of Tender in the Tender evaluation stage) of the revised Estimated Total Contract Value specified by the Government in the notice.
- 33.7 If a notice is issued by the Government under Clause 33.6 above, the Contractor shall within twenty-one (21) days deliver to the Government the additional amount of further Contract Deposit required in the notice in the form of either cash or a further bank guarantee. The further bank guarantee must comply with the requirements in Clause 30.5(a) to (c) of the Terms of Tender. A further Contract Deposit paid by the Contractor to the Government shall form part of the Contract Deposit.
- 33.8 If the Contractor fails to comply with Clauses 33.3, 33.4 or 33.5 above, the Government shall have the right to terminate the entire Contract in Clause 19.1 above.
- 33.9 Upon the expiry or termination of the Contract Period:
- (a) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit (if any) in cash and without interest to the Contractor by the date specified in (i) or (ii) below, whichever is applicable:
    - (i) the end of three (3) months counting from the date of early termination or expiry of the Contract Period; or
    - (ii) in the case if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any

outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing).

- (b) if the Contract Deposit is paid by way of a bank guarantee, the bank guarantee shall be discharged and released in accordance with the guarantee period as stated therein.

(the applicable period specified in sub-clause (a) or (b) above is referred to as the “Guarantee Period”.)

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

33.11 Where the Contract Period is more than three (3) years, the Government may conduct periodic financial vetting of the Contractor with a view to ensuring that the Contractor remains financially healthy for the performance of the Contract and depending on the results, take necessary actions as the Government considers appropriate. Periodic financial vetting may be conducted at an interval of every three (3) years of the Contract Period. Upon request of the Government, the Contractor shall within seven (7) days provide all such information to the Government for such periodic financial vetting which may include information as specified in Clause 30.2 above.

#### **34. Entire Agreement**

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

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

#### **35. Execution of Further Documents**

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

**36. Variations**

36.1 Subject to other provisions of the Contract which provide for the power of the Government to make changes, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an agreement in writing and duly signed by the Contractor and the Government and in which agreement, the Parties expressly agree to the relevant waiver, cancellation, alteration or amendment of or to the provisions of the Contract as specified therein.

**37. Severability**

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

**38. Rights and Remedies Cumulative**

38.1 Notwithstanding anything herein to the contrary, all rights and powers of the Government under the Contract are cumulative, and may be exercised at the same time or separately. They do not exclude any other rights, powers and remedies provided by applicable laws and regulations.

**39. Waiver**

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

39.2 Without prejudice to the generality of Clause 39.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of

termination shall constitute a waiver by the Government of any other right, power or remedy.

**40. Admission of Contractor Personnel to Government Premises**

- 40.1 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 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, 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 may reasonably require.
- 40.2 The Contractor shall ensure that while any of the Contractor Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 40.3 The Government reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government, undesirable.
- 40.4 In the event that the Contractor fails to comply with this Clause 40 and it is determined that such failure is prejudicial to the interests of the Government, the Government may thereupon terminate the Contract forthwith in Clause 19.1 above or partially terminate the Contract pursuant to Clause 19.5 above.

**41. Dispute Resolution and Jurisdiction**

- 41.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.
- 41.2 If the said dispute or difference is not settled by mediation according to Clause 41.1, a Party may institute litigation in respect of the said dispute or difference. The Parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

**42. Assistance in Legal Proceedings**

- 42.1 If and whenever requested by the Government Representative, the Contractor shall provide the Government with all relevant information, documents (including documentation and statements from staff) and any other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may be involved, as well as any internal disciplinary hearing of the Government that arises from 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 the relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings or to participate and/or provide assistance at such mediation.

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

**43. Retention of Records**

43.1 The Contractor shall keep and maintain the records 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 of the Contract include 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.

**44. Replacement of Staff**

44.1 The Government reserves the right to require the Contractor, at the Contractor's own cost, to replace any Cleaner under the following circumstances:

- (a) if the Cleaner is found to be performing their duties unsatisfactorily, as determined by the Government;
- (b) due to misconduct on the part of the Cleaner; or
- (c) during the Cleaner's short-term absence, with prior three (3) days' prior written notice.

44.2 Unless otherwise requested by the Government, the Contractor shall obtain prior written approval from the Government before replacing any Cleaner assigned to provide the Service.

**45. Costs and Expenses**

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

**46. Notices**

46.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at the applicable postal address, facsimile number or email address stated below (or such other replacement postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other party):

To the Contractor: at the correspondence address, facsimile number and email address as specified in Schedule 3.

To the Government: Director of Agriculture, Fisheries and Conservation  
Unit 2209, 22/F, CDW Building,  
388 Castle Peak Road, Tsuen Wan, N.T.  
Marine Conservation Division (West)  
Management Section (West)  
(Attn.: Mr. MAK Chu-wa)  
Fax no.: (852) 3468 3015  
Email address: daniel\_cw\_mak@afcd.gov.hk

46.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 46.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
- (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.

46.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 46.2 above shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in Clause 46.1 above.

46.4 Nothing in this Clause 46 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 46.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

#### **47. Joint and Several Obligations**

47.1 Where the Contractor comprises more than one persons, each such person assumes all obligations of the Contractor under or arising from or in connection with or in relation to the Contract on a joint and several basis.

47.2 A reference to the Contractor in this Contract is a reference to each of the persons constituting the Contractor.

**48. Governing Law**

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

**49. Contracts (Right of Third Parties) Ordinance**

49.1 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 or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

**50. United Nations Convention on Contracts for the International Sale of Goods not applicable**

50.1 The Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**51. Order of Precedence**

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

- (a) the Conditions of Contract;
- (b) Service Specifications;
- (c) the Terms of Tender;
- (d) Interpretation;
- (e) Schedules;
- (f) the Memorandum of Acceptance;
- (g) the Offer to be Bound;
- (h) Non-collusive Tendering Certificate;
- (i) other Tender Documents which form part of the Contract; and
- (j) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

51.2 The Materials are items to be prepared and/or supplied by the Contractor pursuant to requirements of the Contract. They shall form part of the Contract. Notwithstanding,

unless the Parties agree in writing in the manner specified in Clause 46 above, no Materials shall seek to waive, alter, cancel or amend any provisions of any documents listed in Clause 51.1 above. No general approval of, or signature by, the Government of any such Material shall be taken as agreement or approval of any such waiver, cancellation, alteration or amendment, unless the Government expressly acknowledges and agrees on a case-by-case basis to this effect. This shall apply even if any such Material is signed or given approval after the Date of Tender Acceptance.

## **52. Intellectual Property Rights**

- 52.1 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 52.3 below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.
- 52.2 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 (Chapter 528 of the Laws of Hong Kong).
- 52.3 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 (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.
- 52.4 The Contractor warrants that:
- (a) 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;
  - (b) 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

- (c) 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.

52.5 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 Clauses 16.2, 24 and 52 of the Conditions of Contract, 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.

**PART IV  
SERVICES SPECIFICATIONS**

**Services Specifications and Working Procedures for the Provision of Services**

All requirements in this Service Specifications are mandatory requirements.

**1. Service to be Provided**

- 1.1 The Contractor shall collect refuse and keep them in black heavy duty plastic litter bags. The refuse storage areas shall be kept in a reasonable state of tidiness. The objective is to ensure that the beach/coastal areas at (i) Sha Chau and Lung Kwu Chau Marine Park (SCLCMP); (ii) The Brothers Marine Park (BMP); (iii) Southwest Lantau Marine Park (SWLMP); (iv) South Lantau (SLMP) and (v) Cape D' Aguilar Marine Reserve (CDAMR) are kept clean and the refuse washed up and remained on the beaches are removed. Job description and minimum frequency and desired performance outcomes are as follows:

<b>Job Description</b>	<b>Service Minimum Frequency</b>	<b>Estimated No. of Working Days (Day)*</b>	<b>Desired Performance Outcome</b>
Cleaning and refuse disposal of SCLCMP specified in Appendix I – Figure 1	Three (3) day per week	485	(d) The main beach, beach / coastal areas and adjacent areas within Contract Areas are clear of refuse, waste materials, grease and stains. (e) The floating refuse within Contract Areas are cleared. The Contract Areas are marked in Appendix 1. (f) All refuse and wastes shall be collected, sorted in an environmentally friendly manner and temporarily stored properly in designated sites. The designated sites including refuse storage site and/or other temporary waste storage areas shall be kept in a reasonable state of tidiness. (g) Improper disposal of waste such as dumping into the sea, down the slopes, fly-tipping, on-site incineration, or in places other than approved disposal sites is strictly prohibited. (h) The Contractor is required to provide at its own cost and expense to dispose all collected refuse to any landfill, refuse transfer stations or other Government waste disposal facilities as agreed by the Government Representative in accordance with the prevailing Hong Kong Laws and Regulations and as the requirements set out in Clause 1 above.
Cleaning and refuse disposal of BMP specified in Appendix I – Figure 2	One (1) day per week	160	
Cleaning and refuse disposal of SWLMP specified in Appendix I – Figure 3	Three (3) days per month	120	
Cleaning and refuse disposal of SLMP specified in Appendix I – Figure 4	Two (2) days per month	75	
Cleaning and refuse disposal of CDAMR specified in Appendix I – Figure 5	One (1) day per week	160	

			(i) All the collected refuse shall be put into plastic litter bags provided by the Contractor. Number of litter bags for disposal will be counted by the Inspecting Officer.
<b>Supervision and Administration</b>			
Respond to rectify if Contractor's performance is below the abovementioned performance requirements			(a) At any time when the level of cleanliness of the Contract Areas falls below the acceptable standards stated above, remedial action shall be taken timely to restore acceptable standard can be re-established within three (3) days.
Overall supervision and number of Cleaners provided			(b) The Contractor shall properly supervise the work of the Contractor Personnel stipulated in Clause 1.
Respond to ad-hoc services			(c) Ad-hoc requests for provision of additional Cleaners are attended to within seven (7) days from the date of the written notice from the Government Representative.

\* No. of working days is an estimation. Only actual requirement will be entitled to payment and subject to actual needs. Actual requirements may be varied by **20%** of the estimation.

#### Remarks:

1. The Contract Areas are located at a remote area with limited number of piers for boarding or berthing. Beach landings are required to transfer refuse onto the vessel(s). Contractor shall consider appropriate means of transport for the provision of the Services in accordance with the laws and regulations of Hong Kong.
2. Seasonal tide and weather will influence the size and amount of refuse within the Contract Areas.
  - (a) The Contractor shall transport all the collected refuse from the respective marine park or marine reserve and dispose of the collected refuse to a nearby refuse collection point of Food and Environment Hygiene Department or a landfill site of the Environmental Protection Department. **Improper disposal of waste, including but not limited to dumping into the sea, sweeping into gullies, down the slopes, fly-tipping, on-site incineration, or in places other than approved disposal sites is strictly prohibited.**
  - (b) Cleaning the beach/coastal areas in SCLCMP, BMP, SWLMP, SLMP and CDAMR as delineated in Appendix I. Special attention has to be drawn to several locations prone to refuse accumulation at SCLCMP, BMP, SWLMP, SLMP and CDAMR, as depicted in Appendix I.

## 2. **Qualification Requirements of the Contractor Personnel**

2.1 The Contractor shall deploy the Contractor Personnel of the following qualifications, capabilities and experience to carry out their duties under the Contract:

	<b>Rank</b>	<b>Qualification and Other Requirements</b>
(a)	Contract Manager	(i) possess a minimum of three (3) years' experience in management of contracts for cleaning services prior to the original Tender Closing Date; and (ii) be able to write and speak fluent English and Chinese.
(b)	Cleaning Supervisor	(i) possess a minimum of two (2) years' experience in cleaning services prior to the original Tender Closing Date, one (1) year of which must be in the capacity of a supervisor or foreman; and (ii) be able to speak fluent Cantonese.
(c)	Cleaner	(i) be physically fit to carry out cleaning and related tasks; and (ii) be able to speak Cantonese.

