

**THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
Agriculture, Fisheries and Conservation Department  
INVITATION TO TENDER**

Tender Ref. : AFCD/CPR/01/20  
File Ref. : AF GR CPA 08/1/1 Pt.5

**TENDER FORM**

Contract No. :

**LODGING OF TENDER**

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

**“Tender for Provision of Security Guard Services at Pak Tam Chung Barrier Gate  
& Access Road to Yung Shue O, Sai Kung  
(Tender Reference: AFCD/CPR/01/20)”**

and addressed to the Chairman, Tender Opening Committee, Government Logistics Department,  
must be deposited in the Government Logistics Department Tender Box,  
situated at Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong,  
before 12:00 noon on 7 January 2021. Late tender will not be accepted.

**INTERPRETATION**

**PART 1 – TERMS OF TENDER**

**PART 2 – CONDITIONS OF CONTRACT**

**PART 3 – CONTRACT SCHEDULES**

**PART 4 – OFFER TO BE BOUND**

**PART 5 – MEMORANDUM OF ACCEPTANCE**

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

A hardcopy of these tender documents can be obtained from the following address:

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

Dated this 11<sup>th</sup> day of December 2020



(Patrick LAI)

Government Representative  
Agriculture, Fisheries and Conservation Department

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## INTERPRETATION

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

“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government;
“Commencement Date”	means 1 April 2021, or such later date as may be specified by the Government Representative in the Letter of Conditional Acceptance;
“Companies Ordinance (Cap.622)”	means Cap. 622 of the Laws of Hong Kong and includes the predecessor Companies Ordinance which has the meaning assigned to it in section 2 of the Companies Ordinance (Cap. 622);
“Contract”	means the contract made between the Government and the Contractor for the provision of the Services on the terms and conditions set out in the Tender Document, the tender submitted by the Contractor (to the extent accepted by the Government), the Memorandum of Acceptance issued by the Government to that Contractor and any attachments to any of the above;
“Contract Deposit”	means the deposit as more particularly described in Clause 12 of the Terms of Tender and Clause 21 of the Conditions of Contract;
“Contract Manager”	means the person appointed by the Contractor under Clause 5 of the Conditions of Contract to perform the duties as specified in Clause 5(c) of Contract Schedule 1;
“Contract Period”	means the period specified in Clause 1 of the Conditions of Contract subject to any early termination or extension provided for in the Contract;
“Contract Venue”	means the Pak Tam Chung Barrier Gate and the Yung Shue O Checkpoint within Sai Kung Country Parks as shown in Contract Schedule 2, and any other sites that are specified by the Government for the purposes of the Contract;
“Contractor”	means the Tenderer whose tender has been accepted by the Government;
“Contractor’s Employees” or “Employees”	means the persons deployed by the Contractor to perform the Services, including the individuals who perform the duties of a Contract Manager, Supervisor and Security Guard as described in Clause 5 of Contract Schedule 1;

“Country Parks”

means the various country parks as listed in the Schedule of the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub. leg. B);

“Demerit Point” or “Demerit Points”

means the demerit point attracted due to issue of notices of default by any Government bureau or departments for breaches of contractual obligations under a Non-skilled Worker Contract in respect of:

- (a) wages;
- (b) holiday pay payable to the 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 the 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 performance of a Non-skilled Workers 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); and
- (g) gratuity payable to Non-skilled Workers with no less than one year of service under a continuous contract.;

“Estimated Total Contract Value”

means the amount quoted as such by the Contractor in Section 3 of Appendix C as the estimated total amount of payment for the provision of the Services, to be payable by the Government to the Contractor by way of Monthly Fees in accordance with the provisions of the Contract;

“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 33(f) and 33(g) 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) or (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 every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149);
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
“Government Representative ”	means the Director of Agriculture, Fisheries and Conservation of the Government or any officer from time to time authorised to act on his behalf for the purposes of the Contract;
“Guard House”	means the working station provided to the Security Staff;
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;
“Letter of Conditional Acceptance”	means the letter of conditional acceptance referred to in Clause 10 of the Terms of Tender;
“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 14 of the Conditions of Contract subject to and after any adjustment or deductions in respect of that month;

“Monthly Rate”

means the monthly rate as set out in Contract Schedule 3 chargeable by the Contractor to the Government for the provision of the Services before adjustment or deductions and on the basis of which the Monthly Fee is determined;

“Non-collusive Certificate”

Tendering

means 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 8(b) of the Terms of Tender;

“Public Body” and “Public Officer”

have the meanings given to them in the Interpretation and General Clauses Ordinance (Cap 1);

“Relevant Offences”

means the offences as defined in Clause 3(b) of Appendix I;

“Sai Kung Country Park Visitor Centre”

means the visitor centre managed by the Agriculture, Fisheries and Conservation Department where is located at Pak Tam Chung, Sai Kung;

“Security Company Licence”

means a valid **Type I** Security Company Licence issued by the Security and Guarding Services Industry Authority under section 21 or renewed under section 23 of the Security and Guarding Services Ordinance (Cap. 460) for provision of security guard services;

“Security Guard”

means a person deployed by the Contractor to perform duties set out in Clause 5(b) of Contract Schedule 1. A Security Guard must hold a valid **Category B** Security Personnel Permit issued under the Security and Guarding Services Ordinance (Cap. 460);

“Security Personnel Permit”

means a permit issued to an individual by the Commissioner of Police under section 14 or renewed under section 15 of the Security and Guarding Services Ordinance (Cap. 460) for doing the type of security work described in the Contract;

“Security Staff”

means collectively the Security Guards and Supervisors;

“Services”

means all the services, works, duties, responsibilities and obligations to be carried out by and on the part of the Contractor under the Contract;

“Service Requirements”

means the specifications and requirements of the

Services to be provided by the Contractor as set out in Contract Schedule 1;

“Specified Tender Box”	means the tender box specified in the “Lodging of Tender” section of the Tender Form;
“Statement of Convictions”	means the statement of convictions in respect of the Relevant Offence in the form of Appendix H;
“Supervisor”	means a person deployed by the Contractor to perform the supervisory duties set out in Clause 5(a) of Contract Schedule 1. A Supervisor must hold a valid Category B Security Personnel Permit issued under the Security and Guarding Services Ordinance (Cap. 460);
“Standard Contract”	<p>Employment means the written employment contract to be entered into between the Contractor and each of the Security Staff employed by the Contractor, a copy of such contract and its guidance notes can be downloaded from the following hyperlink</p> <p>&lt;<a href="http://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html">http://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html</a>&gt; for Chinese version or</p> <p>&lt;<a href="http://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html">http://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html</a> &gt; for English version;</p>
“Statutory Minimum Wage” or “SMW”	means the “minimum wage” as defined in the Minimum Wage Ordinance (Cap. 608);
“SMW plus rest day pay rate”	has the same meaning as ascribed to the term “statutory minimum wage plus rest day pay rate” in paragraph 2 of the Guidance Notes accompanying the Standard Employment Contract;
“Tender Closing Date”	means the latest date by which tenders must be lodged and as specified in the “Lodging of Tender” section of the Tender Form which may be extended in accordance with Clause 7(b) of the Terms of Tender;
“Tender Document”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued under Clause 29 of the Terms of Tender prior to the Tender Closing Date;
“Tender Validity Period”	means the period of time mentioned in Clause 14(a) of the Terms of Tender during which a tender shall remain open;
“Tenderer”	means the company which has submitted a tender in response to this invitation to tender.
“work shift”	means the working hours of each shift of Security

Staff as specified in Contract Schedule 1;

“working day”  
or “Business Day” means Monday to Friday other than a Public Holiday.

2. The following rules of interpretation apply:

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

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

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

**PART 1**  
**TERMS OF TENDER**

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**Provision of Security Guard Services at Pak Tam Chung Barrier Gate & Access Road  
to Yung Shue O, Sai Kung**

**PART 1  
TERMS OF TENDER**

**1. Tender Document**

- (a) This tender document, identified as Tender Ref. AFCD/CPR/01/20, comprises the following documents: -
- (i) Tender Form;
  - (ii) Interpretation;
  - (iii) PART 1 – Terms of Tender;
  - (iv) PART 2 – Conditions of Contract;
  - (v) PART 3 – Contract Schedules 1 to 5;
  - (vi) PART 4 – Offer to be Bound; and
  - (vii) PART 5 – Memorandum of Acceptance.
- (collectively “Tender Document”). Each of the above Tender Document is referred to by their names as stated above throughout the Tender Document and the Contract.
- (b) The Interpretation as provided for in Sheets 1 to 6 shall apply to the whole set of the Tender Document and the Contract unless the context requires otherwise.

**2. Invitation to Tender**

Tenders are invited for the provision of all of the Services at the Contract Venue to the Government on such terms and conditions as set out in the Terms of Tender, the Conditions of Contract and the Contract Schedules. **Tenderers must be bodies corporate either incorporated or registered under the Companies Ordinance (Cap. 622) and holders of a Security Company Licence.**

**3. Essential Requirements**

- (a) Tenderers must meet **all** the essential requirements as set out in Section 3 of Appendix I to the Terms of Tender.
- (b) **Failure to meet or comply with any of the essential requirements as set out in Section 3 of Appendix I will render a tender not to be considered further.**

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

- (a) Tenderer must complete and submit Appendix A (Tenderer's Declaration) and Appendix G on relevant experience in providing security guard services. Without prejudice to the Government's right to seek clarification or missing information under Clause 13 below, failure to complete and submit Appendix A or G may render a tender invalid.
- (b) If a Tenderer is incorporated outside Hong Kong, it must, if required and at its own cost, provide a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation of the Tenderer and acceptable to the Government on the following issues and any other issues as may be required by the Government:
- (i) the Tenderer is duly incorporated and validly existing under the laws of the place of the Tenderer's incorporation, and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract;
  - (ii) the Tenderer has the full power, authority and legal capacity to:
    - (1) execute and submit its tender and to incur the liabilities and perform the obligations under the Tender Document; and
    - (2) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
  - (iii) the proposed Contract with the Government will, upon its formation pursuant to Clause 10(d), constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation and is enforceable against the Tenderer in accordance with its terms;
  - (iv) the execution, delivery and performance of its tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;
  - (v) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation in connection with the execution and delivery of the Tenderer's tender, or the performance by the Tenderer of its obligations under the Tender Document and the Contract;
  - (vi) the Tenderer's tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation in order to secure their validity and/or priority;
  - (vii) there is no restriction under the laws of the place of the Tenderer's incorporation affecting the Tenderer's obligations under the Tender Document and the Contract;
  - (viii) the choice of the laws of Hong Kong to govern the Tender Document and the

Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation of the Tenderer; and

- (ix) it is not necessary under the laws of the place of incorporation of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation in order to enable it to enforce its rights under the Tender Document and the Contract.

## **5. Wages of Security Staff**

- (a) A Tenderer must propose the monthly wage payable to each Security Staff in Appendix D of the Terms of Tender. The proposed monthly wage for Security Staff must not be less than the **“SMW plus rest day pay rate”** on the basis of 31 days (27 working days plus 4 paid rest days) per month and 8 normal hours of work per day (Note A).
- (b) The monthly wage payable by the Contractor to each Security Staff **must not be less than the higher of** (i) the proposed monthly wage quoted by the Contractor in Contract Schedule 4; and (ii) the **“SMW plus rest day pay rate”**. (Note A)
- (c) If the monthly wage for Security Staff proposed in Appendix D of the Terms of Tender is less than the **“SMW plus rest day pay rate”**, that tender will be evaluated nevertheless but the proposed wage will be deemed to be not less than **the “SMW plus rest day pay rate”** for the purpose of tender evaluation.
- (d) The Government may at any time before the tender exercise is completed request the Tenderer to confirm its abidance by **the “SMW plus rest day pay rate”**. Should the Tenderer refuse to or otherwise fail to confirm such abidance, its tender will not be further considered by the Government for award of the Contract.
- (e) If the Tenderer proposes in Appendix D to the Terms of Tender a monthly wage higher than **the “SMW plus rest day pay rate”**, that higher monthly wage will become binding on the Tenderer should the Tenderer be awarded the Contract.

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

Note A:

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

**6. Tender Preparation**

- (a) Tenders must be completed in English or Chinese and in ink or typescript and be submitted in accordance with Clause 7 of the Terms of Tender.
- (b) **Tenderers must submit by the Tender Closing Date and time the following documents failing which the tender will not be considered further:**
  - (i) PART 1 – Appendix C - Price Proposal with the price information in Sections 2 and 3 of the Price Proposal duly completed; and
  - (ii) PART 4 – Offer to be Bound which **must** be duly signed.
- (c) Tenderers are required to complete and submit the following documents including the documentary evidence which are necessary for tender evaluation, failing which the tender may not be considered further:
  - (i) PART 1 – Appendix A - Tenderer's Declaration;
  - (ii) PART 1 – Appendix B - Information to be submitted by the Tenderer;
  - (iii) PART 1 – Appendix D - Wage Proposal and Proposed Maximum Working Hours for Security Staff;
  - (iv) PART 1 – Appendix G - Tenderer's Business Experience in Provision of Security Guard Services;
  - (v) PART 1 – Appendix H - Statement of Convictions and Authorizations;
  - (vii) PART 1 – Appendix J – Proposed Plans
  - (viii) PART 1 – Appendix K – Contract Manager Experience; and
  - (ix) PART 1 – Appendix L – Non-collusive Tendering Certificate.
- (d) When completing the tender, Tenderer should ensure that:
  - (i) the name of the Tenderer should be the same as the name shown on the Certificate of Incorporation or the Certificate of Change of Name (if any) when the company is incorporated under the Companies Ordinance (Cap. 622) or other similar ordinance elsewhere; and
  - (ii) the "Offer to be Bound" and all the Appendices are duly signed by the Tenderer or the Tenderers authorized person or persons for and on behalf of the Tenderer (in the case of a company);
- (e) A two-envelope system will be adopted for this tender. A tender shall submit in its tender in two (2) separate proposals, one is the Price Proposal and another as the Technical Proposal as set out in (i) and (ii) below:

**Price Proposal**

- (i) The Price Proposal should contain the original copy and two (2) copies of Appendix C, fully completed, signed, stamped with the company chop of the Tenderer and dated. It must be placed in a sealed plain envelope clearly marked:

Price Proposal – “Tender for Provision of Security Guard Services at Pak Tam Chung Barrier Gate & Access Road to Yung Shue O, Sai Kung (Tender Reference: AFCD/CPR/01/20)”

### Technical Proposal

- (ii) The Technical Proposal (without any indication on prices) should contain the original copy and two copies of all other remaining information, forms, schedules and documents required by the Tender Documents (including Part 1- Appendices A, B, D, G, H, J and K, and Part 4 - Offer to be Bound of the Tender Form, and all documents required to be attached thereto including but not limited to the documents for financial vetting) or otherwise necessary for tender evaluation, including but not limited to acknowledgements of receipt of corrigenda or addenda. It must be placed in another sealed plain envelope clearly marked:

Technical Proposal – “Tender for Provision of Security Guard Services at Pak Tam Chung Barrier Gate & Access Road to Yung Shue O, Sai Kung (Tender Reference: AFCD/CPR/01/20)”

- (f) The tender comprising both Price Proposal and Technical Proposal should then be enclosed in another sealed plain envelope and addressed to the person specified in the “Lodging of Tender” section of the Tender Form and clearly marked as below:

“Tender for Provision of Security Guard Services at Pak Tam Chung Barrier Gate & Access Road to Yung Shue O, Sai Kung (Tender Reference: AFCD/CPR/01/20)”

## **7. Submission of Tender**

- (a) A tender to be submitted in response to this invitation to tender shall be submitted in **TRIPLICATE (i.e. one set of originals and two sets of copies)** with all necessary information including documentary evidence necessary for tender evaluation in accordance with the Lodging of Tender section of the Tender Form before the Tender Closing Date. The envelopes must not bear any indication which may relate them to a particular Tenderer. **Late tenders or tenders not so submitted (for example, a Tender submitted by e-mail or facsimile) WILL NOT BE CONSIDERED.**
- (b) If a black rainstorm warning signal is issued or tropical cyclone signal No.8 or above or “extreme conditions after super typhoons” announced by the Government is/are in effect for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the closing time of this tender will be extended to 12:00 noon (Hong Kong time) on the next working day (excluding Saturday) after the black rainstorm warning signal or tropical cyclone signal No.8 or above or “extreme conditions after super typhoons” as announced by the Government 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 9:00 a.m. (Hong Kong time) and 12:00 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 and time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

- (d) Any appendices/annexes to the Terms of Tender and Contract Schedules issued with this invitation to tender must not be altered by the Tenderer. Any alteration to the figures in a Tenderer's proposal should be done by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (e) Each Tenderer may only submit **ONE** tender.

## **8. Warranty Against Collusion**

- (a) The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in sub-clause (b) below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- (b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in **Appendix L**) as part of its Tender
- (c) In the event that the Tenderer is in breach of any of the representations, warranties and/or undertakings in sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government: -
  - (i) reject the Tenderer's tender;
  - (ii) if the Government has accepted the tender, withdraw its acceptance of the tender; and
  - (iii) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- (d) By submitting a tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above may prejudice the Tenderer's future standing as a Government contractor or service provider.
- (f) The rights of the Government under sub-clauses (c) to (e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

**9. Tender Assessment**

- (a) Without prejudice to other rights and powers of the Government not to consider a tender under other applicable provisions in the Tender Documents, the evaluation of tenders will be conducted in accordance with the Marking Scheme as set out in Appendix I to the Terms of Tender.
- (b) Normally, the tender with the highest combined score, will be recommended for acceptance subject to the requirement that the Government is satisfied that the recommended tenders is fully (including technically, commercially and financially) capable of undertaking the Contract, and that the recommended tender is the most advantageous to the Government in accordance with the tender provisions. If two or more tenders obtain the same highest combined score, the tender which obtains the highest weighted technical score will be recommended for acceptance. The tender that has achieved the highest combined score will be recommended for acceptance.

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

- (a) Tenders will be considered on an **overall** basis. A tender with only partial offers will not be considered further.
- (b) The Government is not bound to accept the tender with the highest combined technical and price score or any tender or to give any reasons for doing so and the Government reserves the right to accept all or any part of any tender at any time within the Tender Validity Period.
- (c) Award of contract shall be subject to the recommended Tenderer not being debarred up to the date of the Letter of Conditional Acceptance due to conviction of any of the Relevant Offences in Clause 3(a) of Appendix I or accumulation of three or more Demerit Points in Clause 3(i). The recommended Tenderer will receive a Letter of Conditional Acceptance with a condition to this effect. Subject to the condition as mentioned above and the delivery of the Contract Deposit pursuant to Clause 12 below and fulfilment of any other conditions as the Government may specify in the Letter of Conditional Acceptance, a binding Contract would be deemed to have been constituted between the Government and the successful Tenderer upon issuance of the Letter of Conditional Acceptance by the Government. For the avoidance of doubt, the subsequent issuance of the duplicate copy of the Contract with Part 5 (Memorandum of Acceptance) duly completed is entirely a matter of procedural formality.
- (d) Upon and subject to the successful Tenderer having duly complied with Clause 10(c) above, the Government will issue the Memorandum of Acceptance notifying fulfillment of the conditions precedent and the Contract is deemed to have been formed on the date of the issuance of the Letter of Conditional Acceptance.
- (e) If the conditions precedent set out in Clause 10(c) above are not satisfied, the

Government will be at liberty to award the Contract to another Tenderer, conduct a fresh tender exercise or take such appropriate action as the Government deems fit. Without prejudice to the foregoing, if the successful Tenderer fails to deliver the Contract Deposit to the Government pursuant to Clause 12 hereof, such failure may prejudice its future standing as a Government contractor or service provider. Tenderers who do not receive any notification within the Tender Validity Period shall assume that their tenders have not been accepted.

#### **11. Prices Tendered**

- (a) Tenderer should ensure that the rates or contract value tendered are accurate before submitting their bids. Under no circumstances shall the Government be obliged to accept any request for rates or contract value adjustment on grounds that a mistake has been made in the rates or contract value tendered.
- (b) All rates or contract value tendered in the tender shall be in Hong Kong currency and, if accepted by the Government, shall remain valid and binding throughout the Contract Period. No request for price variation will be considered.
- (c) A Tenderer is requested to indicate in the space provided in Section 4 of Appendix C any payment discounts it will allow on the Monthly Fees if payment is made in full within a specified period of time.
- (d) Without prejudice to the generality of the Conditions of Contract, the Government may require a Tenderer, who in the opinion of the Government has submitted unreasonably low price, to justify and demonstrate to the reasonable satisfaction of the Government that it is capable of carrying out and completing the Contract. A Tenderer's failure to so justify and demonstrate to the Government's satisfaction shall entitle the Government to reject the tender.

#### **12. Contract Deposit**

- (a) The successful Tenderer must pay the Contract Deposit either by cash, cheque or cashier's order or in the form of a banker's guarantee. Each Tenderer should state clearly in Section 2 of Appendix A the method of providing the Contract Deposit. If the successful Tenderer fails to do so, it will be regarded to have undertaken to pay the Contract Deposit to the Government by cash.
- (b) If the Estimated Total Contract Value exceeds HK\$1.4 million but does not exceed HK\$15 million, 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 as security for the due and faithful performance of the Contract by the successful Tenderer.
- (c) The Contract Deposit shall be payable within fourteen (14) days from the date of the Letter of Conditional Acceptance and either in cash, cheque or cashier's order or in the form of a banker's guarantee in the form attached at **Appendix F** to the Terms of Tender issued by a bank holding a valid banking licence under the Banking Ordinance (Cap.155). A banker's guarantee for the purpose of this Clause must comply with the requirements as provided in Clause 21 of the Conditions of Contract.
- (d) If the successful Tenderer elects to pay the Contract Deposit by way of a banker's

guarantee, the proposed guarantor and the form and substance of the banker's guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the banker's guarantee must comply with the following

- (i) it must be issued by a bank that holds a valid banking licence issued under the Banking Ordinance (Cap.155) and acceptable to the Government;
  - (ii) unless otherwise agreed by the Government, it must be on the terms set out at **Appendix F**; and
  - (iii) the banker's guarantee must shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Letter of Conditional Acceptance. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.
- (f) If the successful Tenderer fails to deliver to the Government the Contract Deposit within such time as specified in sub-clause (c) above, the Government shall be at liberty to terminate the Contract, to conduct a fresh tender exercise or to take such appropriate action as the Government deems fit.

### **13. Request for Information**

- (a) If the Government considers that:
- (i) clarification in relation to any tender is necessary; or
  - (ii) a document or a piece of information, other than the document or information set out in Clause 13(b), is missing from any tender,

it may request the Tenderer to make the necessary clarification, or submit the required document or information. Each Tenderer must thereafter within two (2) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A tender will not be considered further if complete information or document is not provided by the deadline specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the tender further or may proceed to evaluate the tender on an "as is" basis.

- (b) The document and information not covered by Clause 13(a) are:
- (i) a duly signed "Offer to be Bound"; and
  - (ii) Appendix C - Price Proposal with the price information in Section 1 of the Price Proposal duly completed.
- (c) The Government will not consider any clarification or information submitted by a Tenderer (whether or not submitted at the request of the Government) if the Government considers that such clarification or information would alter the Tenderer's tender in substance or give the Tenderer an advantage over other Tenderers.

**14. Tender to Remain Open**

- (a) Tenders shall remain valid and open for acceptance by the Government on these terms for not less than one hundred and twenty (120) days after the Tender Closing Date.
- (b) If a Tenderer does not state in its tender the period for which the tender is to remain valid and open for acceptance, the Tender Validity Period of that tender will be one hundred and twenty (120) days after the Tender Closing Date.
- (c) If a Tenderer offers in its tender a period that is shorter than one hundred and twenty (120) days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with Clause 14(a) within five (5) working days or such other period as specified by the Government without any other change to the tender (except any change made in response to any clarification by the Government pursuant to Clause 13). If the Tenderer fails to confirm compliance with Clause 14(a) within the specified deadline or, despite confirming compliance therewith, introduces any change to the tender not in response to any clarification by the Government pursuant to Clause 13, its tender will not be considered further.
- (d) If before expiry of the Tender Validity Period, a Tenderer withdraws its offer, the Government will take due notice of the Tenderer's action and this may prejudice its future standing as a Government contractor.

**15. Offer to be Binding**

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

**16. Documents of Unsuccessful Tenderers**

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

**17. Complaints about Tendering Process**

The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its tender has not been fairly evaluated may write to the Director of Agriculture, Fisheries and Conservation who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. Tenderers are to note that the Director of Agriculture, Fisheries and Conservation shall not consider a complaint that is lodged later than

three (3) months after the award of Contract.

**18. Undisclosed Agency**

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

**19. Personal Data Provided**

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

**20. Offering Gratuities**

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

**21. New Information**

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

**22. Consent to Disclosure**

The Government shall have the right to disclose, without further reference or notice to the successful Tenderer, whenever the Government considers appropriate or upon

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

**23. Contractor's Performance Monitoring**

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

**24. Cancellation and Costs of Tender**

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

**25. Environmental Friendly Measures**

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

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

**26. Tenderer's Enquiries**

- (a) Before the Tender Closing Date, any enquiries concerning the submission of tenders can be made by contacting Mr. Henry LAW at telephone no. 2150 6745. For enquiries on other technical issues such as Services requirements, please contact Mr. CHIK Shu Fai at telephone no. 2792 3730 no later than five (5) working days prior to the Tender Closing Date. The Government officers may at any time request any Tenderer to make enquiries in writing.
- (b) After lodging a Tender with the Government, the Tenderer should not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government reserves the sole right to initiate any contact with Tenderers and all such contacts and subsequent responses from Tenderers shall be made in writing.
- (c) Unless otherwise expressly stated by the Government, any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Tenderer shall be for guidance and reference purposes only. The statement shall not be deemed to form part of these Terms of Tender and such statement or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as set out in these Terms of Tender or the Conditions of Contract.

**27. Tenderer's Commitment**

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

**28. Tender Briefing Session**

In order to have a clear understanding of the Contract and the Services before submitting offers, all Tenderers who wish to submit a bid in this tender are strongly recommended to deploy staff at supervisory level to attend a tender briefing on 29 December 2020 (Tuesday) at 14:30 at Sai Kung Country Park Visitor Centre, No. 531 Tai Mong Tsai Road, Sai Kung. Tenderers who would like to attend the briefing session should complete the reply slip attached at **Appendix E** to the Terms of Tender and send back to Country Parks Ranger Services Officer/East for registration by facsimile on 2792 6340 not less than 24 hours before the tender briefing session. Each Tenderer may nominate not more than two representatives to attend the tender briefing session.

**29. Tender Addenda**

The Government reserves the right to clarify, amplify or amend this tender at any time prior to the Tender Closing Date. Any clarification(s) or amendment(s) on any aspect of this tender will be by way of an addendum and will be posted on the departmental webpage. These addenda if comprising an amendment, clarification or adjustment to any provisions of the Contract, shall form part of the Contract and shall take priority over the documents previously issued. Tenderers are advised to check the said website from time to time for any issue of addendum and the contents thereof.

**30. The Attachments**

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

**31. Negotiation**

The Government reserves the right to negotiate with any Tenderer about the terms of its offer.

**32. Counterproposal**

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

**33. Government Discretion**

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

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

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

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

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

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

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

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

**Appendix A****Tenderer's Declaration****Section 1 – Tenderer's Portfolio**

1. Name of Tenderer<sup>1</sup> (in English) : \_\_\_\_\_

(in Chinese) : \_\_\_\_\_

2. Details of Company

(a) Scope of Business : \_\_\_\_\_

(b) Registered Office

(i) Address : \_\_\_\_\_

\_\_\_\_\_

(ii) Telephone Number : \_\_\_\_\_ (iii) Fax : \_\_\_\_\_

Number

(c) Year of Establishment : \_\_\_\_\_

(i) Ownership : \_\_\_\_\_

(ii) If a subsidiary, name of parent company : \_\_\_\_\_

(d) Members of the Company : Name Residential Address

(i) Managing Director

(ii) Director

(iii) Owner/Shareholder

(e) No. of staff : \_\_\_\_\_

Signature of Person  
Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter : \_\_\_\_\_

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

Tel. No. / Fax. No. : \_\_\_\_\_

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

Terms of Tender

**Appendix A****Tenderer's Declaration**

3. I/We also certify that the particulars given by me/us below, are correct:

(a) The number of my/our/the Company's Business Registration Certificate

is .....