2.2 The Contractor shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of experience. Unsubstantiated experience will be considered.

2.3 Local and / or foreign experience will be considered.

2.4 In the event that a Contractor proposes multiple Contract Manager, it shall be counted based on the experience of the Contract Manager who possess the greatest level of experience.

2.5 For the purpose of Tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years of experience shall be equivalent to seven hundred and thirty (730) days (i.e. three hundred and sixty-five (365) days x 2).

## 3. **Responsibilities / Duties of the Contractor Personnel**

3.1 The Contract Manager shall be responsible for: (i) responding promptly to any queries raised and implementing instructions given by the Government Representative in relation to the provision of the Services on behalf of the Contractor; (ii) attending meeting and discussions with the Government Representative in relation to the provision of Services as required by the Government Representative; and (iii) giving proper training, supervision and guidance to the Cleaners and Cleaning Supervisor in performing the Services.

3.2 The Cleaning Supervisor is one of the Cleaners. In addition to his/her general cleaning duties, the Cleaning Supervisor shall also be responsible for: (i) coordinating and overseeing the Cleaners in their execution of general cleaning and other related tasks at the Contract Areas in accordance with the Service Requirements; (ii) liaising with the Government Representative on the timing and other arrangements for carrying out specific cleaning tasks; (iii) reporting daily to the Government Representative on the execution of general cleaning tasks at the Contract Areas under the Contract; (iv) keeping a log book of the daily attendance record of each Cleaner; (v) providing digital photo with date stamp on each service for official record. The photos should be included before commencement of works, during works, after completion of works and conveyance of collected refuse; and (vi) informing the Government representative, the time of arrival and departure.

- 3.3 The Cleaners shall be responsible for performing the cleaning and related tasks at the Contract Areas assigned by the Contract.
4. **Provision of Mobile Phone Contact of Contract Manager and Cleaning Supervisor**
- 4.1 The Contractor shall provide the Contract Manager and the Cleaning Supervisor with mobile phones, and shall provide the Government with the contact numbers of such mobile phones immediately upon the commencement of the Contract Period to ensure that the Government can effectively contact the Contract Manager and Cleaning Supervisor at all times during the Contract Period.
5. **Supply of Cleaning Materials, Equipment and Tools for use by the Cleaners**
- 5.1 During the entire Contract Period, the Contractor shall provide at its own costs and expense regarding the necessary transport, sufficient cleaning equipment, materials and tools to Cleaners for proper and efficient performance of the Services. All transport, cleaning equipment, materials and tools shall be a type approved by the inspecting officer. The Contractor shall provide the following cleaning items:
- (a) plastic litter bags not less than 0.05 mm (thickness) x 800 mm (height) x 900 mm (width) with drain holes at lower part of bags; and
  - (b) all cleaning materials, equipment, tools, protective gears such as cotton gloves, rattan baskets, etc. in the execution of the Contract from time to time.
- 5.2 All Cleaners working at the beach/coastal areas shall be provided with the tools and materials as required in Clause 26 of Conditions of Contract (Heat Stroke Prevention Work Plan) to prevent heat stroke as well as appropriate personal protective equipment, including safety reflective vests for all those Cleaners, if appropriate.
- 5.3 Cleaners working over or near water, where the danger of drowning exists, shall be provided with appropriate marine safety and floatation devices such as life jackets and buoyant work vests. Prior to and after each use, the buoyant work vests or life preservers shall be inspected for defects which would alter their strength or buoyancy. Defective units shall not be used.
- 5.4 The Contractor shall promptly replace at its own costs any of these equipment in use as and when required by the Government Representative. The Contractor shall be liable for any loss of or damage howsoever caused to such equipment, materials tools or vessel(s) belonging to the Contractor and used for or in connection with the performance of the Services.
- 5.5 The Contractor shall manage the uses of these cleaning equipment, materials and tools in the following manner:
- (a) All cleaning equipment, materials and tools shall be clean, safe, of good condition, free of excessive noise, odour or emission, and properly maintained;

- (b) All cleaning equipment, materials and tools shall be properly stored after use in locations agreed upon by the Government Representative to avoid being unsightly or causing obstruction;
- (c) All cleaning chemicals must be environmentally friendly. No cleaning chemical of corrosive nature which may cause any personal injury or property damage to the natural environment in marine parks or marine reserve, the Cleaners or any person in or near the Contract Areas should be use. The Contractor should ensure that all its Cleaners exercise their utmost care to avoid contamination to the natural environment in the Contract Areas with detergents, cleaning agent or any liquid during performance of the Services. The Contractor shall adopt the Green Guidelines for Cleaning Services developed by Environmental Protection Department and Government Logistics Department in Schedule 17 in the performance of the Services.

5.6 The Contractor shall pay all costs, charges and expenses to the provision, management, operation, maintenance and replacement of all such other cleaning equipment.

## **6. Conveyance of collected refuse**

- 6.1 The Contractor shall provide vessel(s) for the transport of Contractor Personnel to and from, and between the sites, and for the transport of the collected refuse at his own cost. The vessel(s) shall hold a valid license issued by the Marine Department and it shall not travel at a speed exceeding ten (10) knots within marine parks and marine reserve.
- 6.2 The vessel(s) shall comply with all relevant maritime and insurance laws in Hong Kong, including but not limited to the Merchant Shipping (Local Vessels) (Certificate and Licensing) Regulations (Cap. 548D), Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G) and the Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation (Cap. 548H).

## **7. Employment of Staff and Manner of Supervision**

- 7.1 All Cleaners shall be provided with proper protective clothing and equipment, and the Contractor shall also provide appropriate insurance for the Cleaners.
- 7.2 The Contractor shall be responsible for the good conduct of Contractor Personnel while they are performing Services under the Contract and shall ensure that they behave appropriately at all times. The Contractor shall also ensure that Contractor Personnel engaged in providing the Services are fit and competent for their tasks. The Contractor shall be held liable for any contractual default with regard to salary payments and adherence to working hours.
- 7.3 The Contractor shall deploy the number of Cleaners as specified below:

<b>Location</b>	<b>Frequency of working day</b>	<b>Minimum no. of Cleaners required and working time</b>
SCLCMP	Three (3) days of Service / week	At least three (3) Cleaners (excluding
BMP	One (1) day of Service / week	the vessel master responsible for

SWLMP	Three (3) days of Service /month	managing the vessel during the cleaning services operation) from 9:00 a.m. to 6:00 p.m., including one (1) hour lunch break
SLMP	Two (2) days of Service / month	
CDAMR	One (1) day of Service / week	
Additional Services for the above MP or MR	As required	

- 7.4 A competent and authorized representative of the Contractor approved in writing by the Government Representative (whose approval may at any time be withdrawn) shall be available to be contacted daily by the Government Representative during service hours of the Contract and be available for site inspections as requested. Such authorized agent or representative shall be in full charge of the Services and shall receive on behalf of the Contractor directions and instructions from the Government Representative.
- 7.5 The Government reserves the right to request the Contractor at its own cost and expense to replace any Cleaner(s) who is/are found:
- (a) not performing his/her duties to the satisfaction of the Government Representative; or
  - (b) on account of his/her misconduct or ill health; or
  - (c) his/her short-term absence during the working time without any approval from the Government Representative,
- by giving a three (3) days' prior notice in writing.

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

- 8.1 The Contractor shall keep and submit record showing in detail the Service performed each day (including but not limited to digital images/video clips before each Service and after completion of each Service at the Service location and receipt at the disposal point as may be requested by the Government Representative).
- 8.2 The Contractor shall maintain accurate attendance records for each Service including the arrival and departure times. The intentional submission of falsified attendance records may constitute in breach of Contract.
- 8.3 The Contractor shall at all times keep a record setting out the wages and employment history of each Cleaner covering the period of his employment during the preceding six (6) months. The record shall include the following information of the Cleaner: -
- (a) name and identity card number;
  - (b) date of commencement of employment;
  - (c) job title;
  - (d) wages paid in respect of each wage period;

- (e) wage period; and
  - (f) period of annual leave, sick leave, maternity leave and holidays entitled and taken, together with details of payments made in respect of such period.
- 8.4 The Contractor shall provide any other information such as the weight and the types of refuse collected and other documentation as may be requested by the Government Representative relating to the provision of the Service, including but not limited to number of refuse bags collected and volume of refuse in each bag.
- 8.5 The Government Representative may prescribe the form of the Contractor's reports, records and schedules required.

Appendix I

Maps illustrating demarcation of Marine Parks or Marine Reserve and cleaning areas covered by the Contract

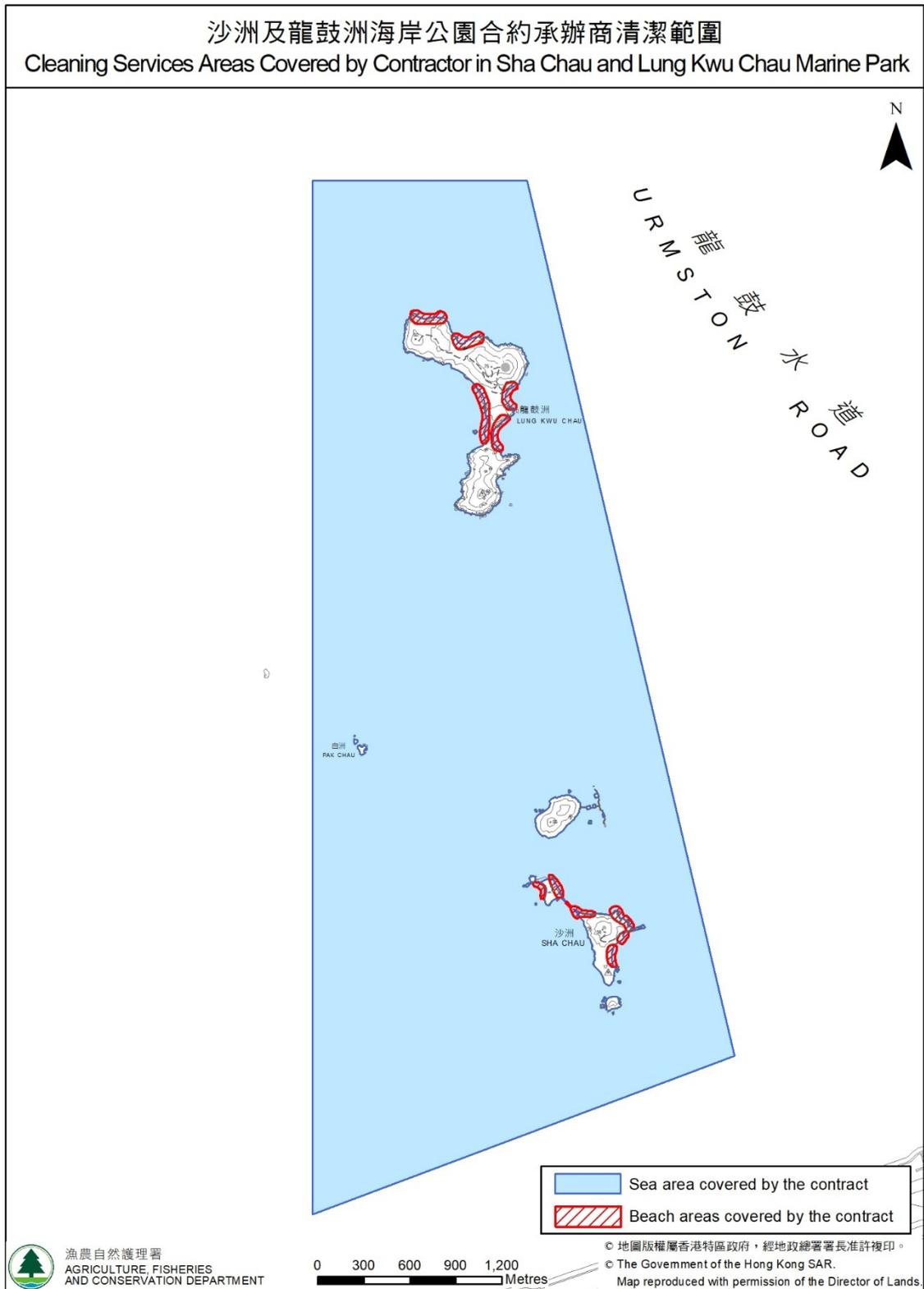
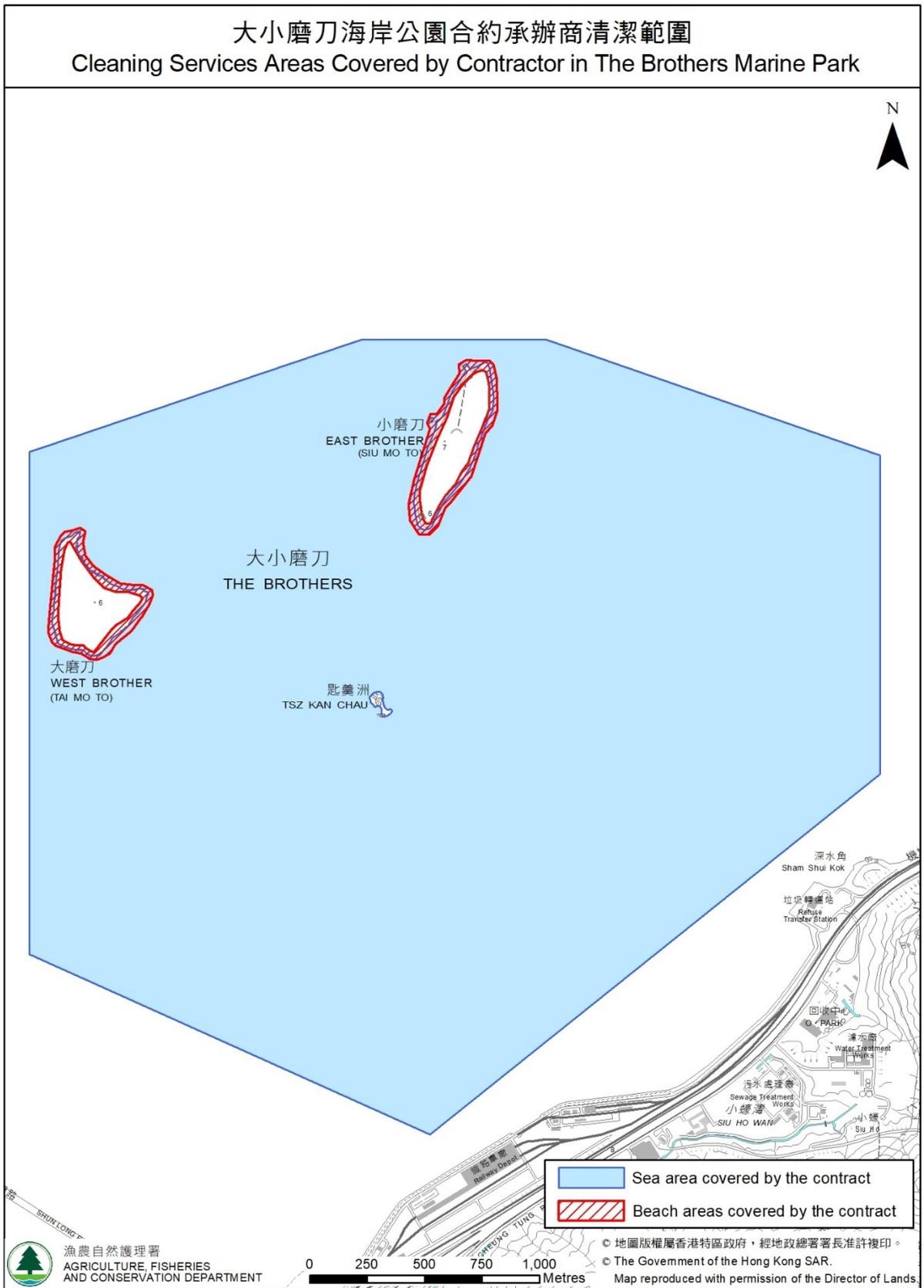
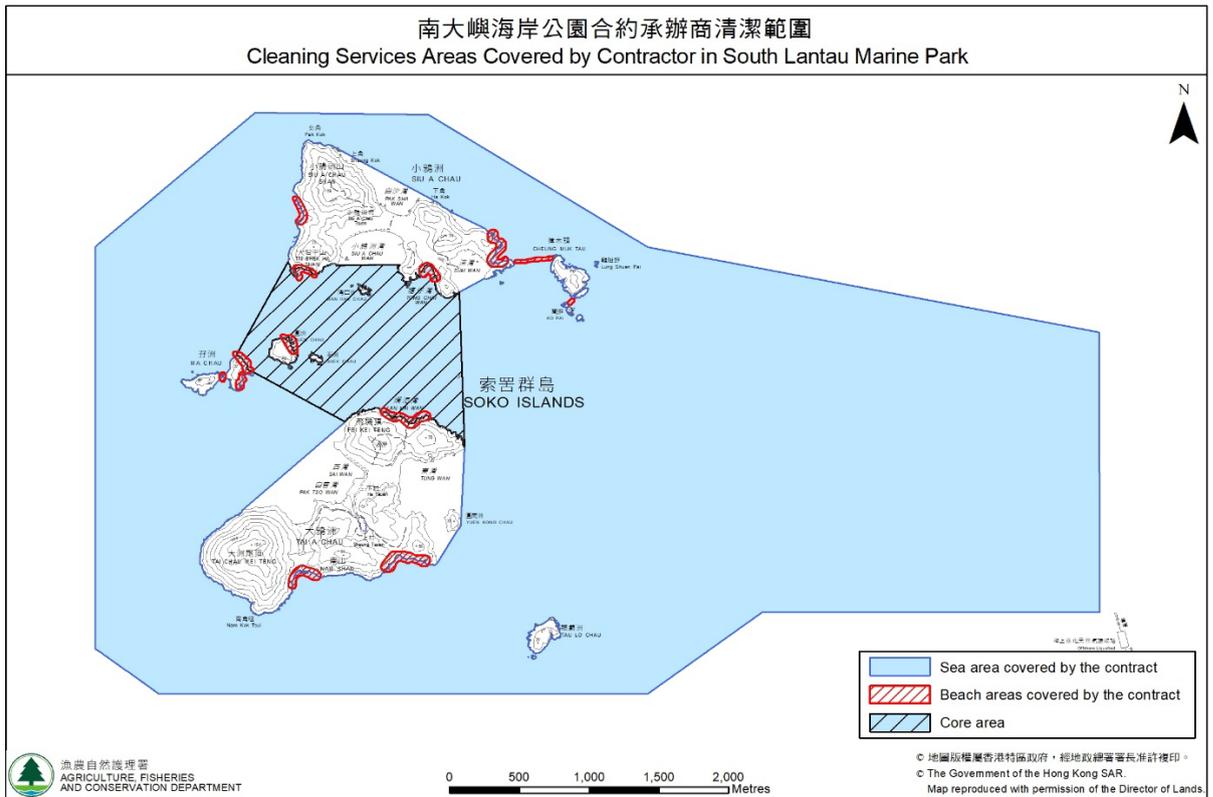
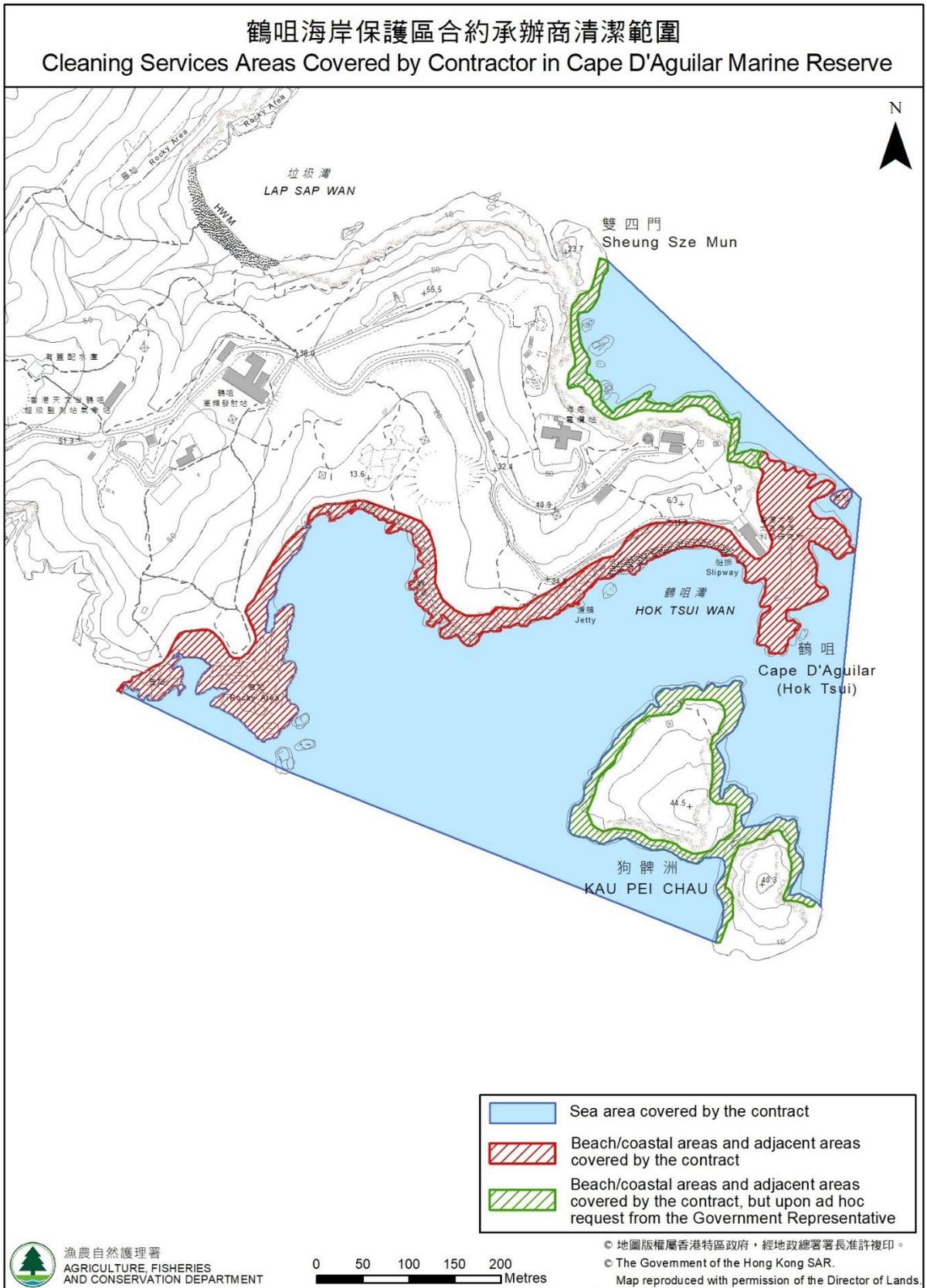


Figure 1: Sha Chau and Lung Kwu Chau Marine Park



**Figure 2: The Brothers Marine Park**





**Figure 5: Cape D'Aguiar Marine Reserve**

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
Western Waters**

**Schedule 1  
Price Schedule**

To: Director of Agriculture, Fisheries and Conservation

I/We,

having read the terms stated in the Tender Document, hereby offer to provide the Service as required thereof at an Estimated Total Contract Value of

\_\_\_\_\_ (HK\$ \_\_\_\_\_).