(b) The date of expiry of my/our/the Company's Business Registration Certificate

is .....

(c) I am/We are/The Company is covered by an Employees' Compensation Insurance Policy,  
the particulars of which are as follows:

Policy No. ....

Name of Insurance Company .....

Period covered by the Policy is from .....

to .....

Brief particulars of the cover provided and any special conditions are as follows:

.....

.....

**Note: --**

Note 1: The Tenderer may be a body of corporate or an unincorporated joint venture / entity (e.g. a sole proprietorship of partnership).

Signature of Person

Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter

: \_\_\_\_\_

Name of Tenderer

: \_\_\_\_\_

Tel. No. / Fax. No.

: \_\_\_\_\_

Date

: \_\_\_\_\_

Terms of Tender

**Appendix A****Tenderer's Declaration****Section 2 – Election of method of payment of Contract Deposit**

[Please refer to Clause 12 of the Terms of Tender and Clause 21 of the Conditions of Contract.]

If required under Clause 12 of Terms of Tender, we, the Tenderer, will pay the Contract Deposit : -

- \* (i) in cash, cheque or cashier's order,
- \* (ii) in the form of a banker's guarantee in accordance with Clause 21 of the Conditions of the Contract.
- \* *Delete as appropriate. In the event that a Tenderer fails to elect which method of providing a Contract Deposit, it will be assumed that the Tenderer will deposit cash with the Government.*

Signature of Person  
Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter : \_\_\_\_\_

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

Tel. No. / Fax. No. : \_\_\_\_\_

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

Terms of Tender

**Appendix B****Information to be Submitted by the Tenderer**

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

1. The following documents are attached for assessment: -

Business Status

- ☐ Copy of a valid Business Registration Certificate. The certificate should bear a machine printed line to show that full registration fee has been paid.
- ☐ Copy of the current Memorandum and Articles of Association, the Certificate of Incorporation and any other corporate documents evidencing business status.
- ☐ Copy of the licence within the meaning of the Security and Guarding Services Ordinance (Cap. 460).

Requirements of Experience and Qualification

- ☐ Documentary evidence of (i) my/our business experience in the provision of security guard services during the ten (10) years immediately preceding the original Tender Closing Date and (ii) experience and qualifications of Contract Manager.

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

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and give consent for the referee(s) to release and provide information to the Agriculture, Fisheries and Conservation Department as regards my/our record of performance concerning the types of services listed in Contract Schedule 1.

- (b) I/We hereby declare that all information given in (a) above and any additional sheets attached hereto are correct. I/We agree that, if any of such information is found to be incorrect, my/our tender will score no mark in the relevant claim of experience.

(Please indicate by ☒ as appropriate)

Signature of Person

Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter : \_\_\_\_\_

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

Tel. No. / Fax. No. : \_\_\_\_\_

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

Terms of Tender

**Appendix C**

**Price Proposal**  
**(Rates of Charges for the Provision of the Services)**  
 [Please refer to Clause 11 of the Terms of Tender.]

The amount of the monthly payment for the Services to be performed by the Contractor in full compliance with all requirements and specifications set out in the Contract, including without limitation the staff and duty hours requirements specified in Clauses 2 & 3 of Service Requirements shall be as follows: –

**1. Staff Requirement and Duty Hour****a. Pak Tam Chung Barrier Gate**

<b>Duty Hours / Grade of Staff</b>	<b>Weekdays</b>			<b>Saturdays, Sundays and General Holidays</b>		
	<b>1<sup>st</sup> Shift 0000- 0800</b>	<b>2<sup>nd</sup> Shift 0800- 1600</b>	<b>3<sup>rd</sup> Shift 1600- 0000</b>	<b>1<sup>st</sup> Shift 0000- 0800</b>	<b>2<sup>nd</sup> Shift 0800- 1600</b>	<b>3<sup>rd</sup> Shift 1600- 0000</b>
<b>Supervisor</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>
<b>Security Guard</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>2 No.</b>	<b>2 No.</b>

**b. Yung Shue O Checkpoint**

<b>Grade of Staff</b>	<b>Saturdays, Sundays and General Holidays</b>	<b>Duty Hours</b>
<b>Supervisor</b>	<b>1 No.</b>	<b>1 hour/checking (Conduct random check of the performance of security guards at least once every two service days)</b>
<b>Security Guard</b>	<b>2 No.</b>	<b>07:30 – 17:30</b>

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

Name of Person Authorized to Sign Tender: \_\_\_\_\_

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

Tel No. : \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

Terms of Tender

**Price Proposal**  
**(Rates of Charges for the Provision of the Services)**  
 [Please refer to Clause 11 of the Terms of Tender.]

**2. Unit Rates for Security Guard**

## a. Pak Tam Chung Barrier Gate

	(A)	(B)	(C)
	<b>Hourly Rate (HK\$)</b>	<b>No. of Working Hour per Shift</b>	<b>Total Amount per Shift (=A x B)</b>
<b>Supervisor</b>	\$ per hour	8	
<b>Security Guard</b>	\$ per hour	8	

## b. Yung Shue O Checkpoint

	(A)	(B)	(C)
	<b>Hourly Rate (HK\$)</b>	<b>No. of working hour per shift</b>	<b>Total Amount per Shift (=A x B)</b>
<b>Supervisor</b>	\$ per hour	1	
<b>Security Guard</b>	\$ per hour	10	

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

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

Name of Person Authorized to Sign Tender: \_\_\_\_\_

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

Tel No. : \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

Terms of Tender

**Price Proposal**  
**(Rates of Charges for the Provision of the Services)**  
 [Please refer to Clause 11 of the Terms of Tender.]

**3. Total Contract Value****Schedule I – Essential Services (Regular Security Guard Services)**

<b>Provision of Security Guard Services at:</b>				
<b>Location</b>	<b>Contract Period</b>	<b>No. of Months</b>	<b>Monthly Rate (HK\$)*</b>	<b>Total Rate (HK\$)</b>
		<b>(i)</b>	<b>(ii)</b>	<b>(i) x (ii)</b>
(a) Pak Tam Chung Barrier Gate	1.4.2021 (8:00am) – 1.4.2024(8:00am)	36		(a)
(b) Yung Shue O Checkpoint	1.4.2021 – 31.3.2024	36		(b)
<b>Estimated Total Contract Value [(a) + (b)] (HK\$)=</b>				

**\* Notes:**

- Acceptance of offers will be on the **OVERALL** basis [i.e. Item (a) — Pak Tam Chung Barrier Gate + Item (b) – Yung Shue O Checkpoint under Schedule I – Essential Services].
- The Contractor shall be responsible for all costs and expense required for rendering the Services under the Contract, including but not limited to the equipment, materials and tools required to be provided under the Contract. Tenderers should take this into account when offering the unit rates.
- When quoting for the Monthly Rate, Tenderers must consider and take into account the number of Security Staff required for the various shifts as stated in Section 1 hereof and Clause 3 of the Service Requirements (Contract Schedule 1).

**4. Payment Discounts**

(a) Tenderer is requested to indicate in the space provided below the discount which it would allow on the Monthly Fees if payment is made in full within:

- 14** clear working days from date of receipt of invoice or from date of acceptance of Services, whichever is the later: \_\_\_\_\_ % discount.
- 28** clear working days from date of receipt of invoice or from date of acceptance of Services, whichever is the later: \_\_\_\_\_ % discount.

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

Name of Person Authorized to Sign Tender: \_\_\_\_\_

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

Tel No. : \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

Terms of Tender

**Appendix C**

**Price Proposal**  
**(Rates of Charges for the Provision of the Services)**  
[Please refer to Clause 11 of the Terms of Tender.]

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

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

Name of Person Authorized to Sign Tender: \_\_\_\_\_

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

Tel No. : \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

Terms of Tender

**Appendix D****Wage Proposal and Proposed Maximum Working Hours for Security Staff**

[Please refer to Clause 5 of the Terms of Tender and Clauses 2 &amp; 3 of Service Requirements.]

1. Tenderers must propose in the given spaces below a monthly wage rate and proposed daily maximum working hours for a **Security Staff**. The monthly wage rate proposed must comply with the requirements set out in Clause 5 of the Terms of Tender. Tenderer are advised to read Clauses 5(c) to (d) of the Terms of Tender carefully for the consequences of non-compliance of the wage requirements.
2. By way of illustration, the monthly wage payable to a Security Staff shall not be less than the **SMW plus rest day pay rate** (<HK\$9,300>), calculated on the basis of –
  - (i) 31 days per month (i.e. 27 normal working days plus 4 paid rest days); [see Note 1]
  - (ii) 8 hours a day [see Note 2]; and
  - (iii) HK\$37.5 per hour [see Note 3].
3. Wage proposal for Security Staff, calculated on the basis of 31 days per month (i.e. 27 normal working days plus 4 paid rest days) and 8 hours a day:

Type of Staff	Proposed Monthly Wage [see Note 4]	Proposed Daily Maximum Allowable Working Hours (excluding meal break)
Supervisor	HK\$ _____ (based on an hourly rate of \$ _____)	_____ hours
Security Guard	HK\$ _____ (based on an hourly rate of \$ _____)	_____ hours

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

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

Note 3: The Statutory Minimum Wage is HK\$37.5 with effect from 1 May 2019.

Note 4: The monthly wage payable by the Contractor to each Security Staff **must not be less than the higher of** (i) the proposed monthly wage quoted by the Contractor in Contract Schedule 4; and (ii) the “**SMW plus rest day pay rate**”.

**Appendix D**

**Wage Proposal and Proposed Maximum Working Hours for Security Staff**

[Please refer to Clause 5 of the Terms of Tender and Clauses 2 & 3 of Service Requirements.]

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

Name of Person Authorized to Sign Tender: \_\_\_\_\_

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

Tel No. : \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

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

To: Country Parks Ranger Services Officer/East  
Agriculture, Fisheries and Conservation Department

Fax: (852) 2792 6340

**Registration Form for Attending Tender Briefing Session**  
**Provision of Security Guard Services at Pak Tam Chung Barrier Gate**  
**& Access Road at Yung Shue O, Sai Kung**  
**(Tender Ref.: AFCD/CPR/01/20)**

**Details of the Briefing Session**

Date : 29 December 2020 (Tuesday)  
Time : 14:30  
Venue : Sai Kung Country Park Visitor Centre,  
No. 531, Tai Mong Tsai Road, Sai Kung.

**Details of Registration**

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

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

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

**NOTE: This form should be completed and returned by fax to the Agriculture, Fisheries and Conservation Department not less than 24 hours before the tender briefing session.**

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

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

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

**WHEREAS**

(A) By a contract (hereinafter called the "Contract") dated the [day] of [month year] made  
between «SUPPLIER\_NAME» of «SUPPLIER\_ADDRESS» (hereinafter called the "Contractor")  
of the one part and the Government of the other part (designated as Agriculture, Fisheries and  
Conservation Department Contract No. «CONTRACT\_NUMBER»), the Contractor agreed and  
undertook to provide .....  
upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions  
hereinafter appearing, the due and faithful performance of the Contract by the Contractor. Now  
the Guarantor HEREBY AGREES with the Government as follows:

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

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

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

(b) The Guarantor, as a primary obligor and as a separate and independent obligation

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

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

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

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

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

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

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;

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

- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
  - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
  - (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
  - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.
- (6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorizes the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling **six (6)** months after the expiry of the Contract (unless (b) is applicable); or
  - (b) in the case if at the time of expiry or termination of the Contract, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there remains any outstanding Government's rights and claims under the Contract or otherwise at law arising from antecedent breaches of the Contract by the Contractor or which have otherwise accrued or arisen prior to

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

the termination of expiry, the date falling twenty four (24) months after the early termination or expiry of the Contract Period

whichever is the later.

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

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

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

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

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

- (a) upon the Government, at the Country Parks Ranger Services Division, the Agriculture, Fisheries and Conservation Department, 6/F Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, marked for the attention of Director of Agriculture, Fisheries and Conservation, facsimile number 2317 0482;
- (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

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

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

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

(15) The Guarantor hereby acknowledges that

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

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

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

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

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

\* Please delete as appropriate

@ See Powers of Attorney Ordinance Chapter 31

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

**Appendix G****Tenderer's Business Experience in Provision of Security Guard Services**

Tenderer must provide description and history of their relevant experience in the provision of security guard services with clear indication on the number of years of relevant experience during the ten (10) years immediately preceding the original Tender Closing Date; and should provide documentary proof to substantiate claims of the relevant experience for technical assessment. Failure to provide documentary proof to substantiate claims of the relevant experience may, at the absolute discretion of the Government, render the experience not to be counted.

Client Name	Contract Period	Description of Business

Signature of Person  
Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter : \_\_\_\_\_

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

Tel. No. / Fax. No. : \_\_\_\_\_

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

Terms of Tender

**Appendix H****Statement of Convictions and Authorization****PART A - DECLARATION**

A Tenderer hereby declares if the following person(s) has/have obtained any conviction of the Relevant Offences (as defined in Section 3 of Appendix I) for a period of 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** (please delete as appropriate)

If yes, please complete the following table –

<b>Date of Offence</b>	<b>Location of Offence</b>	<b>Date of Conviction</b>	<b>Ordinance and the Sections Breached</b>	<b>Court Penalties</b>
(Use separate sheets if required)				

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

**PART B - AUTHORIZATION**

The signatory of this Statement of Convictions hereby authorize AFCD to obtain information from all Government bureaux/departments and give consent to the Government bureaux/departments concerned to provide information about our conviction records in respect of the Relevant Offences to AFCD for the purposes of assessment of our Tender under this tender exercise and subsequent management of the Contract.

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

Name and Title of Person Authorized to :  
Sign Tender \_\_\_\_\_

Name of Tenderer in English : \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Date : \_\_\_\_\_

Terms of Tender

**Appendix I****Marking Scheme**

A two-envelope approach with a technical to price weighing of **60:40** will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. All tenders will be assessed in the following manner.

**Stage 1 – Completeness Check on the Tender Offers Submitted**

2. All tenders received will be checked on whether all the documents and information required in Clause 6(b) of the Terms of Tender have been submitted. Failure to submit any of the documents as stipulated in Clause 6(b) of the Terms of Tender **on or before the Tender Closing Date** will **render a tender invalid and will not be considered further**.