<b>Item No.</b>	<b>Description of Services</b>	<b>Estimated No. of Working Days (Day) (a)</b>	<b>No. of Cleaners Required (No.) (b)</b>	<b>Unit Rate per Cleaner per Day (HK\$) (c)</b>	<b>Estimated Contract Value (HK\$) (d)=(a)x(b)x(c)</b>
<b>1</b>	Provision of Cleaning Services to Sha Chau and Lung Kwu Chau Marine Park as stipulated in the Service Specification	485	3		
<b>2</b>	Provision of Cleaning Services to The Brothers Marine Park as stipulated in the Service Specification	160	3		
<b>3</b>	Provision of Cleaning Services to Southwest Lantau Marine Park as stipulated in the Service Specification	120	3		
<b>4</b>	Provision of Cleaning Services to South Lantau Marine Park as stipulated in the Service Specification	75	3		
<b>5</b>	Provision of Cleaning Services to Cape D'Aguiar Marine Reserve as stipulated in the Service Specification	160	4		
<b>6</b>	Additional Service for the above 4 Marine Parks and 1 Marine Reserve	30	3		
<b>Estimated Total Contract Value (HK\$):</b>					

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

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

**Remarks:**

1. Acceptance of offers will be considered on an “**OVERALL**” basis. Partial or incomplete offer **will not be considered further.**
2. The estimated number of working days specified in the Service Specification and Price Schedule is an estimate for the Tenderer’s reference only and is not being a figure to which the Government binds itself to adhere. The actual requirements may vary depending on the actual need of the Government. The Tenderer shall be prepared to accept any increase or decrease of the estimated working days by twenty percent (**±20%**) as part of the Contract with all price, terms and conditions remain unchanged. Only actual requirement will be entitled to payment.
3. The Estimated Total Contract Value quoted in Price Schedule shall be deemed to be full inclusive values of the Services to be executed and including but not limited to provision of labour, materials and equipment, taking precautions and safety measures, general obligations, liabilities, risk and insurance. Tenderers shall provide cost breakdown to AFCD, upon a written request, for reference.
4. Payment of the Service will be subject to deductions stipulated in Clause 15 of Conditions of Contract (Failure to Carry Out Accepted Innovative Suggestions).
5. The successful Tenderer shall provide the Services strictly according to the requirement specified in the Tender. The Government reserves the right to reject any Service which deviate from the details provided in the Tender.

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 2

#### Wage Proposal and Working Conditions for Cleaners

#### 1. Wage Proposal

1.1 Tenderers must propose in the given spaces below a monthly wage rate for a Cleaner and the basis on which such wage rate is calculated. The monthly wage rate proposed must comply with the requirements set out in Clause 14.1 of the Terms of Tender. Tenderers are advised to read Clauses 4 to 10 of the Conditions of Contract carefully for, amongst others, the consequences of non-compliance of the wage requirements. Failure to provide the information for Clause 1.4 below before the Tender Closing Date, the Tender will be evaluated but the respective wages proposed will be deemed to be the Statutory Minimum Wage for the purpose of tender evaluation. If the Tenderer offers a higher monthly wage than the Statutory Minimum Wage in 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 Statutory Minimum Wage. However, the higher wage offered by this Tenderer shall become binding if the Contract is subsequently awarded to the Tenderer.

1.2 By way of illustration, the monthly wage payable to a Cleaner shall not be less than the monthly wage rate derived from the Statutory Minimum Wage under the Minimum Wage Ordinance plus paid rest days, i.e. HK\$10,440.8, calculated on the basis of: -

- (a) thirty-one (31) days per month (i.e. twenty-seven (27) working days plus four (4) paid rest days) <sup>Note 1</sup>;
- (b) six (6) normal working days per week; eight (8) normal hours of work per day <sup>Note2</sup>; and
- (c) current minimum hourly wage rate of HK\$42.10.

1.3 The Contractor shall pay each Cleaner no less than the wage as specified below:

Type of staff	Proposed monthly wage <sup>Note 3</sup>	Basis of calculation <sup>Notes 1 to 2</sup>
Cleaners	HK\$ _____	[Hourly rate of HK\$ _____] x [8 hours a day] x [31 days per month (i.e. 27 working days plus 4 paid rest days)]

**Note 1:** Tenderers must allow one (1) paid rest day for every period of seven (7) days.

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

**Note 3:** The monthly wage payable to each Cleaner during the Contract Period must not be less than (i) monthly wage committed by the Tender in this wages proposal; or (ii) the “SMW plus rest day pay rate” as the same may be adjusted as a result of future revision of the SMW, whichever is the higher.

## 2. Working Conditions

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

Type of staff	Maximum allowable net working hours per day for each staff member engaged exclusively under the Contract Note 4
Cleaners	HK\$ _____

**Note 4:** If a Tenderer fails to indicate any maximum allowable net working hours per day for all Cleaning Supervisor / Cleaner in its Tender before the Tender Closing Date, the Tender will be evaluated but the respective working hours proposed will be deemed to be more than ten (10) hours excluding meal break for the purpose of tender evaluation. If the Tenderer offers the daily maximum working hours of ten (10) hours or less in a subsequent clarification in writing upon request by the Government Representative at any time before the tender exercise is completed, the Tender will only be assessed on the basis that the daily maximum working hours offered by the Tenderer is more than ten (10) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

Signature of the Tenderer/ an authorised signatory for an on behalf of the Tenderer : \_\_\_\_\_

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

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

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

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

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
Western Waters**

**Schedule 3  
Information Schedule**

**Table A – Information required under Clause 8 of the Terms of Tender:**

(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 company / others *  (*Please delete whichever is not applicable).
(d)	Shareholders / partners / proprietor of the Tenderer and their percentage of ownership	
(e)	Length of business experience (in years)	
(f)	Names of the following	
	1. managing director and other directors;	
	2. partners; or	
	3. sole proprietor	
(g)	Place and date of incorporation or formation	
(h)	Business profile information of the 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 (Cap. 310) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Cap. 310); or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by	Please attach if applicable

	the place of business of the Tenderer	
(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 (Cap. 622) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or 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 of Tenderer's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's 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 the Tenderer's 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, or (b) in the case of Electronic Tendering	Please attach if applicable

	<p>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). In any of the aforesaid applicable situations, the name of the person authorized to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification.</p>	
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\*delete where inapplicable

**Table B – Information required under Clause 12 of the Terms of Tender:**

(a)	Name of the proposed sub-contractor	
(b)	Place of business of the proposed sub-contractors (in address form)	
(c)	Obligations proposed to be performed by the proposed sub-contractor	

**Contact Details of the Tenderer / Contractor**

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

**Process Agent**

[For a Tenderer/Contractor incorporated, formed or established outside Hong Kong without a place of business in Hong Kong]

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
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**Schedule 4**  
Qualification Requirements of the Contractor Personnel

	<b>Rank</b>	<b>Qualification and Other Requirements</b>	<b>Checklist result</b> (Please indicate “Compliant / Non-compliant” in the blank box) (If compliant, the contractor may provide supporting documents)
(a)	Contract Manager	(i) possess a minimum of three (3) years’ experience in management of contracts for cleaning services prior to the original Tender Closing Date; and	
		(ii) be able to write and speak fluent English and Chinese.	
(b)	Cleaning Supervisor	(i) possess a minimum of two (2) years’ experience in cleaning services prior to the original Tender Closing Date, one (1) year of which must be in the capacity of a supervisor or foreman; and	
		(ii) be able to speak fluent Cantonese.	
(c)	Cleaner	(i) be physically fit to carry out cleaning and related tasks; and	
		(ii) be able to speak Cantonese.	

**Remarks:**

1. The Contractor shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of experience. Unsubstantiated experience will be considered.
2. Local and / or foreign experience will be considered.
3. In the event that a Contractor proposes multiple Contract Manager, it shall be counted based on the experience of the Contract Manager who possess the greatest level of experience.
4. For the purpose of Tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years of experience shall be equivalent to seven hundred and thirty (730) days (i.e. three hundred and sixty-five (365) days x 2).

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
Western Waters**

**Schedule 5**  
**Details of vessel(s) for cleaning services**

The Tenderer certifies and warrants that the vessel(s) particularized below be provided for the Services under the Contract:

	<u>Vessel</u>
Certificate of ownership number:	
Validity period of the operating licence:	
Charter party agreement / legally binding agreement to substantiate its claim of the right of use of the proposed items:	

**Remarks:**

Please attach to this Schedule 2 two (2) colour photographs in 3R size illustrating full view of the proposed vessel(s), photocopies of the vessel's licences, certificates of ownership of abovementioned items and other relevant documents.

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

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

## **Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

### **Schedule 6** **Execution Plan**

1. The Tenderer must submit the Execution Plan, including Management Plan, Work Plan and Innovative Suggestions. The Tenderer may also include other materials or suggestions as appropriate to facilitate consideration of its Tender by the Government. The Execution Plan shall demonstrate the Tenderer's ability to coordinate and deliver the Services promptly with quality assurance measures. Failure to provide Execution Plan will render a Tender invalid and will not be further considered.
2. The Execution Plan as amended and accepted by the Government shall form part of the Contract and the Contractor shall abide by it.
3. The Execution Plan shall cover the following items:

#### **3.1 Management Plan**

(use separate sheet as required)

- (a) an organization chart showing the line of command and division of labour of the proposed workforce; with details of the professional qualifications and experience of the key personnel, including but not limited to Contract Manager, proposed for the Contract;
- (b) detailed 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 service;
- (c) details of training programmes for on-site supervisory and operational staff for the performance of the Services, including induction, refresher and focused courses (e.g. corrective training for Contractor's staff with unsatisfactory standard of performance or discipline); and
- (d) a detailed protocol and mechanism for maintaining close communication with the Government Representative on provision of services including daily inspection and reporting, arrangement of refuse conveyance and action to be taken for ad hoc tasks required.

#### **3.2 Work Plan**

(use separate sheet as required)

- (a) a detailed program including daily / weekly / monthly work plans for meeting the work schedule as well as materials / tools / vessels available in meeting the performance requirements of the Contract;
- (b) details of a staff deployment plan setting out the distribution and responsibilities of the proposed work force and provision of relief workers;

- (c) detailed safety measures adopted for the performance of the Contract including collection, storage and conveyance of refuse on land / by sea to ensure safety of working staff and the public; and
- (d) 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.

### 3.3 Innovative Suggestions (optional)

- (a) Tenderers who intend to propose Innovative Suggestion(s) shall list the Innovative Suggestions by filling in the tables in Innovative Suggestions Schedule in Annexes to facilitate tender evaluation. The Innovative Suggestions proposed by the Tenderers shall include:
  - (i) Pro-innovation Proposals that are directly relevant to the Services to enhance quality, effectiveness and efficiency for the provision of Services; or
  - (ii) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services.