**Stage 2 – Compliance with Essential Requirements**

3. A tender which has passed Stage 1 completeness check will be checked to determine its compliance with all the essential requirements set out below. **A tender which fails to meet any of the essential requirements in this Clause 3 will not be considered further.** A tender which passes Stage 2 assessment will proceed to Stage 3 assessment.

- (a) A Tenderer must be bodies corporate either incorporated or registered under the Companies Ordinance (Cap. 622) and holds a Security Company Licence as at the original Tender Closing Date. <sup>Note 1</sup>

**Past Convictions**

- (b) A Tenderer who is convicted of any offence under the relevant sections of the following Ordinances (such offences are collectively referred to as “**Relevant Offences**”) is debarred from tendering for this Contract for a period of 5 years from the date of the Tenderer’s last conviction or such shorter period as may be determined by the Central Tender Board under the review mechanism referred to in Clause 3(e) below “**Debarment Period**” – <sup>Note 2</sup>

- (i) any offences under the Employment Ordinance (Cap. 57) or the Employees’ Compensation Ordinance (Cap. 282), convictions in respect of

which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);

- (ii) Section 17I (1) or Section 38A(4) of the Immigration Ordinance (Cap. 115);
- (iii) Section 89 of the Criminal Procedure Ordinance (Cap. 221) and/or Section 41 of the Immigration Ordinance (Cap. 115) (aiding and abetting another person to breach his condition of stay);
- (v) Section 7, Section 7A, Section 7AA, Section 43B(3A), Section 43BA(5) and Section 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
- (vi) 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).

Subject to Clause 3(e), any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.

- (c) 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.
- (d) For the avoidance of doubt,
  - (i) 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
  - (ii) If the Tenderer is a partnership or a company, the Tenderer would be treated as having been convicted of a Relevant Offence if any partner of

the partnership or any shareholder of the company has been convicted of a Relevant Offence during the five-year period immediately preceding the Tender Closing Date.

- (e) The five-year Debarment Period applicable to the relevant Tenderer shall stand unless and until a revised Debarment Period is determined by the Central Tender Board. The revised Debarment Period will only be applicable for the purpose of this Invitation to Tender if it is determined by the Central Tender Board under the established review mechanism on the date immediately before the Tender Closing Date. However, the revised Debarment Period will become invalid as soon as the Tenderer is convicted of any of the Relevant Offences subsequent to the Central Tender Board's determination, and in such a case, the Tenderer is debarred from tendering for this Contract for a period of 5 years from the date of that subsequent conviction. For details of the review mechanism, please visit the homepage of the Treasury Branch of the Financial Services and the Treasury Bureau at <http://www.fstb.gov.hk/tb/en/government-procurement-policy-procedures.htm>.
- (f) The Tenderer shall submit as part of the Tender the Statement of Convictions setting out particulars of all convictions in respect of the Relevant Offences (if any) for a period of 5 years immediately preceding the Tender Closing Date. The Statement of Convictions shall be submitted in respect of
- (i) the Tenderer itself;
  - (ii) where applicable, each of its partners if it is a partnership or each of its shareholders if it is a company; and
  - (iii) where applicable, its sub-contractor.

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

- (g) 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.

- (h) Notwithstanding Clause 3(b) above, in respect of the following offences of the Relevant Offences, only convictions obtained on or after 1 April 2019 will count:
- (i) Sections 7AA, 43B(3A) and 43BA(5) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
  - (ii) any offence under the Occupational Safety and Health Ordinance (Cap. 509) or the Factories and Industrial Undertakings Ordinance (Cap. 59), conviction in respect of which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

#### Demerit Points

- (i) If a Tenderer has accumulated three Demerit Points over a rolling period of 36 months, it shall be debarred from tendering for this Contract for a period of five years from the date on which the third Demerit Point was obtained. Any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.
- (j) Demerit Points under appeal will still be counted for the purpose of debarment.
- (k) The Contract Manager proposed by the Tenderer shall meet the following requirements on or before the original Tender Closing Date-
  - (i) having an aggregate of **not less than three (3) years'** full-time working experience at management or supervisory level in overseeing security service contracts in the **past ten (10)-year** period immediately preceding the original Tender Closing Date  
Note 3-6; and
  - (ii) possession of a post-secondary qualification.
- (l) No proposal for sub-contracting of any or all parts of the Contract shall be made. A tender containing a sub-contracting proposal will not be considered further and will be disqualified.

**Explanatory Notes to Essential Requirements**

- Note 1** A Tenderer shall provide documentary proof to substantiate its claim of business status and holding a Security Company Licence as at the original Tender Closing Date. The Government Representative will, at any time before the tender exercise is completed, request the Tenderer to confirm whether it holds a Security Company Licence as at the original Tender Closing Date with production of documentary proof to substantiate its claim.
- Note 2** If a Tenderer is found to have made a false declaration of or untruthful revelation of, including but not limited to, its record of convictions under the relevant Ordinances, the Government may, without prejudice to any other rights which it has or may have, refuse to further consider its tender or terminate forthwith the Contract if it is awarded to the Tenderer.
- Note 3** A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee's letter) to substantiate its claim of the working experience or qualification. Working experience and qualifications not substantiated will not be taken into account.
- Note 4** Local and/or outside Hong Kong experience will be counted.
- Note 5** It is not necessary for a Contract Manager to have continuous full-time working experience at management or supervisory level in overseeing security service contracts in the past ten (10)-year period immediately preceding the original Tender Closing Date.
- Note 6** The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of not less than six (6) years' working experience" is equivalent to have accumulated 2190 days (i.e. 365 days x 6) of working experience.

**Stage 3 – Technical Assessment**

4. Tenders which have passed Stages 1 and 2 assessments will be further evaluated for their Technical Proposal as detailed in the marking scheme below. The maximum total technical marks are 100 and are divided into eight criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. Passing marks of 4, 3 and 2 are set for Assessment Criteria 1, 2 and 3 respectively, which are 20% of the maximum mark of the respective Assessment Criteria. **Tenders that do not attain any of the above said passing marks for Assessment Criteria 1, 2 and 3 will not be considered further.**

5. The submission for Section (A) Execution Plan, excluding related annexes and documentary proof, **shall not be more than 50 pages in A4 size paper for text** (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit will be considered in the tender evaluation but 0.5 mark will be deducted from the total technical marks for each excessive page, subject to a maximum of 5 marks.

Assessment Criteria		Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Marks Scored (M x S)	Passing Mark
				5	4	3	2	1	0		
(A)	Execution Plan										
(1)	Work Plan (See Notes 2 and 5)	20	4								4
(2)	Organisation and Supervision Plan (See Notes 3 and 5)	15	3								3
(3)	Contingency Plan (See Notes 4 and 5)	10	2								2
(4)	Innovative suggestions										
	(a) Type I – directly relevant to the Services (See Note 6)	8	4								–
	(b) Type II – not directly relevant to the Services but can bring positive values to Government or the public (See Note 7)	4	2								–
	Sub-total for (A)	57									–
(B)	Experience, Certification and Qualification										
(5)	Tenderer’s experience in the provision of security and/or cleaning services (See Note 8)	10	2								–
(6)	Experience and qualifications of Contract Manager (See Note 9)	4	1								–
	Sub-total for (B)	14									–
(C)	Labour Benefits										
(7)	Proposed monthly wages (See Note 10)	25	N.A.								–
(8)	Proposed daily maximum working hours (See Note 11)	4	4								–
	Sub-total for (C)	29									–
	Total Technical Mark	100									—

6. A tender which has passed Stage 3 assessment shall be considered as a “conforming tender”. A maximum weighted technical score of 60 will be allocated to the conforming tender with the highest total technical marks, while the weighted technical score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Technical Score} = 60 \times \frac{\text{Total technical mark of the conforming tender being assessed}}{\text{The highest total technical mark among all conforming tenders}}$$

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

### **Explanatory Notes for Stage 3 – Technical Assessment**

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

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

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

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

##### For Assessment Criteria (4a) and (4b)

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

##### For Assessment Criterion (5)

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

##### For Assessment Criteria (6) and (7)

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

##### For Assessment Criterion (8)

See Note 11 below.

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For Assessment Criterion (9)

Standard score of 1 or 0 will be awarded.

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

The Work Plan shall cover the following items:

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

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

The Organisation and Supervision Plan shall cover the following items:

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

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

The Contingency Plan shall cover the following items:

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

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

- (a) Standard scores will be given to Assessment Criteria (1) to (3) in accordance with the following six-grade approach –

- 5 – The proposed plan is **practical** with **detailed information** on **all** items as well as **offers exceeding the contract requirements** on **over half** of the items of the respective plan as required in Notes 2 to 4 above.
- 4 – The proposed plan is **practical** with **detailed information** on **all** items as well as **offers exceeding the contract requirements** on **one** of the items of the respective plan as required in Notes 2 to 4 above.
- 3 – The proposed plan is **practical** with **detailed information** on **all** items of the respective plan as required in Notes 2 to 4 above.
- 2 – The proposed plan is **practical** with **detailed information** on **over half** of the items and brief information covering the remaining items of the respective plan as required in Notes 2 to 4 above.
- 1 – The proposed plan is **practical** with **brief information** on **all** items of the respective plan as required in Notes 2 to 4 above.

- 0 – The proposed plan is **impractical** or **fails** to provide information on **any** of the items of the respective plan as required in Notes 2 to 4 above.

(b) The meaning of “over half” of the items of the respective plan are as below –

	Work Plan	Organisation and Supervision Plan	Contingency Plan
Over half	3	2	2

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

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

- (a) Marks will be given if the proposed innovative suggestions are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (b) **Type I** innovative suggestions shall cover any of the following items –
- (i) adoption of technology to enhance service delivery in security/access control e.g. smart patrol devices and mobile surveillance cameras, etc.;;
  - (ii) adoption of technology to enhance service delivery in management services e.g. streamlining and speeding up the management process, reducing errors and omissions;

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

- 4 – **More than one (1) practicable** innovative suggestions are proposed covering any of the items as required in (b) of this Note above.
- 2 – **One (1) practicable** innovative suggestion is proposed covering any of the items as required in (b) of this Note above.
- 0 – **No** practicable innovative suggestion is proposed.

(d) Paragraph (c) of Note 5 above is also applicable to this Note.

(e) Marks will not be given to any innovative suggestion which (i) is related to labour benefit measures e.g. cash allowance, cash/coupon bonus/award and additional leaves, etc. or (ii) a tenderer will neither be capable of nor responsible for implementation.

(f) An innovative suggestion that scores marks under Type I will not earn marks again under Type II and vice versa. If the Tender Assessment Panel (“TAP”) considers that the same innovative suggestion could earn marks under Types I and II, it will be taken as scoring marks under Type I only. Each innovative suggestion will be counted once, irrespective of the number of improvements/positive values/benefits involved.

(g) Tenderers shall highlight the proposed innovative suggestions with all of the following details –

- (i) the type (i.e. Type I or Type II) of innovative suggestion which each of them belongs to;
  - (ii) sufficient details on what improvements/benefits/positive values to which their proposed innovative suggestions can bring about; and
  - (iii) how they are to be implemented,
- in their submissions to facilitate tender evaluation. If a tenderer fails to specify item (i) above, it will be deemed as proposed under Type I.

(h) Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions. Marks will not be given if the tenderers only propose a concept without sufficient details. The information that shall be provided by the tenderers includes the following –

- if the suggestion is concerned with a kind of technology, equipment, tool, system,

material, facility and vehicle, etc. : scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;

- if the suggestion is concerned with a kind of measure, service, scheme and activity, etc. : the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
- if the suggestion is related to manpower : the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.

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

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

- (a) Marks will be given if the proposed innovative suggestions though are not directly relevant to the Services, can bring about positive values/benefits to the Government or public at large.
- (b) **Type II** innovative suggestions shall contribute to any of the following positive values –
- (i) to contribute to the development of Smart City;
  - (ii) to provide better care and support for the elderly, youth or minority groups.
- (c) Standard scores will be given in accordance with the following rule:

- 2 – **More than one (1) practicable** innovative suggestions contributing to any of the positive values as listed in (b) of this Note above.

- 1 – **One (1) practicable** innovative suggestion contributing to any of the positive values as listed in (b) of this Note above.
- 0 – **No** practicable innovative suggestion is proposed.

(d) Paragraph (c) of Note 5 and paragraphs (e) to (j) of Note 6 above are also applicable to this Note.

**Note 8: for Assessment Criterion (5) – Tenderer’s experience**

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

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

- 4 – An aggregate of eight (8) or more years’ experience.
- 3 – An aggregate of six (6) to less than eight (8) years’ experience.
- 2 – An aggregate of four (4) to less than six (6) years’ experience.
- 1 – An aggregate of two (2) to less than four (4) years’ experience.
- 0 – An aggregate of less than two (2) years’ experience,  
or  
 failing to produce documentary proof to support its claim of experience.

(c) A Tenderer shall submit documentary evidence (e.g. a copy of contract) to substantiate its claim of the experience. Experience not substantiated will not be taken into account.

(d) Local and/or outside Hong Kong experience will be counted.

(e) The experience gained by a Tenderer will only be counted where the previous contract(s) was/were entered under the same name of the Tenderer. For the avoidance of doubt, a Tenderer’s experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Tenderer shall not be considered. The meanings of “parent company” and “subsidiary” follow the meanings under the

Companies Ordinance (Cap. 622).

- (f) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership, will be counted.
- (g) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, “an aggregate of two (2) years’ experience” is equivalent to have accumulated 730 days (i.e. 365 days x 2) of experience under a single contract or different contracts.
- (h) It is not necessary for a Tenderer to have continuous experience in providing security in the past ten (10)-year period immediately preceding the original Tender Closing Date.
- (i) A Tenderer’s experience under different contracts of the same type will not be double-counted for any overlapping periods. The required years of experience is to be counted in days, i.e. “an aggregate of at least three (3) years” is equivalent to have accumulated not less than 1,095 (i.e. 365 days x 3) days of experience in provision of security guard services under a single contract or different contracts. A Tenderer’s experience under different contracts with overlapping periods is to be counted in accordance with the following examples: -

<b>Contracts</b>	<b>Contract period</b>	<b>Contract period without overlapping with an earlier contract</b>	<b>Number of days counted for accumulated experience</b>
Contract A	16.4.2003-15.4.2005	16.4.2003-15.4.2005	731 days
Contract B	1.10.2004-31.3.2006	16.4.2005-31.3.2006	350 days
Contract C	1.1.2005-31.12.2006	1.4.2006-31.12.2006	275 days
		Total:	1,356 days

**Note 9: for Assessment Criterion (6) – Qualification of a Contract Manager**

- (a) Assessment will be based on the aggregate number of years of full-time working experience at management or supervisory level in overseeing security service contracts in the **past ten (10)-year** period immediately preceding the original Tender Closing Date

(b) Standard scores will be given to Assessment Criterion (6) in accordance with the following rule –

- 4 – An aggregate of six (6) or more years' experience.
- 3 – An aggregate of five (5) to less than six (6) years' experience.
- 2 – An aggregate of four (4) to less than five (5) years' experience.
- 1 – An aggregate of three (3) to less than four (4) years' experience.
- 0 – An aggregate of less than three (3) years' experience,  
or  
failing to produce documentary proof to support its claim of experience.

(c) A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee's letter) to substantiate its claim of the working experience or qualification. Working experience and qualifications not substantiated will not be taken into account.

(d) Local and/or outside Hong Kong experience will be counted.

(e) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of not less than six (6) years' working experience" is equivalent to have accumulated 2190 days (i.e. 365 days x 6) of working experience.

(f) It is not necessary for a Contract Manager to have continuous full-time working experience at management or supervisory level in overseeing security service contracts in the past ten (10)-year period immediately preceding the original Tender Closing Date.

(g) The Tenderer should only propose one Contract Manager.

**Note 11: for Assessment Criterion (7) – Proposed monthly wages for this Contract**

(a) Marks will be given to Assessment Criterion (7) in accordance with the following rule –

P<sub>1</sub> = Proposed monthly wage for Security Guard of the conforming tender being assessed

P<sub>2</sub> = Proposed monthly wage for Supervisor of the conforming tender being assessed

H<sub>1</sub> = The highest proposed monthly wage for Security Guard among all conforming tenders

H<sub>2</sub> = The highest proposed monthly wage for Supervisor among all conforming tenders

C = **\$9,300**, i.e. the prevailing monthly wage rate of Statutory Minimum Wage (“SMW”) plus paid rest days for Security Staff derived on the basis of 31 days (i.e. eight (8) hours of work per day and 27 working days plus four (4) paid rest days per month)

$$\text{Marks scored} = 25 \times \left( 59.42\% \times \frac{P_1 - C}{H_1 - C} + 40.58\% \times \frac{P_2 - C}{H_2 - C} \right)$$

[      M<sub>1</sub>      ]      [      M<sub>2</sub>      ]

Illustrative Example for Tenderer's Proposed Monthly Wage for Security Staff	Marks Scored (Example)
P <sub>1</sub> = HK\$9,700 P <sub>2</sub> = HK\$9,900 H <sub>1</sub> = HK\$9,900 H <sub>2</sub> = HK\$9,900 C = HK\$9,300	Marks scored = $25 \times \left( 59.42\% \times \frac{9,700-9,300}{9,900-9,300} + 40.58\% \times \frac{9,900-9,300}{9,900-9,300} \right)$ = 20.05

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- (b) If  $H_1$  or  $H_2$  is equal to  $C$ , no marks will be given for  $M_1$  or  $M_2$  to all Tenderers respectively.
- (c) If a Tenderer fails to indicate any monthly wage or  $P_1$  or  $P_2$  is each less than  $C$ , the tender will be evaluated but the respective  $P_1$  or  $P_2$  will be deemed to be equal to  $C$  for the purpose of tender evaluation. Such presumption will be revoked immediately if the Tenderer fails to confirm their abidance by the SMW upon request by the Government Representative at any time before the tender exercise is completed. If the Tenderer offers a higher amount than the SMW in 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 this Tenderer.
- (d) The marks scored will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 6 above.

**Note 12: for Assessment Criterion (8) – Proposed daily maximum working hours**

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

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

**Stage 4 – Price Assessment**

7. Failure to submit a Price Proposal in the form of Appendix C with the price information in Sections 2 and 3 duly completed will render a tender invalid and will not be considered further. The price assessment is based on the Estimated Total Contract Value of the tenders which have passed Stage 3 assessment.

8. Tenders that have passed Stage 3 – Technical Assessment will be further evaluated for the Terms of Tender

Price Proposal. A maximum weighted price score of 40 will be allocated to the conforming tender with the lowest Estimated Total Contract Value, while the weighted price score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Price Score} = 40 \times \frac{\text{The lowest Estimated Total Contract Value amongs all conforming tenders}}{\text{Estimated Total Contract Value of the conforming tender being assessed}}$$

[Note: The weighted price score of each tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 6 above.]

9. Any payment discount offered by a Tenderer will not be taken into consideration in price assessment, except when there is more than one conforming offers offering the same lowest Estimated Total Contract Value.

#### **Stage 5 - Calculation of Combined Score**

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

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

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

**Appendix J****Proposed Plans**

A Tenderer must submit, with its tender, proposed Work Plan, Organization Plan and Supervision Plan, and Contingency Plan. The information submitted in the plans will be evaluated by the Government Representatives. The Tenderer may also include other materials as appropriate to facilitate consideration of its tender by the Government, in particular, **innovative suggestions** directly relevant to the Services or that can bring positive values to the society would be given additional credits.

Without prejudice to any other provisions of this tender, if the Work Plan, Organisation and Supervision Plan, and Contingency Plan are accepted by the Government, they will be legally binding on the successful Tenderer and form part of the Contract.

The **Work Plan** shall cover the following items:

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

The **Organisation and Supervision Plan** shall cover the following items:

- (a) an organisation chart showing the line of command and division of labour of the proposed workforce;
- (b) details of the mechanism setting out the monitoring and appraisal system on daily supervision of the workers for ensuring delivery of quality service, dealing with unsatisfactory standard of performance/conduct/discipline of the workers and preventing recurrence of sub-standard services; and

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- (c) details of the training programmes provided to staff for the performance of the Contract.

The **Contingency Plan** shall cover the following items:

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

**Appendix K****Experience and Qualifications of Contract Manager**

I/we hereby set out the experience and qualifications of the Contract Manager who would be deployed to oversee the Contract in the table below.

<b>Name</b>	<b>Post</b>	<b>Relevant Experience<sup>^</sup> (Number of Years)</b>	<b>Post-secondary Qualification (Yes or No)</b>

**Note**

<sup>^</sup> Years of full-time working experience at management or supervisory level in overseeing security service contracts in the **past ten (10)-year** period immediately preceding the original Tender Closing Date.

A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee's letter, certificate and etc.) to substantiate its claim of the working experience or qualifications. Working experience and qualifications not substantiated will not be taken into account in tender evaluation.

Signature of Person  
Authorized to sign Tender : \_\_\_\_\_

Name in Block Letter : \_\_\_\_\_

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

Tel. No. / Fax. No. : \_\_\_\_\_

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

Terms of Tender

**Appendix L****Non-collusive Tendering Certificate**

To: the Government

Dear Sir/ Madam,

**Non-collusive Tendering Certificate**

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

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

Non-collusion

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

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

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

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements,

\_\_\_\_\_  
Terms of Tender

**Appendix L****Non-collusive Tendering Certificate**

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

**Consequences of breach or non-compliance**

- 5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 8(b) of the Terms of Tender, the Government may exercise any of the rights under Clauses 8(c) to (e) of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.
- 6. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government

**Appendix L****Non-collusive Tendering Certificate**

may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

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

Name of the authorised signatory :  
(where applicable)

Title of the authorised signatory :  
(where applicable)

Name of Tenderer  
(in block letters)

Date :

## PART 2

### CONDITIONS OF CONTRACT

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

**1. Contract Period**

- (a) The Contractor shall provide the Services to the Government, for a period of thirty-six (36) months from the Commencement Date subject to any provision for sooner determination or extension of the Contract as is provided for in the Contract.
- (b) Notwithstanding Clause 1(a) above, the Government may by serving a written notice on the Contractor of no less than three (3) months prior to the expiry of the Contract Period at its sole discretion extend the Contract Period for a continuous period of not more than twelve (12) months, commencing immediately upon expiry of the Contract Period on the same terms and conditions herein except this sub-clause (b).
- (c) The Contractor shall continue to perform the Contract throughout the extension period under Clause 1(b) when Government exercises its right to extend the Contract.

**2. Services to be Provided and Variation of Services**

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

may from time to time and at any time during the Contract Period: -

- (i) by giving three (3) days' notice in writing require the Contractor to provide additional Security Staff at such places within the Country Park(s), in such manner and at such times as the Government Representative may specify; and
  - (ii) by giving two (2) days' prior verbal notice (to be properly documented subsequently) to the Contractor, require the Contractor to provide additional Security Staff to carry out emergency or other special services at such part of the Country Park(s), for such duration and in such manner as may be directed by the Government Representative and the Contractor shall provide such Services accordingly.
- (h) The Government will pay for the Services provided by the Contractor including those provided under Clause 2(g) above in accordance with the rates specified in Contract Schedule 3 (Price Schedule).

### **3. Contractor's Acknowledgement**

The Contractor acknowledges that-

- (a) it has made itself thoroughly conversant with all aspects of the Contract including but not limited to the nature and quality requirements of the Services, and other requirements under the Contract on equipment, materials, tools, deployment of labour and supervisory staff; and any necessary storage or transportation requirement under the Contract.
- (b) it has been supplied with sufficient information to enable it to provide to the Government the Services in accordance with the terms and conditions of the Contract; and
- (c) it shall not be entitled to any additional payment nor be excused from performing any of its obligations under the Contract on the ground of any misinterpretation by the Contractor of any matters relating to the Contract.

### **4. Contractor's Warranties and Undertakings**

The Contractor warrants and undertakes to the Government that: -

- (a) the Contractor and all the Contractor's Employees shall have the necessary skills, experience, qualifications and expertise to provide the Services on the terms and conditions as set out in the Contract;
- (b) the Contractor shall carry out and provide the Services with all due diligence and in a proper, skilful and professional manner and shall perform the Services to the satisfaction of the Government Representative;
- (c) the Contractor shall comply with all laws, regulations, by-laws and code of practice which are from time to time applicable to the provision of the Services, including the obtaining and maintaining of all necessary licences or permits;
- (d) the Contractor shall, through the Government Representative, keep the Government informed of all matters relating to the Services and shall answer all reasonable enquires made by the Government Representative;
- (e) the Contractor shall enter into a written Standard Employment Contract (if the contractual

Conditions of Contract

period exceeds seven (7) days) with each of its employees and shall comply with all terms of the Standard Employment Contract;

- (f) the Contractor shall comply with all reasonable instructions and directions on all matters relating to the Contract as the Government Representative may from time to time issue to the Contractor;
- (g) the Contractor shall take all necessary measures, including the provision of proper protective gear and proper training to ensure the safety of all Contractor's Employees during the provision of the Services. In the event of any Contractor's Employees or Contractor's sub-contractors or agents suffering from any personal injury or death in the course of provision of Services and whether there be a claim for compensation or not, the Contractor shall within twenty-four (24) hours give notice in writing of such personal injury or death to the Government Representative;
- (h) the Contractor shall be responsible for the good conduct of Contractor's Employees, permitted sub-contractors and agents (if any) while they are performing the Services at the Country Parks areas under the Contract and shall ensure that they comply with the Code of Conduct for the Contractor's Employees set out in Contract Schedule 5 which may be amended from time to time by the Government Representative. The Government Representative may require on reasonable grounds (including but not limited to medical, security and disciplinary grounds) the immediate removal or replacement of any of the Contractor's Employees or the Contractor's permitted sub-contractors or agents (if any) engaged or deployed for the purpose of the Contract. Any of the Contractor's Employees, the Contractor's sub-contractors or agents so removed shall be replaced as soon as possible by a competent substitute within such time as specified by the Government Representative.

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

- (a) The Contractor shall employ sufficient number of suitably trained, experienced and competent managerial and site supervisory staff for the maintenance and execution of the Services. They shall include but not limited to the following:
  - (i) At least one (1) Contract Manager ; and
  - (ii) At each location as specified in Contract Schedule 2, sufficient number of Supervisors and Security Guards as specified in Clause 3 of Contract Schedule 1.
- (b) The Contractor shall ensure that they all fulfill the respective qualifications to carry out their responsibilities and duties as stipulated in Clause 5 of Contract Schedule 1.
- (c) The Contractor shall pay or shall ensure to be paid to each Security Staff during the Contract Period a wage not less than: -
  - (i) the monthly wage as specified in Contract Schedule 4; or
  - (ii) a monthly wage referred to at (i) above as the same may be adjusted as a result of future revision of the Statutory Minimum Wage, whichever is the higher.

- (d) The Contractor shall promptly pay or shall ensure prompt payment of wages to the Contractor's Employees in accordance with the Employment Ordinance (Cap. 57), failure to do so will entitle the Government to terminate the Contract. The Contractor shall use autopay for payment of wages to the Security Staff (payment by cheque is only allowed upon termination of employment contract and is made at request of the Security Staff concerned).
- (e) Without the prior approval of the Government Representative, the Contractor shall not allow any Security Staff to work each day for more than the maximum allowable working hours per day as specified in the Standard Employment Contract.
- (f) The Contractor shall allow each Security Staff working in a shift of eight (8) hours or above not less than one hour meal break each day. The period of meal break of each Security Staff shall be specified in the Standard Employment Contract .
- (g) The Contractor shall ensure and procure that its contracts with its permitted sub-contractor shall contain a clause to the same effect as this Clause. The Contractor shall ensure that any default of the said clause by its permitted sub-contractor shall be readily remedied. Any failure of its permitted sub-contractor to observe the aforesaid contractual clause shall be deemed to be a breach of the Contract on the part of the Contractor under this Clause entitling the Government to terminate Contract forthwith.
- (h) The Contractor shall pay a gratuity to a Security Staff upon the expiry or termination of the Standard Employment Contract for reason(s) other than in accordance with section 9 of the Employment Ordinance (Cap. 57), provided that the Security Staff has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for a period of not less than 12 months immediately before the expiry or termination of the Standard Employment Contract. The amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Security Staff during the above period. The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance (Cap. 57) and may be offset against the severance payment or long service payment in accordance with the Standard Employment Contract. Detailed requirements on the gratuity payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.
- (i) The Contractor shall provide the holiday pay to a Security Staff provided that the Security Staff has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for not less than one month immediately preceding a statutory holiday. The holiday pay shall be calculated according to the relevant provisions under the Employment Ordinance (Cap. 57). Detailed requirements on the holiday pay payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.
- (j) 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 Security Staff has worked, the Contractor shall pay the Security Staff for the day/shift at least 150% of the Security Staff'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 Security Staff with whom the Contractor is not required to enter into the Standard Employment Contract.