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

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

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 7

#### Tenderer's experience in provision of relevant cleaning services

1. Assessment on a Tenderer's experience as stipulated in Annex 1 for tender evaluation will be solely based on the items specified in the table below substantiated with valid documentary proof. Tenderer shall provide copy of documentary evidence of relevant experience including but not limited to client's name, contract period, Contract Areas, place of business, areas served and description of business.
2. Experience in the provision of cleaning services to any public areas, including but not limited to marine parks, coastal areas during the twelve (12) years immediately before the Original Tender Closing Date will be evaluated. Tenderers shall complete paragraph 3 and paragraph 4 below (if applicable) by the time subsequently stipulated by the Government.
3. Zero (0) mark will be given for Assessment Criteria (B)(4) if the Tenderer fails to complete the table below or no indication of using separate sheet in the table below before the **Tender Closing Date**. A Tenderer's experience under different contracts will not be double-counted for any overlapping periods. Please refer to Note 7 of **Appendix to Annex 1**.

Details of Contract (with client's name)		Contract Period	
		Start Date	End Date
1.	<i>e.g. Provision of Cleaning Services at XXX Marine Parks (Contract Ref.: AFCD/XYZ/2022)</i>	<i>1.1.2022</i>	<i>31.12.2025</i>
2.			
3.			
4.			
5.			

(Use separate sheets if required)

4. The Tenderer shall declare if any contract in the table above was terminated due to the Tenderer's default:
  - (i) No contract in the table above has been terminated due to my / our default \*; or
  - (ii) The contract(s) mentioned in paragraph 5 below has / have terminated due to my / default.

*\* Delete as appropriate. In the event that a Tenderer fails to declare in this paragraph, it will be assumed that no contract in the table above has / have been terminated due to my /our default.*

5. The Tenderer shall provide relevant information of the terminated contract(s), if any, (including reference number, name, position, tel./fax no. of referee, date of termination, reasons of termination, etc.) below:

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6. The Tenderer shall authorise the Government acting through the AFCD to obtain information from the referee(s) referred to in the documentary evidence submitted regarding my / our relevant experience in providing cleaning services:

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and give consent for the referee(s) to release and provide information to the Government as regards my / our record of performance concerning the types of services listed in the Service Specifications.

## **Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

### **Schedule 8**

#### **Code of Conduct for the Contractor Personnel**

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

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 9 Statement of Convictions

A Tenderer hereby declares if the following person(s) has/have obtained any conviction of the Relevant Offences as defined in Clause 10 of Terms of Tender for a period of five (5) years immediately preceding the Tender Closing Date:

- (a) The Tenderer itself;
- (b) Where applicable, each of its partners if it is a partnership or each of its shareholders if it is a company; and
- (c) Where applicable, its sub-contractor.

\*Yes/No

\* Delete as appropriate

If Yes, please complete the following table:

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

*(Use separate sheets if required)*

#### AUTHORIZATION

I/We hereby authorize the AFCD to obtain information from all Government bureaux/departments and give consent to the Government departments and public organisations concerned to release and provide information of my/our conviction records in respect of the Relevant Offences to the AFCD for the purposes of assessment of my/our Tender under this tender exercise and subsequent management of the Contract.

I/We hereby declare that all information given in Schedule 9 above and any additional sheets attached hereto are correct. I / We understand that if any of the information contained in the table above is found to be incorrect, my / our Tender will not be further considered, or my / our Contract will be terminated in accordance with Clause 19.1 of the Conditions of the Contract if I am / we are awarded the Contract.

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

\_\_\_\_\_

Name and Title of the authorised Signatory of the Tenderer:

\_\_\_\_\_

**Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

**Schedule 10**  
**Sub-Contractor’s Acknowledgement**

The sub-contractor proposed by the Tenderer hereby acknowledges that:

- (a) If it is in breach of any contractual obligations referred to in the definition of “Demerit Point” during its performance of the Contract, AFCD is entitled to issue a default notice attracting a Demerit Point to each of the Tenderer/Contractor and the sub-contractor;
- (b) If it is convicted of any of the Relevant Offences arising from this Contract or has accumulated three or more Demerit Points arising from this Contract over a rolling period of thirty-six (36) months, AFCD may terminate the Contract immediately; and
- (c) Its conviction(s) of the Relevant Offences (regardless of whether the conviction(s) arise(s) from this Contract) and the Demerit Point(s) awarded to it will be taken into account into the assessment of its offer in future quotation exercises.

Name of Proposed Sub-contractor : \_\_\_\_\_

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

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 11

#### Tenderers' declaration of being Government service contractor

1. For the purpose of assessing the marks to be awarded in connection with Assessment Criterion (C)(7), Tenderers shall declare if they have been Government contractors of Non-skilled Worker Contract in the period of thirty-six (36) months immediately before the Tender Closing Date:

\* I/we have **not** been Government contractors of Non-skilled Worker Contract in the specified period.

\* I/we have been Government contractors of Non-skilled Worker Contract in the specified period.

Note: \* Please tick (✓) the appropriate box if the statement is confirmed to be correct.

2. If the Tenderers have been Government service contractors of Non-skilled Worker Contract in the period of **thirty-six (36) months immediately before the Tender Closing Date**, the Tenderers shall provide information as specified in the table below **before the Tender Closing Date**. Assessment Criterion (C)(7) will be assessed on the basis of the information provided in the table below and Note 7 of **Appendix to Annex A**. If a Tenderer fails to complete the table below or no indication of using separate sheet in the table below and no demerit point is found in Government's record, such Tenderer will be considered as a Tenderer has not been a previous Government contractor of Non-skilled Worker contract.

Contract Period	Description of Government Non-skilled Worker Contract undertaken by the Tenderer in the period of thirty-six (36) months immediately before the Tender Closing Date	Name of Government department hiring the services	No. of demerit point received
<i>For example 1.1.2022 to 31.12.2025</i>	<i>e.g. Provision of Cleaning Services at XXX Marine Parks (Contract Ref.: AFCD/XYZ/2022)</i>	<i>AFCD</i>	<i>0</i>

*(Use separate sheets if required)*

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
Western Waters**

**Schedule 12**

**Government discretion**

[Information Required under Clause 26.1 of the Terms of Tender]

\*(a) I/We confirm that none of the events as mentioned in Clause 26.1(a) to 26.1(g) of the Terms of Tender has ever occurred.

\*(b) I/We confirm that the following event(s) as mentioned in Clause 26.1(a) to 26.1(g) of the Terms of Tender has occurred:

Date	Details of the event

*(Use separate sheets if required)*

Note: \* Please tick (✓) the appropriate box if the statement is confirmed to be correct.

## **Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

### **Schedule 13** **Details of Bank Account**

The bank specified below is prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer. Unless otherwise agreed by the Government, payment of the Monthly Fees will be made to the bank account provided by the Tenderer below. A Tender is requested to provide the following information for payment:

Banker's name : \_\_\_\_\_

Banker's address : \_\_\_\_\_

Account holder's name : \_\_\_\_\_

Bank account no. : \_\_\_\_\_

Sorting Code  
(applicable only if a Tenderer is  
from a place outside Hong Kong :  
and does not have a bank  
account in Hong Kong) \_\_\_\_\_

## **Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

### **Schedule 14**

#### **Election of method of payment of Contract Deposit**

*[Please refer to Clause 30 of the Terms of Tender and Clause 33 of the Conditions of Contract.]*

If the Tender is accepted, the Tenderer shall elect, pursuant to Clause 30 of the **Terms of Tender** to deposit with the Government, not later than twenty-one (21) days from the Date of Tender Acceptance or at such other time as shall be directed by the Government, a sum stated in Clause 30 of the **Terms of Tender** as security for the due and faithful performance of the Contract

- \* (i) in cash,
- \* (ii) in the form of a banker's guarantee in accordance with Clause 33 of the **Conditions of Contract** and Clause 30 of the **Terms of Tender** <sup>Note 1</sup>.

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

Note 1: In case the Tenderer selects to pay Contract Deposit by way of a banker's guarantee, the proposed guarantor and the form and substance of the banker's guarantee shall be submitted in accordance to the terms set out in Clause 30 of the **Terms of Tender**.

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 15

#### Certification of Heat Stroke Prevention Work Plan

*[Please refer to Clause 9.1 of Terms of Tender and Clause 26.1 of the Conditions of Contract for details of the Heat Stroke Prevention Work Plan]*

**Tender reference** : \_\_\_\_\_

**Invitation to Tender / Contract title** : \_\_\_\_\_

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

I, \_\_\_\_\_ [full name of registered safety officer], hereby certify that the Heat Stroke Prevention Work Plan prepared and submitted by the Tenderer in respect of the above-mentioned Invitation to Tender has been checked in full compliance with the requirements set out in Clause 9.1 of the Terms of Tender issued by AFCD in relation to the above-mentioned Invitation to Tender. Unless specified otherwise, capitalized terms used herein shall have the meaning as ascribed to them in the tender documents in respect of the Invitation to Tender.

**Signature of Safety Officer** : \_\_\_\_\_

**Registration reference under the Labour Department** : \_\_\_\_\_

**Expiry date of registration under the Labour Department** : \_\_\_\_\_

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

Note 1: The signatory of this Certification of Heat Stroke Prevention Work Plan hereby irrevocably and unconditionally authorise AFCD to obtain information from the Labour Department and give consent to the Labour Department to provide information about the signatory's registration status with the Labour Department under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z) to AFCD for the purposes of assessment of the Tender submitted under this Invitation to Tender and subsequent management of the Contract.

Note 2: Regardless of the mode the Tender is submitted (viz. via paper-based submission or electronic submission (if applicable)), **this Certification of Heat Stroke Prevention Work Plan must be signed and submitted as part of the Tender by the Tender Closing Date, otherwise the Tender will not be considered further.** However, if a photocopy or scanned copy of this Certification of Heat Stroke Prevention Work Plan signed by the above registered safety officer has been submitted (and which will be the case for electronic submission if applicable), the Government reserves the power, but not the obligation, to request the original for further verification after the Tender Closing Date. In preparing this Certification of Heat Stroke Prevention Work Plan, please adopt the above wording, otherwise, the Tender may not be considered further. Where any blank has not been completed (apart from the name block and signature block), AFCD reserves the power, but not the obligation, to request resubmission after the Tender Closing Date.

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

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

## Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

### Schedule 16 Green Guidelines for Cleaning Services

#### 1. Cleaning Products and Supplies

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

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

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

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

	<ul style="list-style-type: none"> <li>➤ Parabens;</li> <li>➤ Triclosan;</li> <li>➤ Nitromusk and polycyclic musk fragrances</li> </ul>
<b>Hand Soaps</b>	<ul style="list-style-type: none"> <li>● The pH value of product should not be higher than 11 or less than 2</li> <li>● The product should be at least 90% biodegradable and not bioaccumulative</li> <li>● The product should not contain nitromusk and polycyclic musk fragrances</li> <li>● The product should not be formulated or manufactured with alkylphenol ethoxylates</li> <li>● (APEOs), ethylene diaminetetra acetic acid (EDTA), nitrilotriacetate (NTA), halogenated organic solvents</li> <li>● The product should not be formulated or manufactured with phosphate or phosphonates</li> <li>● The product should not contain more than 1 % by weight of volatile organic compounds (VOCs)</li> <li>● The product should not be formulated or manufactured with optical brighteners</li> </ul>

## 2. Water Saving

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

## 3. Energy Saving

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

## 4. Staff Training

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

**Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters**

**Schedule 17**  
**Undertaking**

To: The Government of the Hong Kong Special Administrative Region as represented by the Director of Agriculture, Fisheries and Conservation (“the Government”)

Agriculture, Fisheries and Conservation Department  
Unit 2209, 22<sup>th</sup> Floor, CDW Building,  
388 Castle Peak Road, Tsuen Wan,  
New Territories

Re. Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters (Tender Ref.: AFCD/SQ/1/26)

I/We, (Name of the tenderer: \_\_\_\_\_) being the tenderer for the captioned tender exercise (“Tenderer”), hereby undertake in favour of the Government that I/We shall take actions to ensure that the Certificate of Survey and operating licence of the vessel issued by Marine Department of the Government pursuant to the Merchant Shipping (Certification and Licensing) Regulation (Cap. 548D) are valid and shall renew the same whenever needed for the provision of the Services, will function properly throughout the Tender Validity Period, and which shall remain valid and open for a period of **one hundred and fifty (150)** days after the Tender Closing Date.

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 :

\_\_\_\_\_

**Provision of Cleaning Services in Marine Parks and Marine Reserve in  
Western Waters**

**Schedule 18**  
**Sub-contractor's undertaking**

**THIS UNDERTAKING** is made on the..... day .....of 20 .....

BY

whose registered office is at [*address*]

("Sub-contractor")

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Government")

**WHEREAS**

- (A) By an invitation to tender (Tender Reference: AFCD/SQ/1/26), the Government invited Tenders for a contract to Cleaning Services in Marine Parks and Marine Reserve in Western Waters *for* Agriculture, Fisheries and Conservation Department ("Contract") upon the terms and conditions of the Contract ("Invitation to Tender").
- (B) [Name of the Tenderer] ("Tenderer") has submitted a tender in response to this Invitation to Tender.
- (C) The Tenderer proposes to appoint the Sub-contractor to perform the work as more particularly specified in Table B of the Information Schedule in Schedule 3 submitted by the Tenderer as part of its tender.
- (D) The Government has requested that the Tenderer shall procure the Sub-contractor to execute this Undertaking as part of the Tender.

NOW THIS UNDERTAKING witnesses as follows:

1. All words and expressions, and rules of interpretation defined or used in the Contract to be entered into between the Government and the Contractor following from the Invitation to Tender shall, unless specifically defined or redefined herein or the context otherwise requires, have the same meaning or otherwise shall have equal force when used in or interpreting this Undertaking.
2. The Sub-contractor warrants and undertakes to the Government that it will perform all obligations of the Contractor under the Contract to the extent that they have been sub-contracted to the Sub-contractor under Table B of the Information Schedule in Schedule 3 and discharge all liabilities of the Contractor in relation to or in connection with or arising

from such obligations (collectively, “Sub-contracted Obligations”) as if references to the Contractor in all provisions in the Contract in relation to such Sub-contracted Obligations shall mean the Sub-Contractor with effect from the date of this Undertaking until all such Sub-contracted Obligations have been duly fulfilled and duly discharged. The Sub-contracted Obligations are recapitulated as follows:

3. (a) The ownership of all Intellectual Property Rights which exist in the Materials which are produced or provided by Sub-contractor shall as from creation become, and at all times thereafter, remain vested in the Government.
- (b) Without prejudice to the generality of Clause 2 above, the Sub-contractor hereby grants or in case it is not empowered to do so, shall at its own cost and expense procure that there will be granted, for the benefits of each of the Government, its authorised users, assigns and successors-in-title the licence on the terms set out in Clause 52.3 of the Conditions of Contract to the extent that any subject matter covered by the licence or any part thereof is to be supplied by the Sub-contractor in the performance of the Sub-contracted Obligations.
4. The Sub-contractor shall not be discharged or released from this Undertaking by any arrangement made between the Government and the Contractor or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Sub-contractor.
5. Without prejudice to Clause 4 above, the obligations of the Sub-contractor under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way by, and the Sub-contractor hereby waives notice of:
  - (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the Contractor's obligations under the Contract;
  - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
  - (c) the termination of the Contract for any reason;
  - (d) any forbearance or waiver of any right of action or remedy that the Government may have 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 or membership or shareholding or director or management of the Contractor (as the case may be) or that the Sub-contractor is no longer a subsidiary of the Contractor;

- (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
  - (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 Sub- contractor, other than an express release of its obligations by the Government.
6. This Undertaking shall extend to all Sub-contracted Obligations under the Contract as the same may from time to time be amended or supplemented and the Sub-contractor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
  7. This Undertaking shall have immediate effect upon execution. This Undertaking shall cover all of the Sub-contracted Obligations and shall remain in full force and effect and irrevocable until all such Sub-contracted Obligations mentioned in Clause 2 above have been performed and discharged but all provisions stated in Clause 20.1(a)(iii) of the Conditions of Contract which are deemed incorporated herein by virtue of Clause 13 below as well as Clauses 1, 3, and 7 to 15 of this Undertaking shall continue to survive.
  8. This Undertaking is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, undertaking, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively “Security”) and this Undertaking may be enforced by the Government without first having recourse to any of the Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the 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 Undertaking shall be conclusive and binding on the Sub-contractor.
  10. The obligations expressed to be undertaken by the Sub-contractor under this Undertaking are those of primary obligor and not as a surety.
  11. This Undertaking 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 Sub-contractor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

12. All documents arising out of or in connection with this Undertaking shall be served:-
- (a) upon the Government, at \_\_\_\_\_,  
marked for the attention of \_\_\_\_\_,  
telephone number \_\_\_\_\_, facsimile number \_\_\_\_\_ and  
email address: \_\_\_\_\_;
- (b) upon the Sub-contractor, at \_\_\_\_\_,  
marked for the attention of \_\_\_\_\_,  
telephone number \_\_\_\_\_, facsimile number \_\_\_\_\_ and  
email address: \_\_\_\_\_.
13. Without prejudice to other provisions of this Undertaking including Clause 2, all provisions of the Contract (other than the Terms of Tender and Terms of Tender (Supplement)) shall be deemed incorporated herein, mutatis mutandis, and save in the case of those provisions concerning (a) any approval, consent, notices and any other form of communication to be given by the Government including any Order (as the Government will communicate directly with the Contractor (unless and to the extent the Government also chooses to do the same to the Sub-contractor)); (b) any obligation of the Government to the Contractor (including payment obligation); (c) the Contract Deposit (as no Contract Deposit is required from the Sub-contractor); and (d) any provision concerning any Item not covered by the Sub-contracted Obligations. References therein to “Contract” shall mean this Undertaking, and references therein to “Contractor” shall mean the Sub-contractor.
14. For the avoidance of doubt, the Sub-contractor acknowledges and agrees that the Government has no obligation to the Sub-contractor, including any obligation of the Government to the Contractor under the Contract (including any payment obligation).
15. Nothing in this Undertaking shall be taken as an assignment or transfer of any rights or obligations or liabilities from the Contractor to the Sub-contractor. The Sub-contractor acknowledges and agrees that all the Sub-contracted Obligations shall be borne by the Contractor and Sub-contractor jointly and severally. Notwithstanding this Undertaking, the Contractor shall remain liable and responsible for all acts, omissions and defaults of the Sub-contractor and its employees, agents and sub-sub-contractors of whatever tier as if they were the acts, omissions and defaults of the Contractor.
16. If this Undertaking is required to be submitted as part of the Tender but the Tenderer is not eventually awarded with the Contract, this Undertaking shall be void ab initio but not otherwise.

**IN WITNESS** whereof this Undertaking was executed as a deed on the date first above written.

THE COMMON SEAL OF THE SUB-CONTRACTOR )  
IS HEREUNTO AFFIXED )  
in the presence of: )  
Name: )  
Title: Director )  
Name: )  
Title: Director/Company Secretary )

as witnessed by:

Name:  
Title:

Notes:

- (1) Please adopt and modify the execution clause in accordance with the execution requirements of the applicable laws of the place of incorporation of the Sub-contractor. For example, if the Sub-contractor does not and is not required to keep a common seal or seal, it is not required that the Sub-contractor affixes a common seal or seal in the execution of this document but the execution of this document as a deed must be in accordance with the laws of the place of its incorporation. As mentioned in Paragraph 8.4 of the Terms of Tender, a legal opinion will be required for this Undertaking.
- (2) Where the Sub-contractor is a Hong Kong company, this Undertaking shall be signed by at least two directors or one director and one company secretary unless supported by board resolution attached hereto authorising the affixation of the common seal and the execution of this Undertaking by the signator(ies).

## ANNEX 1

### Marking Scheme and Assessment Criteria

#### Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters

1. A two (2)-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 subsequent to the technical assessment.
2. For Tender evaluation, a tender assessment panel (“Tender Assessment Panel”) will be formed. The Tender Assessment Panel will evaluate the Tenders in five stages as set out below.

#### **Stage I – Completeness Check**

3. All Tenders received will be checked on whether all the documents and information required in **Clause 3.3 of the Terms of Tender** have been submitted, except for Schedule 1 which will be checked in Stage IV.
4. Tenders which have passed Stage I evaluation will proceed to Stage II evaluation.

#### **Stage II – Checking for Compliance with Essential Requirement**

5. Tenders which have passed Stage I evaluation will be checked to ensure their compliance with all the essential requirements including but not limited to those set out in Clause 7 of the Terms of Tender. Information and documents submitted in a Tender to substantiate the Tenderer’s compliance of the essential requirements will be evaluated by the Tender Assessment Panel. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

#### **Stage III – Technical Assessment**

6. Technical Proposals of Tenders which have passed Stages I and II evaluation will be further evaluated according to the Assessment Criteria and marking guidelines set out in **Appendix to Annex 1**.
7. **Any Tender which fails to score the passing mark (10 out of 30) under the assessment criterion (1) (Management Plan and Work Plan in the Execution Plan) of the Assessment Criteria in Appendix to this Annex 1 will not be considered further.**
8. The weighted technical score will be worked out for Tenders which have passed Stages I to III of the evaluation. The highest scoring Tender that has passed Stage III will be given the maximum weighted technical score of 50 and the remaining Tenders will be given a weighted technical score in accordance with the following formula:

$$50 \times \frac{\text{Total technical mark attained by the Tender being assessed}}{\text{Highest total technical mark among Tenders that have passed Stages I to III evaluation}}$$

**Stage IV – Price Assessment**

9. (a) Price Proposals of those Tenders which have passed Stages I to III evaluation will be assessed.
- (b) The price assessment will be based on the Estimated Total Contract Value in Schedule 1.
10. The lowest Estimated Total Contract Value submitted by a Tenderer amongst all the Tenderers whose Tenders have passed Stages I to III evaluation will be given the maximum weighted price score of 50 and the remaining Tenders will be given a weighted price score in accordance with the following formula:

$$50 \times \frac{\text{Lowest Estimated Total Contract Value among the Tenders that have passed Stages I to II evaluation and completed Stage III assessment}}{\text{Estimated Total Contract Value of the Tender being assessed}}$$

Note: The weighted technical score and weighted price score of each Tender will be rounded to the nearest two (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.

**Stage V – Calculation of Combined Score**

11. (a) The weighted technical score and weighted price score of a Tender will be added up to calculate the Tender's combined score.
- (b) The Tenderer whose Tender attains the highest combined score (price and technical scores) will normally be recommended for the award of the Contract.