## **6. Contractual Obligations under the Standard Employment Contract**

- (a) The Contractor shall enter into a written Standard Employment Contract with each of its Security Staff employed for the performance of this Contract if the employment period exceeds seven (7) days.
- (b) The Contractor shall strictly observe its contractual obligations under the Standard Employment Contract, including but not limited to, the contractual obligations the breach of which would attract a Demerit Point.
- (c) Without prejudice to the generality of Clause 6(b) above, the Contractor shall, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:
  - (i) paying wages;
  - (ii) paying holiday pay payable to the Security Staff having been employed under a continuous contract for not less than one month;
  - (iii) paying wages at a rate of at least 150% for the Security Staff who are required to work when the typhoon signal no. 8 or above is hoisted; and
  - (iv) paying wages by means of autopay to the Security Staff (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);
  - (v) paying the gratuity to the Security Staff with no less than one year of service under a continuous contract;
  - (vi) not allowing the Security Staff to work beyond the committed daily maximum working hours under the Contract.
- (d) In the event that the Contractor engages a sub-contractor (the engagement of which is subject to the Government's prior written approval), it shall ensure that its sub-contractor shall also observe and comply with Clause 6(a) to Clause 6(c) above, as if references to "Contractor" read "sub-contractor".
- (e) If the Contractor or the sub-contractor fails to comply with any of its obligations in Clause 6(a) to Clause 6(c) above, without prejudice to any other rights, actions or remedies available to the Government including but not limited to the issuance of one or more Demerit Points to the Contractor and/or the sub-contractor, the Government may terminate the Contract immediately.

## **7. Performance of Contractor's Employees**

- (a) The Contractor shall not allow any one of the Contractor's Employees to work more than one work shift each day or two consecutive work shifts in any two consecutive days during the Contract Period.
- (b) The Contractor shall ensure the good conduct of each of the Contractor's Employees while

they are performing the Services for or on behalf of the Contractor. Without prejudice to the aforesaid, the Contractor shall ensure that each employee : –

- (i) is fit for its tasks;
  - (ii) maintains the standard of discipline, courtesy, behaviour and consideration in performing the Services;
  - (iii) does not smoke, sleep, consume alcoholic drink, listen to radio, gossip and will refrain from any other malpractices while they are performing the Services; and
  - (iv) is on duty during the period of a day as specified in Clause 3 of Contract Schedule 1 as applicable to the post set out therein for which the Contractor's Employee is assigned to perform his/her duties for the purpose of this Contract and is punctual at all times.
- (c) The Government Representative may require on reasonable grounds (including but not limited to medical, security and disciplinary grounds) the immediate removal or replacement of any of the Contractor's Employees or agents engaged or deployed for the purpose of the Contract.
- (d) Any employee or agent so removed shall at the sole cost and expense of the Contractor be replaced as soon as possible by a competent substitute and within such time as specified by the Government Representative. The Contractor shall not deploy the removed person to perform the Services at any Contract Venue of this Contract.
- (e) The Government shall in no circumstances be liable to the Contractor, its employees and agents in respect of any liability, loss or damage occasioned by such removal and the Contractor hereby agrees to fully indemnify the Government against any aforesaid claim made by such employees or agents.
- (f) The Contractor and the Contractor's Employees shall: –
- (i) deal promptly and courteously with the Government Representative, the general public and all others with whom they may have contact in performing the Services under the Contract;
  - (ii) wear tidy and clean uniforms and such special or protective clothing and footwear as the Government may consider necessary or appropriate. Any such special or protective clothing and footwear shall be provided, maintained and replaced as necessary by the Contractor at its own expenses;
  - (iii) upon being requested by the Government Representative, accompany the Government Representative to the locations specified by the Government Representative to inspect the performance of the Services;
  - (iv) give proper training, supervision and guidance to the Security Staff in performing the Services.

- (v) conduct surprise checks at such frequency agreed by the Government Representative and record the findings of his surprise checks in a record book;
- (vi) provide the record book for the Government Representative's inspection whenever requested by the Government Representative;
- (vii) if required by the Government Representative, deliver to the Government within such period as specified by the Government Representative, copies of the record for the Government's retention;
- (viii) if required by the Government Representative, attend and participate in meetings arranged by the Government Representative in relation to the Services (including meeting with any persons, groups or associations specified by the Government Representative to resolve complaints or discuss any aspect of the Services); and
- (ix) if required by the Government Representative, prepare a written report on any aspect of the Services as instructed by the Government Representative.

## **8. Personnel Records**

- (a) The Contractor shall maintain or shall ensure to be maintained proper, current and accurate records of the Standard Employment Contracts, the attendance log and wage books showing details of working hours, working days, payment of wages to the Contractor's Employees, bank autopay returns, receipts of wages and records of contributions to the mandatory provident fund schemes. Such records shall also include the name, identity card number, photograph, grade, qualifications and/or record of experience (of manager and supervisor ranks only) and age of each of the Contractor's Employees.
- (b) The Contractor shall enter into written Standard Employment Contract (if the contractual period exceeds seven (7) days) with accompanying guidance notes with each and all of the Employees in accordance with Clause 4(e) above, and shall ensure that all Employees fully understand all contents of the Standard Employment Contract. Copies of the signed employment contract should be kept by the Contractor, the Employees and the Government for record and for monitoring of the Contractor's compliance with the Contract.
- (c) The Contractor shall within fourteen (14) days from the Commencement Date of the Contract provide the Government Representative with copies of the Standard Employment Contracts entered into under sub-clause (b) above at its own costs. In the event that there is any subsequent change of concerned Employees and/or of the terms of the Standard Employment Contract as approved by the Government Representative, the Contractor shall provide the Government Representative within three (3) days after such change with a copy of any new Standard Employment Contract entered into or any employment contract as amended, as the case may be, at its own cost.
- (d) The Contractor shall keep proper records of all amendments, variation or cancellation to the Standard Employment Contracts and the wage payment to the Contractor's Employees.
- (e) Any breach of the undertaking in sub-clause (a) to (d) above in respect of written Standard Employment Contracts with Contractor's Employees shall be construed as a material breach

of the Contract and the Government shall have right to terminate the Contract.

- (f) The Contractor shall not vary the terms and conditions of the Standard Employment Contract without the prior written approval of the Government Representative.
- (g) If requested by the Government Representative, the Contractor shall produce evidence to satisfy the Government Representative that the terms and conditions specified in the Standard Employment Contracts have been complied with. The Government Representative may at any time during the Contract Period approach the Contractor's Employees to verify the information provided by the Contractor. If requested by the Government Representative, the Contractor shall make arrangement for any or all of the Contractor's Employees to meet the Government Representative or the representatives of the Labour Department.
- (h) The Contractor shall obtain consent from the Contractor's Employees for disclosure of their personal data, the Standard Employment Contracts and all other records of employment to the Government Representative and the representatives of the Labour Department for the purposes of the Contract.
- (i) All records stated in this Clause shall be readily available for inspection by the Government Representative at any time.

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

- (a) If the Contractor is convicted of any of the Relevant Offences (regardless of whether the conviction arises from this Contract), such conviction(s) will be taken into account in the assessment of the Contractor's offer (as the case may be) in future tender or quotation exercises.
- (b) If the Contractor is in breach of any contractual obligations referred to in the definition of "Demerit Point" the Government is entitled to issue a default notice to the Contractor.
- (c) If any sub-contractor engaged by the Contractor to perform this Contract is in breach of any contractual obligations referred to in the definition of "Demerit Point", the Government is entitled to issue a default notice to each of the Contractor and the sub-contractor.
- (d) Each default notice issued under Clause 9(b) attracts one Demerit Point. The Demerit Point(s) will be taken into account in the assessment of the Contractor/sub-contractor's offer (as the case may be) in future tender or quotation exercises

#### **10. Performance Monitoring of the Contractor**

Without prejudice to Clause 9 hereof, the performance of the Contractor shall be monitored and may be taken into account in the tender evaluation of the Contractor's future bids for Government service contracts.

#### **11. Illegal Workers**

In the performance of the Contract, the Contractor shall not employ any person who are forbidden under the laws of Hong Kong or not entitled for whatever reason to undertake employment in Hong Kong or to aid and abet another person to breach his condition of stay. Any employment by the Contractor in breach of this Clause shall entitle the Government to

terminate the Contract pursuant to Clause 22 hereof.

**12. No Assignment and Sub-contracting**

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

**13. Inspection and Rejection**

- (a) In connection with the carrying out of the Services, the Government Representative shall at any time be entitled to inspect the performance of the Contractor and the vehicles, equipment, materials and tools used or to be used in the Services. The Government Representative shall be entitled to interview any member of the Contractor's Employees or sub-contractor (if any) and to inspect all records relevant to the Services and to obtain copies of such records from the Contractor free of charge.
- (b) The Services performed before payment shall be subject to inspection by the Government Representative who may withhold payment unless the Services have been performed in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative. The Government Representative shall have the right not to accept unsatisfactory performance of the Services and suspend payment until the Contractor has rectified the defects.
- (c) At any time during the Contract Period, the Government Representative may investigate each case where the Contractor has failed to perform the Services or any part thereof in accordance with the provisions of the Contract. If in any particular case the Services provided by the Contractor has failed to meet the performance standards required under the Contract or any terms and conditions of the Contract, the Government Representative shall be entitled to instruct/advise the Contractor either verbally or in writing to remedy/rectify the failure in order to comply fully with the performance standards required under the Contract and terms and conditions of the Contract.
- (d) Within forty-eight (48) hours of being notified verbally or in writing of any of the Services being unsatisfactory, the Contractor shall be required to take immediate and necessary action to rectify such unsatisfactory Services. If the Contractor fails to rectify such unsatisfactory Services in accordance with Clause 13(c) or fails to provide required number of staff in accordance with the Service Requirements in Contract Schedule 1, the Government Representative may, without prejudice to any other rights and remedies available to the Government, carry out and complete such Services by its own resources or by other

contractors. All costs and expense whatsoever which may be incurred by the Government Representative thereof shall be recoverable in full from the Contractor by deducting such sums from any money due or becoming due to the Contractor under this or other contracts with the Government.

#### 14. Payment to Contractor

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

Monthly Fee payable to Contractor

$$\begin{array}{rclcl}
 \text{(Estimated Total} & & \text{(Total charges for} & & \text{(Total deductions} & & \text{(such other sums the} \\
 \text{Contract Value as} & & \text{additional} & & \text{calculated under Clause} & & \text{Government is entitled} \\
 \text{calculated in} & & \text{Services/additional} & & \text{15 of the Conditions of} & & \text{to deduct pursuant to} \\
 \text{Schedule I of} & + & \text{Security Staff provided} & - & \text{Contract)} & - & \text{other provisions of the} \\
 \text{Section 3 of} & & \text{by the Contractor under} & & & & \text{Contract)} \\
 \text{Appendix C to the} & & \text{Clause 2(g) of the} & & & & \\
 \text{Terms of Tender)} & & \text{Conditions of Contract,} & & & & \\
 & & \text{calculated on the basis} & & & & \\
 & & \text{of the applicable rates} & & & & \\
 & & \text{of charges as set out in} & & & & \\
 & & \text{Contract Schedule 3)} & & & & 
 \end{array}$$

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

- (b) The Monthly Fee set out in sub-clause (a) above shall be inclusive of all fees, costs, charges and disbursements incurred by the Contractor in the performance of the Services including but without limitation to the equipment, materials, uniforms and tools required to be deployed/provided under the Contract; the costs and expenses incidental to the attendance of meetings, the giving of presentations and briefings; the fees for obtaining any licence, authorization or permit from any Government or other authority; the fees payable to any sub-contractors or agents in connection with the performance of the Services.
- (c) Payment shall be made in Hong Kong dollars. The Contractor shall at the beginning of each month deliver to the Government Representative an invoice in respect of the Services rendered to the Government in the preceding month. Subject to the Government Representative being satisfied that the calculations of the Monthly Fee is correct, the Government shall pay the Contractor the Monthly Fee within 30 days after having received from the Contractor the invoice and the statement in accordance with the provisions of sub-clause (a). The Monthly Fee will be paid by the Government into the Contractor's bank account direct.
- (d) Unless the Government Representative otherwise notifies in writing, all invoices and correspondence concerning the Monthly Fee shall be addressed to the Government

Representative at the address specified in Clause 30. The Government Representative shall not be liable for any delay in the payment of the Monthly Fee if invoices and correspondence shall not be so addressed.

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

#### **15. Deduction in Monthly Fee**

- (a) The Contractor shall ensure the Security Guards employed for the work are not less than the number stipulated in Clause 3 of the Service Requirements in Contract Schedule 1. Without prejudice to any other rights and remedies of the Government under the Contract or otherwise at law, the Government is entitled to make deductions from the Monthly Fee an amount (to be rounded to the nearest dollars) calculated in the formula below if any of the Contractor's Employees have resigned, have been dismissed or absent from duty without immediate replacements for the period of absence. The sum (to be rounded to the nearest dollars) for the absence of each Contractor's Employee shall be calculated in the following sub-Clauses.

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

- (b) The Government reserves the right to make the following deductions from payment due under this Contract on the occurrence of any of the following events: –
- (i) the number of staff is found to be less than that specified in Clause 3 of the Service Requirements in Contract Schedule 1;
  - (ii) the staff is found to be absent from duty without reasonable excuse or is found to be sleeping whilst on duty or in any other way present but not performing his or her duties;
  - (iii) the staff fails to obey instructions, supply required equipment, dress in proper attire, and any other minor infringement of his or her specified duties; and
  - (iv) a staff's absence from duty exceeding 15 minutes will be counted as one hour. Deduction shall be calculated in terms of one hour unit. The deduction sum (to be rounded to the nearest dollars) shall be calculated in terms of one hour unit.