**Appendix to Annex 1****Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters  
Marking Scheme and Assessment Criteria for Stage III – Technical Proposal**

Assessment Criteria		Maximum mark	Passing mark <small>Remarks:1 &amp; 2</small>
<b>(A) Execution Plan</b>			
(1)	Management Plan (see Notes 1 and 2)	30	<b>15</b>
(2)	Work Plan (see Notes 3 and 4)	30	<b>15</b>
(3)	Innovative Suggestions		
	(a) Pro-innovation Proposals – directly relevant to the Service (see Note 5)	8	--
	(b) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services (see Note 6)	3	--
<b>Sub-total for (A)</b>		<b>71</b>	<b>--</b>
<b>(B) Tenderer Experience</b>			
(4)	Tenderer's experience in providing outdoor cleaning services (see Note 7)	8	--
<b>Sub-total for (B)</b>		<b>8</b>	<b>--</b>
<b>(C) Wages, Working Hours and Record of Demerit Point(s)</b>			
(5)	Proposed monthly wage of Cleaners for this contract (see Note 8)	10	
(6)	Proposed maximum allowable working hours per day of Cleaners (see Note 9)	6	
(7)	Record of Demerit Points under all Government contracts (see Note 10)	5	
Sub-total for (C)		<b>21</b>	
<b>Total Technical Mark</b>		<b>100</b>	<b>--</b>

**Remarks:**

1. Any Tender which fails to score the passing mark of 15 under Assessment Criterion (1) (Management Plan) will not be considered further.
2. Any Tender which fails to score the passing mark of 15 under Assessment Criterion (2) (Work Plan) will not be considered further.
3. In case tenderers indicated in the tender returns that they may apply for Enhanced Supplementary Labour Scheme, for the avoidance of doubt, marks will not be given to any proposal which is made solely to comply with the requirements under the Enhanced Supplementary Labour Scheme administered by the Labour Department.

**Note 1: Management Plan’s requirements**

The Execution Plan shall cover the items mentioned in Paragraph 3.1 of Schedule 6.

**Note 2: Marking Guidelines for Assessment Criterion (1)**Assessment of the Proposed Management Plan

Marks (excluding those reserved for Pro-innovation Proposals / ESG Proposals) will be given for the Management Plan in accordance with the following five (5)-grade approach:

<u>Marks</u>	<u>Percentage of maximum marks</u>	<u>Marking standard</u>
30	100%	The proposed plan is practical with detailed information for all of the required items.
22.5	75%	The proposed plan is practical with detailed information for three (3) required items and brief information for the remaining items.
15	50%	The proposed plan is practical with detailed information for two (2) required items and brief information for the remaining items.
7.5	25%	The proposed plan is practical with detailed information for one (1) required items and brief information for the remaining items.
0	0%	The proposed plan is impractical or fails to provide information on any of the required items.

**Any Tender which fails to score the passing mark of 15 under Assessment Criterion (1) (Management Plan) will not be considered further.**

**Note 3: Work Plan’s requirements**

The Work Plan shall cover the items mentioned in Paragraph 3.2 of Schedule 6.

**Note 4: Marking Guidelines for Assessment Criterion (2)**Assessment of the Proposed Work Plan

Marks (excluding those reserved for Pro-innovation Proposals / ESG Proposals) will be given for the Work Plan in accordance with the following five (5)-grade approach:

<u>Marks</u>	<u>Percentage of maximum Marks</u>	<u>Marking standard</u>
30	100%	The proposed plan is practical with detailed information for all of the required items.
22.5	75%	The proposed plan is practical with detailed information for three (3) required items and brief information for the remaining items.

15	50%	The proposed plan is practical with detailed information for two (2) required items and brief information for the remaining items.
7.5	25%	The proposed plan is practical with detailed information for one (1) required items and brief information for the remaining items.
0	0%	The proposed plan is impractical or fails to provide information on any of the required items.

**Any Tender which fails to score the passing mark of 15 under Assessment Criterion (2) (Work Plan) will not be considered further.**

**Note 5: Pro-innovation Proposals – directly relevant to the Services**

- (a) Tenderers are encouraged to provide Pro-innovation Proposals for Assessment Criteria (1) and (2) to enhance the performance of the Services.
- (b) The Pro-innovation Proposals may not necessarily be technology-related. Pro-innovation Proposals are technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the service outcome. The emphasis is on output-based service delivery of which the contributions should be visible, and preferably be quantifiable and measurable. Tenderers may propose Pro-innovation Proposals involving application / adoption of new technology / inventions; and / or innovative application of existing / matured technology that may enhance service delivery while contributing to the development of “Smart City” and innovation and technology development. Marks will be given if the proposed Pro-innovation Proposals are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (c) Pro-innovation Proposals should be proposed for the following plans respectively:
- (i) Pro-innovation Proposals for the Management Plan

The Tenderer shall propose Pro-innovation Proposals that are directly relevant to the Services to enhance quality, effectiveness and efficiency for the provision of Services, including but not limited to drone-assisted inspections, solar-powered cleaning workboat.

<u>Marks</u>	<u>Marking standard</u>
4	The proposed plan contains four (4) or more effective and practicable Pro-innovation Proposals for the respective plan.
3	The proposed plan contains three (3) effective and practicable Pro-innovation Proposals for the respective plan.
2	The proposed plan contains two (2) effective and practicable Pro-innovation Proposals for the respective plan.
1	The proposed plan contains one (1) effective and practicable Pro-innovation Proposal for the respective plan.

0	The proposed plan does not contain any Pro-innovation Proposals for the respective plan or no supporting documents provided.
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(ii) Pro-innovation Proposals for the Work Plan

The Tenderer shall propose Pro-innovation Proposals that are directly relevant to: –

- (1) utilize innovative equipment to clean locations that are prone to accumulating waste but are difficult to access, such as Stone Circle at Fan Lau and Kau Ling Chung;
  - (2) provide incentive programs (i.e., bonuses, recognition programs) to enhance performance and morale of staff;
  - (3) conduct regular trainings on handling refuse, operating vessels safely, and responding to emergencies; and
  - (4) equip staff with lightweight, waterproof personal protective equipment with integration of wearable health monitors to ensure the safety of workers in challenging environments.
- (d) Distribution of marks for Pro-innovation Proposals meeting the requirements for each plan under (c) above is as follows:

Marks	Marking standard
4	The proposed plan contains four (4) or more effective and practicable Pro-innovation Proposals for the respective plan.
3	The proposed plan contains three (3) effective and practicable Pro-innovation Proposals for the respective plan.
2	The proposed plan contains two (2) effective and practicable Pro-innovation Proposals for the respective plan.
1	The proposed plan contains one (1) effective and practicable Pro-innovation Proposal for the respective plan.
0	The proposed plan does not contain any Pro-innovation Proposals for the respective plan or no supporting documents provided.

- (e) Marks will not be given to any Pro-innovation Proposals / ESG Proposals which a Tenderer will neither be capable of nor responsible for implementation in the opinion of the Government.
- (f) An Innovative Suggestion that scores marks under Pro-innovation Proposals will not earn marks again under ESG Proposals and vice versa. In case a Tenderer specifies the type of an Innovative Suggestion under both Pro-innovation Proposals and ESG Proposals and the Tender Assessment Panel considers that the same Innovative Suggestion could earn marks under both Pro-innovation Proposals and ESG Proposals, it will be taken as scoring marks under Pro-innovation Proposals only. Furthermore, Pro-innovation Proposals scores marks under one plan will not earn marks again under another plan. If the Tender Assessment Panel considers that the same Pro-innovation Proposal could score marks under more than one plan, it will be taken as scoring marks under the first relevant plan. For example, if a Tenderer proposes the same Pro-innovation Proposal which could earn marks under both of the Execution Plan and Work Plan, it will be taken as scoring marks under Execution Plan only.

- (g) Tenderers shall propose Pro-innovation Proposals / ESG Proposals by filling in the details in Schedule of Pro-innovation Proposals or ESG Proposals under this Appendix to Annex 1 to facilitate Tender evaluation.
- (h) Apart from the Schedule of Pro-innovation Proposals and ESG Proposals mentioned in (g) above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the Pro-innovation Proposals and ESG Proposals. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following:
- (1) If the Innovative Suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vessel, etc.: scope of the Services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
  - (2) If the Innovative Suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the Services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
  - (3) If the Innovative Suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (i) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their Pro-innovation Proposals and ESG Proposals. All proposed Pro-innovation Proposals and ESG Proposals 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 Pro-innovation Proposals and ESG Proposals proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original Tender submissions.
- (j) All effective and practicable Pro-innovation Proposals and ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of Contract (e.g. claiming damages and/or termination of the Contract).

**Note 6: ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services**

- (a) Tenderers are encouraged to provide ESG Proposals which may but need not be directly relevant to the performance of the Services but which can bring about positive values or

benefits to the Government or the public at large.

(b) The ESG Proposals may not necessarily be technology-related. Marks will be given if the proposed ESG Proposals are effective and practicable for the following areas:

- (1) measures for environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the Contract, utilisation of environmental-friendly products and spare parts, waste management scheme for proper disposal and recycling of waste metal, lubricant oil, battery and refrigerator); or

<u>Marks</u>	<u>Marking standard</u>
1	The proposed plan contains two (2) or more effective and practicable ESG Proposals.
0.5	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

- (2) social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the Contract); or

<u>Marks</u>	<u>Marking standard</u>
1	The proposed plan contains two (2) or more effective and practicable ESG Proposals.
0.5	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

- (3) governance.

<u>Marks</u>	<u>Marking standard</u>
1	The proposed plan contains two (2) or more effective and practicable ESG Proposals.
0.5	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

(c) Clauses (e), (f), (g), (h), (i) and (j) of Note 5 above are also applicable to this Note.

### **(B) Tenderer Experience**

#### **Note 7: Tenderer's experience in providing outdoor cleaning services**

- (a) Marks will be given if the accumulated experience of the Tenderer in providing outdoor cleaning services reached a specified level. The duration of experience will be calculated based on the past twelve (12) years prior to the Original Tender Closing Date.

Marks will be given as follows:

<u>Marks</u>	<u>Marking standard</u>
--------------	-------------------------

8	An accumulated experience of at least eight (8) years
6	An accumulated experience of at least six (6) years but not more than eight (8) years
4	An accumulated experience of at least four (4) years but not more than six (6) years
2	An accumulated experience of at least two (2) years but not more than four (4) years
0	An accumulated experience less than two (2) years or failing to produce documentary proof to support its claim of experience

- (b) A Tenderer shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of experience. Unsubstantiated experience will not be considered.
- (c) Local and / or foreign experience will be considered.
- (d) The experience of the Tenderer shall only be considered if the previous contract(s) bears the same name as that of the Tenderer or the Tenderer's previous name. For the avoidance of doubt, the experience gained by a Tenderer in its capacity as a sub-contractor, or the experience of a parent company, subsidiary, or sub-contractor of the Tenderer, shall not be taken into consideration. The definitions of "parent company" and "subsidiary" shall follow the meanings as defined under the Companies Ordinance (Cap. 622).
- (e) In the event that the Tenderer is a partnership, only the years of experience acquired by the partnership will be considered for the marking criteria. The individual experience of the participants within the partnership will not be taken into account.
- (f) For the purpose of Tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years of experience shall be equivalent to seven hundred and thirty (730) days (i.e. three hundred and sixty-five (365) days x 2).
- (g) The Tenderer's experience in providing outdoor cleaning services under different contracts during overlapping periods shall not be double-counted. The Tenderer's experience will be measured as illustrated by the following examples:

**Examples:**

Overhaul service contract	Contract period	Contract period without overlapping with an earlier contract	Number of day counted for accumulated experience
A	16.4.2019 – 15.4.2021	16.4.2019 – 15.4.2021	730
B	1.10.2020 – 31.3.2022	16.4.2021 – 31.3.2022	349 (28 days in Feb 2021)
C	1.1.2021 – 31.12.2022	1.4.2022 – 31.12.2022	274
<b>Total:</b>			<b>1,353</b>

**(C) Wages, Working Hours and Record of Demerit Point(s)****Note 8: Proposed Monthly Wage**

(a) Marks given by each Tender will be determined by the following formula:

$$\text{Marks scored} = 26 \times \frac{P - S}{H - S}$$

- P = Proposed monthly wage rate for Cleaners of the conforming tender being assessed  
 H = Highest proposed monthly wage rate for Cleaners among all conforming Tenders  
 S = The prevailing SMW monthly wage rate plus paid rest days for Cleaners, derived on the basis of thirty-one (31) days (i.e. twenty-seven (27) working days plus four (4) paid rest days per month), eight (8) normal hours of work per day and current minimum hourly wage rate (HK\$42.10) i.e. HK\$10,440.80.