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

#### **16. Amenities and Equipment**

- (a) The Monthly Fee for the provision of the Services shall be inclusive of all costs associated with the operation of such Services except for the amenities and equipment listed in

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sub-Clause (b) below.

- (b) The amenities and Services as detailed below are provided to the Contractor free of costs at the Guard Houses at Pak Tam Chung Barrier Gate (“PTC Guard House”) and Yung Shue O Checkpoint within the duration of the Contract: –
- i. the Guard Houses at the Pak Tam Chung Barrier Gate and Yung Shue O Checkpoint are seen to serve as the security office;
  - ii. a direct line telephone service at the PTC Guard House;
  - iii. a CCTV system at the PTC Guard House; and
  - iv. electricity supply to the PTC Guard House.
- (c) The Contractor is required to maintain the Guard Houses at Pak Tam Chung Barrier Gate and Yung Shue O Checkpoint used as the security office in a tidy and sanitary condition. All the necessary cleansing tools and materials should be provided by the Contractor at its own cost.

#### **17. Suspension of Services**

- (a) The Contractor shall provide the Services at Pak Tam Chung Barrier Gate on the days within the Contract Period including but not limited to severe weather conditions such as Tropical Cyclone Warning Signal No. 8 or above, “extreme conditions after super typhoons”, or Black Rainstorm Warning Signal is issued.
- (b) The Services at Yung Shue O Checkpoint shall be suspended as instructed by the Government Representatives if Tropical Cyclone Warning Signal No. 8 or above, or “extreme conditions after super typhoons”, or Black Rainstorm Warning Signal is hoisted by Hong Kong Observatory during the service hour. Deduction of fee in accordance with Clause 15 is not applicable to the suspension of Services under the mentioned inclement weather conditions. However, the Contractor shall resume the Services and be responsible for the Services forthwith after the above inclement weather warning signals are lowered by Hong Kong Observatory.

#### **18. Liability and Indemnity**

- (a) Neither the Government nor its employees or agents shall not be under any liability whatsoever for or in respect of: -
- (i) any loss of or damages to any of the Contractor’s property or that of the Contractor’s Employees, sub-contractors or agents however caused (whether by any negligence of the Government or any of its employees or agents or otherwise); and
  - (ii) any injury to or death of any of the Contractor’s Employees or those of its sub-contractors or agents save and except any such injury or death caused by the negligence of the Government or any of its employees or agents.
- (b) Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its employees and agents (each an “Indemnified Person”) against:
- (i) any and all claims (whether or not successful, compromised, settled, withdrawn or

discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person (“Claims”); and

- (ii) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

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

- (1) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractors;
- (2) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractors;
- (3) any default, unauthorised act or wilful misconduct of the Contractor, its employees, agents or sub-contractor(s);
- (4) any claim that the use or possession of the Materials infringes the Intellectual Property Rights of any person; or
- (5) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority.

The Contractor shall indemnify the Government against any loss of or damage to any Government property or of any of its employees or agents or from and against any claims, actions, proceedings, and liabilities (including liability to pay compensation and damages), costs (including legal costs on a full indemnity basis) and expenses incurred or sustained by the Government arising from any injury to or death of any employee or agent of the Government arising out of the negligence of the Contractor or any of the Contractor’s Employees, sub-contractors or agents.

- (c) The indemnity under Clause 18(b) shall not apply to any injury or death caused by the Negligence of an Indemnified Person
- (d) In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- (e) For the purposes of this Clause, “negligence” shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).
- (f) The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract, or in supervising or controlling the Contractor’s operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Contractor, the Contractor’s Employees or any of the Contractor’s sub-contractors or agents.

**19. Public Liability Insurance**

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

**20. Set Off**

Where the Contractor has incurred any liability to the Government, whether at law or in equity, and whether such liability is liquidated or unliquidated, the Government may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Government to the Contractor under this Contract or any other contracts.

**21. Contract Deposit**

- (a) The Contractor shall have before the commencement of the Services deposited with the Government a Contract Deposit in cash, cheque or cashier's order or in the form of a banker's guarantee issued by a bank that holds a valid banking licence under the Banking Ordinance (Cap. 155) and on terms approved by the Government the Contract Deposit by way of security for the due and proper performance of and observance by the Contractor of the terms and provisions of the Contract.
- (b) The Contract Deposit if in the form of cash, cheque or cashier's order, shall be retained by the Government, or if in the form of a banker's guarantee, shall come into effect on the date of the commencement of the Contract Period and remain in force until the date specified in (i) or (ii) below, whichever is applicable and the later:
  - (i) the date falling six (6) months after the expiry of the Contract Period or sooner termination of the Contract; or
  - (ii) upon early termination or expiry of the Contract Period, there remains any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding claim or right of the Government, the date on which all such obligations, liabilities, rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than twenty-four (24) months after the expiry or early termination of the Contract Period, whichever is the later. The aforesaid period (depending whichever is applicable) is hereinafter referred to as "Guarantee Period".
- (c) If the Contract shall be in breach of any provisions of the Contract, the Government may, without prejudice to any other rights the Government has or may have against the Contractor, deduct from the Contract Deposit (and in the event that the Contract Deposit is paid by way of banker's guarantee, to call on the banker's guarantee the amount) of any and all costs, losses, damages or expenses, incurred or suffered by the Government as a result of (whether direct or indirect) a breach of the Contract by the Contractor, and any sums that are due to the Government under the Contract whether or not demand has been made.
- (d) The Contract Deposit (whether paid in cash, cheque or cashier's order or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owed by the Contractor to the Government.
- (e) If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee any time prior to expiry or termination of the Contract, the Contractor shall, within fourteen (14) days of such deduction, deposit a further sum or provide a further banker's guarantee in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue of and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further deposit must comply with the requirements in Clause 12(c) of the Terms of Tender and shall come into effect on the date of its execution.

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

## **22. Termination of Contract**

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

The Government may terminate the Contract immediately.

- (b) In addition to Clause 22(a) above and without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government may forthwith terminate the Contract if any of the following events occur: -
  - (i) the Contractor fails to carry out the whole or any part of the Services or to observe or perform any of the terms and conditions of the Contract, or to pay any of the sums payable by the Contractor under the Contract, or is in breach of its warranties or undertakings under the Contract or (in the case of a breach capable of being remedied) the Contractor has failed to remedy the breach to the satisfaction of the Government within fourteen (14) days (or such longer period as the Government may allow) after the issuance by the Government to the Contractor of a request in writing (such request to contain a warning of the Government's intention to terminate the Contract) requiring it to do so; or
  - (ii) the Contractor shall pass a resolution or the court shall make an order for its liquidation or a petition is filed for the winding up of the Contractor's business otherwise than for the purpose of a reconstruction or amalgamation that is previously approved by the Government in writing or the Contractor becomes insolvent or makes any composition or arrangement with creditors; or
  - (iii) a receiver has been appointed over any of the Contractor's assets or a distress or execution shall be levied or enforced upon or taken out against any of the Contractor's chattels, properties or assets and shall not be discharged or stayed or in good faith contested by action within thirty (30) days thereafter; or
  - (iv) the Contractor stops payment to creditors generally or is unable to pay its debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or shall cease or threaten to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction); or
  - (v) the Contractor assigns or purports to assign any or all the burden or benefits of this Contract without the prior written consent of the Government; or

- (vi) the Contractor is in material breach of and/or has committed repeatedly breaches of any of its obligations under the Contract; or
  - (vii) any warranties, undertakings, representations or information made or given by the Contractor to the Government in connection with the Tender or the Contract is incomplete, false or misleading; or
  - (viii) the Contractor is found to have made false declaration or untruthful revelation in, including but not limited to, its record of conviction of offences under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115), the Criminal Procedure Ordinance (Cap. 221) or the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as stated in the tender submission by the Contractor during the tendering process; or
  - (ix) the Contractor is found to have employed any person who is forbidden under the laws of Hong Kong or not permissible for whatever reasons to undertake any employment in Hong Kong, whether for this Contract or any other contracts, or to have aided and abetted another person to breach his condition of stay; or
  - (x) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government; or
  - (xi) the Contractor fails to make up the deduction in accordance with Clause 21(d) of the Conditions of Contract; or
  - (xii) the Contractor ceases to hold a Security Company Licence or the Security Company Licence is being suspended, revoked, expired, terminated or rendered invalid for whatever reason.
- (b) Any termination of the Contract howsoever occasioned shall not affect any accrued right or liabilities of either party.
- (c) Notwithstanding anything herein to the contract, the Government may at any time during the Contract Period, at its option and without cause, terminate the Contract by giving the Contractor one month's prior written notice of such termination. The Government shall not be responsible for any loss or damage to the Contractor arising from such termination of Contract.

### **23. Consequences of Termination**

- (a) In the event of early termination of the Contract for whatever reason, including pursuant to Clause 22(a), the Government shall, subject to any right of set-off or counterclaim, only be required to pay the Contractor for Services rendered up to the effective date of termination in accordance with Clause 13 hereof.
- (b) If the Contract is terminated by the Government (other than pursuant to Clause 22(c)) and the Government makes other arrangements for the provision of any Services, the Government may recover from the Contractor: (a) any amount in excess of the Estimated Total Contract Value (which would have been payable to the Contractor had the Contract not been terminated) incurred by the Government in engaging another contractor to complete the

uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 22(a). If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments will be made by the Government to the Contractor for the Services provided by the Contractor prior to termination.

- (c) On the expiry or termination of the Contract for any reason, the Contractor must:
- (i) immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Services;
  - (ii) assist and co-operate with the Government to ensure an orderly transition of the provision of the Services to such person specified by the Government Representative and/or the completion of any work-in-progress;
  - (iii) within twenty-eight (28) days of the date of termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of termination; and
  - (iv) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Services have been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence.
- (d) Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) will be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.
- (e) In the event of termination of Contract for whatever reason, the Government shall not be required to make any further payment to the Contractor in accordance with the Clause 14 of the Conditions of Contract.

#### **24. Government Property**

When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged as a result of the Contractor's action or inaction while in the possession or control of the Contractor or its employees or agents, the Contractor shall pay to the Government a sum which equals to the total replacement cost of such property plus relevant reasonable cost that may be incurred by the Government arising therefrom. A count of the articles or materials in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

**25. Government Premises / Contractor's Premises**

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

**26. Non-Exclusivity**

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

**27. Confidentiality**

- (a) The Contractor shall treat as proprietary and confidential all information, documents,

materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor's knowledge or be accessible by the Contractor in the course of carrying out the Services and all advices, recommendations, documents, materials and data given by the Contractor to the Government under the Contract ("Confidential Information"). The Contractor's obligations under this Clause 27 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

- (b) Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the Government and its authorised users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
  - (i) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
  - (ii) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
  - (iii) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).
- (c) The Contractor 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 (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent.
- (d) The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of the Contract.
- (e) The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- (f) The Contractor shall comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- (g) The Contractor 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 27 and the Official Secrets Ordinance (Cap. 521).
- (h) The Contractor undertakes, if so requested by the Government, to deliver to the Government on such date as specified by the Government, separate confidentiality agreements duly executed by the Contractor and/or each person to whom any Confidential Information is to

be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this clause unless each confidentiality agreement is executed on terms prescribed by the Government.

- (i) The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.
- (j) If the Contractor becomes aware of any breach of confidence by any of its employees, agents or sub-contractors, it shall promptly notify the Government and give the Government all reasonable assistance in connection with any action or proceedings which the Government may take or institute against any such persons.
- (k) The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this clause and any copies, analyses, compilations and extracts thereof whether in hard copies, 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. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.
- (l) The provisions of this Clause 27 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

## **28. Corrupt Gifts**

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

## **29. Publicity**

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's or the Government Representative's or the AFCD's name is mentioned or language used from which a connection with the Government or any of the afore-mentioned entities can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material in relation

to the Contract without the prior written consent of the Government Representative.

### **30. Service of Notice**

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

	<u>Address</u>	<u>Fax. No.</u>
(i) the Government:	Country Parks Ranger Services Officer/East Country Parks Ranger Services Division 2 Country and Marine Parks Branch, Agriculture, Fisheries and Conservation Department, 6/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, Hong Kong	2317 0482
(ii) the Contractor:	As stated in Appendix A to the Terms of Tender	As stated in Appendix A to the Terms of Tender

- (c) Such notice, request, demand, direction or other communications addressed to the relevant party as provided in sub-Clause (b) shall be deemed to have been duly given
  - (i) if sent by personal delivery, upon delivery to the relevant address; or
  - (ii) if sent by post, five (5) business days (for local post) and ten (10) business days (for overseas post) after the date of posting; or
  - (iii) if sent by facsimile, when dispatched with confirmed transmission receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by facsimile machine used for such transmission; or
  - (iv) if sent by e-mail, on the date of transmission.

### **31. Site Record, Return and Management Report**

- (a) The Contractor shall maintain an occurrence book for record of events happened in each work shift containing details including incidents, accidents, unauthorised vehicular entry, emergencies, damages, maintenance, disturbances and the like. Such record books shall be readily made available for the inspection of the Government Representative upon demand.
- (b) The Contractor shall maintain a day-to-day attendance record of the Contractor's Employees on site. Such records shall be readily made available for the inspection of the Government

Representative upon demand.

- (c) The Contractor shall submit the Standard Employment Contract of each employee on site.
- (d) The Contractor shall submit the monthly wage slip/receipt of each employee to the Government Representative.
- (e) The Contractor shall provide any other information and documentation in as may be requested by the Government Representative relating to the provision of the Services.
- (f) Notwithstanding the foregoing, the Contractor shall, as and when called upon to do so by the Government Representative, make available to the Government Representative, or such other person as the Government Representative may direct, such other information which may be within the Contractor's knowledge to enable the Government Representative to verify the data contained in the aforesaid records.
- (g) The Contractor shall keep and maintain the Government's site records properly.
- (h) The Government Representative may prescribe the form of the Contractor's reports, records and schedules required under Clause 31(a) – 31(f) and the Contractor shall adopt the prescribed form in preparing such reports, records and schedules.