(b) Illustrative example for Tenderer's proposed monthly wage for each Cleaner:

	Marks given (Example)
P = HK\$12,000 H = HK\$14,500 S = HK\$10,440.80	$26 \times \frac{12,000 - 10,440.80}{14,500 - 10,440.80}$ $= 9.99 \text{ (Marks)}$

**Remarks:**

- (a) If H is equal to S, no marks will be given to all Tenderers.
- (b) If a Tenderer fails to submit **Schedule 2**, or indicates any monthly wage or its proposed monthly wage (P) being less than the Statutory Minimum Wage (S), the Tender will be still evaluated. However, for the purpose of tender evaluation, the respective P will be deemed to be equal to S. This presumption will be immediately revoked if the Tenderer fails to confirm their abidance by the SMW upon request by the Government Representative at any time after the Tender Closing Date. If the Tenderer offers a higher monthly wage than the SMW in 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 Tenderer shall become binding if the Contract is subsequently awarded to the Tenderer.
- (c) Tenderers are advised to refer to the mark calculation method with an illustrative example above. The marks given of each Tender will be rounded to the nearest two (2) decimal places according to the rounding method as shown in Annex 1 – paragraph 10.

**Note 9: Proposed daily maximum working hours for Cleaners**

Marks will be given as follows:

<b>Marks</b>	<b>Marking standard</b>
6	Proposed daily maximum working hours for all Cleaners are ten (10) hours, excluding meal break (i.e. net total) or less.
0	Proposed daily maximum working hours for all Cleaners exceed ten (10) hours, excluding meal break (i.e. net total).

**Remarks:**

- (a) If a Tenderer fails to submit **Schedule 2** or fails to indicate any daily maximum working hours for all Cleaners in its Tender before the Tender Closing Date, the Tender will still be evaluated. However, for the purpose of tender evaluation, the proposed working hours will be deemed to exceed ten (10) hours, excluding meal break. If the Tenderer subsequently provides a written clarification, upon request by the Government Representative at any time before the completion of the tender exercise, indicating that the daily maximum working hours are ten (10) hours or less, the Tender will still be assessed on the basis that the proposed daily maximum working hours exceed ten (10) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

**Note 10: Record of Demerit Points under all Government Contracts**

- (a) Where the information declared by a Tenderer in **Schedule 9** is inconsistent with the Government's record, without prejudice to the Government's right to seek clarification from the Tenderer pursuant to Clause 15 of the Terms of Tender, the Government's record shall prevail and form the basis of the assessment.
- (b) Where a Tenderer has been a Government service contractor of Non-skilled Worker Contract within thirty-six (36) months immediately before the Tender Closing Date ("previous Government Contractor"), marks will be given to Assessment in accordance with the following rule:

<u>Marks</u>	<u>Marking standard</u>
5	No Demerit Points issued within thirty-six (36) months immediately before the Tender Closing Date
2	One (1) Demerit Point issued within thirty-six (36) months immediately before the Tender Closing Date
0	Two (2) Demerit Points issued within thirty-six (36) months immediately before the Tender Closing Date

- (c) Where a Tenderer has not been a previous Government service contractor of Non-skilled Worker Contract, it will be given an average mark which is calculated by dividing the aggregate marks under Note 10 of all Tenderers who has been a previous Government Contractor of Non-skilled Worker Contract by the number of such Tenderers rounded to the nearest two (2) decimal places according to the rounding method as shown in Annex 1 – paragraph 10.
- (d) 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 and for the purpose of tender evaluation under Note 10.

## Innovative Suggestion Schedule

(Please refer to Notes 4 & 5 of the Explanatory Notes for Marking Scheme for details.)

Tenderers shall provide details of its Innovative Suggestion<sup>1</sup> in the following tables. If there is not enough space, please use supplementary sheets as necessary.

### Pro-innovation Proposals – Directly Relevant to the Services

- **For the Execution Plan**

Item No.	Proposed Pro-innovation Proposals <sup>2</sup>	Brief description on improvements/benefits/positive values to be brought about <sup>3</sup>	Implementation Details	Supporting documents (if any)

### ESG Proposals – may but need not be directly relevant to the Services

Item No.	Proposed ESG Proposals <sup>4</sup> (E) for environmental protection or sustainability; (S) for social responsibility; (G) for governance	Brief description on improvements/benefits/positive values to be brought about <sup>5</sup>	Implementation Details	Supporting documents (if any)

<sup>1</sup> The Innovative Suggestion, whether it be a Pro-innovation Proposal or an ESG Proposal, shall not just repeat, or be inconsistent with, the requirements of the Tender Documents.

<sup>2</sup> Please identify the technological means or arrangements or work process or solutions or equipment covered by the Pro-innovation Proposals that can enhance efficiency, effectiveness and productivity of the Services. If not clearly stated, it shall be assumed that the Pro-innovation Proposal shall apply to all Services.

<sup>3</sup> In order to score marks, the Innovative Suggestion must bring about any one or more such improvements and/or benefits and/or positive values as found in the list.

<sup>4</sup> Please identify whether the ESG Proposal is for environmental protection or sustainability / for social responsibility / for governance by filling in (E) or (S) or (G) as the case may be. Unless otherwise expressly specified, it shall be assumed that the ESG Proposal shall apply to all Services.

<sup>5</sup> In order to score marks, the Innovative Suggestion must bring about any one or more such improvements and/or benefits and/or positive values as found in the list.


**Remarks:**

1. All effective and practicable Pro-innovation Proposals and ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism for breach of Contract (e.g. claiming damages and/or termination of the Contract).

Name of Tenderer in English (in Block Letters) : \_\_\_\_\_

**ANNEX 2****Form of  
Banker's Guarantee**

**THIS GUARANTEE** is made on the ..... day of ..... 20.....  
by.....  
of ....., a licensed bank within the meaning of the Banking  
Ordinance (Cap. 155) (the "Guarantor")

**IN FAVOUR OF**

The Government of the Hong Kong Special Administrative Region of the People's Republic of  
China (the "Government") of the other part.

**WHEREAS**

(A) By an invitation to tender issued by the Government (Tender Ref: AFCD/SQ/1/26), the  
Government invited tenders for a contract for "Provision of Cleaning Services in Marine Parks and  
Marine Reserve in Western Waters" ("Contract") upon the terms and conditions of the Contract.  
Unless specified otherwise, capitalised terms used herein shall bear the same meaning as ascribed to  
them in the Contract.

(B) It is proposed that the Contract shall be awarded to (Name of the Contractor:  
\_\_\_\_\_), a company whose registered office is situated at registered  
office address: \_\_\_\_\_) ("Contractor").

(C) It is a condition precedent to the Government agreeing to grant the Contract the  
Contractor that, inter alia, the Guarantor executes this Guarantee in favour of the Government.

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

**Now this Guarantee executed as a deed witnesses as follows:-**

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

(2) In consideration of the Government's acceptance of the bank named herein as the  
Guarantor under this Guarantee:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her or 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, notwithstanding any dispute between the Contractor and the Government or any other person.
- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as the “Contractor” or where the “Contractor” is a partnership, any change in the partners or in its constitution or where the “Contractor” is a company, any change of its member or shareholder or its officers or its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

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

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (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; and
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

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

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

- (a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or
- (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities

have actually been carried out, completed and discharged (as confirmed by the Government in writing),

whichever is the applicable.

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

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

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

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

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

(a) upon the Government, at Unit 2209, 22/F, CDW Building, 388 Castle Peak Road, Tsuen Wan, New Territories, the Director of Agriculture, Fisheries and Conservation, marked for the attention of \_\_\_\_\_, facsimile number: (852) 3468 3015;

(b) upon the Guarantor, at \_\_\_\_\_, Hong Kong, marked for the attention of \_\_\_\_\_, facsimile number \_\_\_\_\_.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed \_\_\_\_\_.

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

**IN WITNESS** whereof the Guarantee was executed as a deed and the said Guarantor.....has caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

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

Name of witness:  
Title of witness:  
Signature of witness:

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

Name of witness:  
Title of witness:  
Signature of witness:

\* Please delete as appropriate.

@ See the Powers of Attorney Ordinance (Cap. 31)

Note: When bank 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.

**ANNEX 3****NON-COLLUSIVE TENDERING CERTIFICATE**

(To be completed and returned together with the Tender submission)

To: the Government

Dear Sir/ Madam,

**Non-collusive Tendering Certificate**

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

refer to the Government's invitation to tender for the Contract ("Invitation to Tender") and my/our Tender in response to the Invitation to Tender. Unless specified otherwise, capitalized terms used herein shall have the meaning as ascribed to them in the Tender Documents issued in respect of the Invitation to Tender.

Non-collusion

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

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

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

- (a) the Government;
- (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
- (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
- (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
- (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
- (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
- (g) any person other than the Government, provided that the Government has given prior written consent.

#### Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning subcontracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/we understand that I/we am/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 38.1 of the Terms of Tender, the Government may exercise any of the rights under Clauses 38.3 to 38.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Cap. 619), bid-rigging is a 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 the 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 :

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## ANNEX 4

**Registration Form for the Tender Briefing****Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters****(Tender Reference: AFCD/SQ/1/26)**

To: Director of Agriculture, Fisheries and Conservation  
 Unit 2209, 22/F, CDW Building,  
 388 Castle Peak Road, Tsuen Wan, New Territories,  
 Marine Conservation (West) Division  
 Management Section (West)  
 (Attn.: Mr. MAK Chu-wa)  
 Fax no.: (852) 3468 3015

We will attend the Tender briefing for the above Tender  
 on 27 February 2026, 10:00  
 at Room 2209 – 4  
 Unit 2209, 22/F., CDW Building  
 388 Castle Peak Road, Tsuen Wan  
 New Territories.

Name of the  
 prospective  
 Tenderer

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Attendee(s):

Name

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Position

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Tel no.

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Fax no.

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Date

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- Note: 1. The registration form should be completed and returned by facsimile by 25 February 2026. Late registration will not be accepted.
- Note: 2. Each prospective Tenderer should register no more than two (2) persons for the Tender briefing due to limited seating capacity.
- Note: 3. Please provide a list of the prospective Tenderer's questions, if any, together with this registration.

**OFFER TO BE BOUND**

1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.
2. I/We, the Tenderer mentioned below, do hereby agree to carry out all and any of the Services at the Unit 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 : \_\_\_\_\_

Notes:

- (i) *For Paper-based Tendering, the Offer to be Bound to be signed and submitted shall be Part VII of this Tender Form or a printed copy from a softcopy of Part VII of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part VII of this Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and **the Tender with the non-conforming Offer to be Bound will not be considered further.***
- (ii) *\*For Paper-based Tendering, this Part VII – Offer to be Bound shall be signed (containing an original signature) and submitted in the Tender before the Tender Closing Date. This signed Part VII – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further.***
- (iii) *The Tenderer shall not make any alteration to the original text set out in this Part VII – Offer to be Bound, otherwise **the Tender will not be considered further.** Deleting inapplicable word “I/we” or “me/us” or the alternative wording denoted by # above is however not to be treated as an alteration.*

**PART VIII  
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 contract (“Contract”) for “Provision of Cleaning Services in Marine Parks and Marine Reserve in Western Waters” on and subject to the terms and conditions set out in the Contract. A copy of each document constituting the Contract is hereby attached for identification purposes.

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.....  
.....  
.....  
.....

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

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

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

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

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