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

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

**33. Entire Agreement**

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

**34. Relationship of the Parties**

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

**35. Jurisdiction**

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

**36. Compliance with Laws and Regulations**

- (a) The Contractor shall use all vehicles, equipment, materials and tools in the performance of the Services in such manner as to comply with the provisions of the Contract, the manufacturer's instructions or guidelines, Road Traffic Ordinance (Cap. 374) and its subsidiary legislation, Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation (Cap. 311U), Air Pollution Control (Volatile Organic Compounds) Regulation (Cap.311W), Noise Control (Motor Vehicles) Regulation (Cap 400I), Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK), Code of Practice for the Lighting, Signing and Guarding of Road Works published by the Highways Department, and other code of practice issued by relevant authorities and legislation of the Laws of Hong Kong which may be applicable to the Contract.
- (b) The Contractor shall conform in all aspects with the provisions of any enactment and regulations or by-laws of any local or other duly constituted authority which may be applicable to this Contract and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Government indemnified against all penalties and liability of every kind for breach of any such enactment, regulations, by-laws or rules.
- (c) Licensing Requirements:
  - (i) This Contract does not confer exemption from licensing requirement pertaining to the Services, if any. The Contractor should undertake to approach the relevant authorities for obtaining all licences, permits and certificates, if any, required by law for the execution and operation of the Services.
  - (ii) The Contractor should forthwith obtain and on or before the due date for renewal renew all licences, permits and certificates, if any, required by law for the execution of the Services, and shall not provide any service for which the licence, permit or certificate is so required without first obtaining such licence, permit or certificate.

**37. Waiver and Severability**

No failure by either party to exercise and no delay by either party in exercising any right, power or remedy available to it under the Contract or in law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right or remedy; and the rights and remedies of each party herein contained shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity. Without limiting the foregoing, no waiver by either party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof. If at any time, any provision of the Contract is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the remaining provisions of the Contract shall not be

affected or impaired thereby.

### **38. Disputes**

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

### **39. Complaints/Enquiries Handling**

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

### **40. Information/Data Handling**

The Contractor shall ensure that all their employees/staff will not disclose any information/data collected during the service period, including verbal and written records in any format, to any unauthorised third party. The information/data collected shall be handled with diligent care.

### **41. Contracts (Rights of Third Parties) Ordinance**

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

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

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

- (a) as to the true intent and meaning of the Tender Form, the Terms of Tender in Part 1, the Conditions of Contract in Part 2 and the Contract Schedules in Part 3;
- (b) as to the quality of materials and workmanship;
- (c) as to the method or means (including any question as to what equipment should be provided and used by the Contractor) by which the Services or any part thereof should be provided;
- (d) as to the assessment/judgement on the quality of the Services;

the Government Representative shall state his decision thereon in writing and the Government Representative's said decision shall be final and binding upon the parties, provided that the Government Representative shall have power to cancel any such decision and to substitute it with any other decision thereof.

**43. Force Majeure**

- (a) If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- (b) 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 including its nature, extent, how 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.
- (c) 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 provisions of the Contract.
- (d) Without prejudice to the generality of Clause 43(c) above, whilst the Suspension due to Force Majeure subsists:
  - (i) 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;
  - (ii) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
  - (iii) 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);

- (iv) 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
  - (v) 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.
- (e) Following the issue of a notice by the Contractor under Clause 43(a) above which has led to Suspension due to Force Majeure under Clause 43(c) 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:
- (i) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
  - (ii) the actions taken or proposed to be taken by the Contractor to mitigate or minimize the effects of that Force Majeure Event (“Mitigation Actions”); and
  - (iii) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.
- (f) As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimized 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.

- (g) Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract pursuant to Clause 22 of the Conditions of Contract.

**Annex A****SAMPLE OF ACCOUNTANT'S CERTIFICATE  
FOR PAYMENT APPLICATION**

ACCOUNTANT'S STATEMENT FOR PAYMENT APPLICATION

REQUIRED UNDER CONTRACT NO. \_\_\_\_\_IN RELATION TO THE CONTRACTOR'S PAYMENT APPLICATION NO. \_\_\_\_\_

FOR THE MONTH : 20\_\_

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

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

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

※ To be certified by a certified public accountant (practising) or a corporate practice registered under the Professional Accountants Ordinance (Cap. 50).

## Annex A

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

STATEMENT OF DEPLOYMENT AND WAGES OF SECURITY GUARD

AND ACCOUNTANT'S STATEMENT FOR PAYMENT APPLICATION

CONTRACT NO. \_\_\_\_\_

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

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

Rank	Name	Committed wages for the Security Guard (HK\$)	Number of days on duty	Number of no-pay leave days taken (such as no-pay statutory holidays)	Number of overtime hours	Wages for the month*	Provident Fund contributed by the Security Guard, if applicable	Wages paid to the Security Guard	Provident fund contributed by the Contractor being the employer	Remarks **
						(a)	(b)	(a) – (b)	(a) x 5%	

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

\*\* Among other things, any non-compliance with the committed daily maximum working hours for the Security Guard shall be stated.

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

※ To be certified by a certified public accountant (practising) or a corporate practice registered under the Professional Accountants Ordinance (Cap. 50).

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

<b>Contract Schedule 1</b>	<b>Service Requirements</b>	<b>104</b>
<b>Contract Schedule 2</b>	<b>Locations of Pak Tam Chung Barrier Gate &amp; Yung Shue O Checkpoint</b>	<b>112</b>
<b>Contract Schedule 3</b>	<b>Price Schedule</b>	<b>115</b>
<b>Contract Schedule 4</b>	<b>Staffing Schedule and Monthly Wage for Security Staff</b>	<b>116</b>
<b>Contract Schedule 5</b>	<b>Code of Conduct for the Contractor's Employees</b>	<b>117</b>

## Contract Schedule 1

### Service Requirements

#### 1. The Services

The Pak Tam Chung Barrier Gate and the Checkpoint at the junction of access road to Yung Shue O and Kei Ling Ha Lo Wai (“the Yung Shue O Checkpoint”) is set up by the Government to control and manage the vehicles entering into Sai Kung East and Sai Kung West Country Parks. It is a statutory requirement that only vehicle(s) with a Restricted Road Permit(s)<sup>1</sup> can access the Country Parks. The Contractor shall provide security guard services for (i) manning the Pak Tam Chung Barrier Gate and Yung Shue O Checkpoint and (ii) assisting the Government to issue Restricted Road Permit(s) to eligible applicant(s) for getting access to roads beyond the Pak Tam Chung Barrier Gate if necessary.

#### 2. Contract Period

Subject to other provisions of the Contract, this Contract shall cover a period as specified below:

- (a) Pak Tam Chung Barrier Gate: Thirty-six (36) months. The Contractor shall provide the Services specified in the Contract to the Government for the period commencing at **08:00 a.m. on 1 April 2021** and expiring at **08:00 a.m. on 1 April 2024** both days inclusive, or the dates as stipulated in the Letter of Conditional Acceptance referred to Clause 10(c) of Terms of Tender, which whichever is later.
- (b) Yung Shue O Checkpoint: Thirty-six (36) months. The Contractor shall provide the Services specified in the Contract to the Government on every **Saturdays, Sundays and General Holidays from 07:30 to 17:30** for the period commencing **on 1 April 2021** and expiring on **31 March 2024** both days inclusive, or the dates as stipulated in the Letter of Conditional Acceptance referred to Clause 10(c) of Terms of Tender, which whichever is later.

#### 3. Requirement for Staff Personnel

---

<sup>1</sup> Restricted Road Permit means a valid permit issued under section 4(1) of the Country Parks and Special Areas Regulations (Cap. 208A) for bringing into a country park or special area any vehicle or bicycle, or driving, using or being in possession of any vehicle or bicycle within a country park or special area.

(a) The Contractor shall during the Contract Period: –

- (i) supply Security Staff as stipulated in sub-Clause (b) below at Pak Tam Chung Barrier Gate on each day and for twenty-four (24) hours a day on shift basis;
- (ii) supply Security Staff as stipulated in sub-Clause (b) below at Yung Shue O checkpoint on every **Saturdays, Sundays and General Holidays and for ten hours on each service day (from 07:30 to 17:30)** and at least one Supervisor to random check the performance of Security Guards at a frequency not less than once every two (2) service days; and
- (iii) provide all other services required under the Contract.

(b) The number of Security Staff provided by the Contractor shall consist of: –

**(i) Pak Tam Chung Barrier Gate**

Duty Hours / Grade of Staff	Weekdays			Saturdays, Sundays and Public Holidays		
	1 <sup>st</sup> Shift	2 <sup>nd</sup> Shift	3 <sup>rd</sup> Shift	1 <sup>st</sup> Shift	2 <sup>nd</sup> Shift	3 <sup>rd</sup> Shift
	0000-0800	0800-1600	1600-0000	0000-0800	0800-1600	1600-0000
<b>Supervisor</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>
<b>Security Guard</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>1 No.</b>	<b>2 No.</b>	<b>2 No.</b>

**(ii) Yung Shue O Checkpoint**

Grade of Staff	Saturdays, Sundays & Public Holidays	Duty Hours
<b>Supervisor</b>	<b>1 No.</b>	<b>1 hour/checking</b> <b>(Conduct random check of the performance of security guards at least once every two service days)</b>
<b>Security Guard</b>	<b>2 No.</b>	<b>07:30 – 17:30</b>

- (c) All the Security Staff shall meet the requirements as stipulated in Clause 6 of Service Requirements and other parts of the Contract to discharge all the duties and Services as specified in Clause 5 of Service Requirements and other parts of the Contract.
- (d) The Contractor shall fully co-operate with the Government Representative and comply with his instruction and directives on all matters relating to the Contract. The Contractor shall perform the Services in a manner fully and strictly in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative.

**4. Work Arrangement in times of Severe Weather Conditions**

- (a) For avoidance of doubt, the Contractor shall provide the Services at Pak Tam Chung Barrier Gate on the days specified in Clause 3 including but not limited to severe weather conditions such as Tropical Cyclone Warning Signal No. 8 or above, or “extreme conditions after super typhoons” , or Black Rainstorm Warning Signal is issued.
- (b) The Services at Yung Shue O Checkpoint shall be suspended as instructed by the Government Representatives if Tropical Cyclone Warning Signal No. 8 or above, “extreme conditions after super typhoons” , or Black Rainstorm Warning Signal is hoisted by Hong Kong Observatory during the service hour. The Contractor shall resume the Services and be responsible for the Services forthwith after the above inclement weather warning signals are lowered by the Hong Kong Observatory.

**5. Duties and Responsibilities**

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

- (a) Supervisor: –

(I) Pak Tam Chung Barrier Gate

- (i) To supervise Security Guards on duty at Pak Tam Chung Barrier Gate Guard House and accountable to their performance.
- (ii) To supervise the proper administration of the Pak Tam Chung Barrier Gate and admitting only vehicles authorised to pass through the Pak Tam Chung Barrier Gate by designated authorities.
- (iii) To handle enquiries and complaints related to vehicle permit issuance according to the “Guidelines for Handling Public Complaints for Contractors Employees” issued by AFCD.
- (iv) To deal with registering, recording, checking, filing and verifying the submitted identity documents from eligible applicant(s) and issuing of permit(s) according to the “Guidelines for Manning and Operation of Pak Tam Chung Barrier Gate”, and any guidelines issued and updated from time to time during the Contract Period by the Government Representative.
- (v) To keep proper register(s) of recording application and vehicle(s) entering and leaving the Pak Tam Chung Barrier Gate and submit such records to the Government Representative for inspection upon request. Records shall include the following: –
  - Registers of permit applications; and

- Any relevant documents about permit applications;
- (vi) To ensure all application forms for Pak Tam Chung Barrier One Day Temporary Permit to be handled and filed properly and securely, as they are regarded as restricted documents. All such restricted documents are restricted to access by authorised third party.
- (vii) To perform any other related duties and assignments as may be determined by the Government Representative.
- (viii) To report any unauthorised vehicular entry and irregularities on permits immediately to Government Representative.

(II) Yung Shue O Checkpoint

- (i) To supervise Security Guards on duty at Yung Shue O Checkpoint and be accountable to their performance, and to endorse on the attendance book and occurrence book on each random check of their performance.
- (ii) To supervise the proper administration of the Yung Shue O Checkpoint.
- (iii) To report any unauthorized vehicular entry and irregularities on permits immediately to the Government Representative.
- (iv) To perform any other related duties and assignments as may be determined by the Government Representative.

(b) Security Guard: –

- (i) To control and check all vehicles passing through the Pak Tam Chung Barrier Gate/Yung Shue O Checkpoint and admitting only vehicles authorised to pass through the Barrier Gate/Checkpoint by designated authorities.
- (ii) To keep a register of vehicles entering and leaving the Pak Tam Chung Barrier Gate/Yung Shue O Checkpoint and submitting to the Government Representative for inspection upon request. The register shall include vehicle registration number, permit number, type of vehicles, time of entering or leaving the Barrier Gate/Checkpoint etc. All data and information encountered in the processing of daily permit application/recorded in the log book and vehicle record sheets must not be disclosed by any means to unauthorised third party.
- (iii) To answer enquiries and complaints related to vehicle permit issues according to any guidelines issued or updated from time to time during the Contract Period by the Government Representative.
- (iv) To deal with registering, recording, checking, filing and verifying the permit(s) according to any guidelines issued and updated from time to time during the

Contract Period by the Government Representative.

- (v) To perform any other related duties and assignments as may be determined by the Government Representative.
- (vi) To report any unauthorised vehicular entry and irregularities on permits immediately to the Government Representative.

(c) Contract Manager: –

- (i) To conduct regular inspections and surprise inspections to monitor the performance of all staff under this Contract and to ensure that the Services provided fully complies with all the requirements of this Contract up to the satisfaction of the Government Representative. In conducting the inspections, the Contract Manager shall check the attendance records of all staff and endorse on the attendance book. The frequency of surprise inspection shall not be less than once every seven (7) service days.
- (ii) To be reached by phone at all times to receive on behalf of the Contractor directions and instructions from the Government Representative with respect to the Services required to be provided by the Contractor under this Contract.
- (iii) To meet the Government Representative regularly during office hour for discussion on the performance and arrangement for improving the service quality of the Security Staff and rectifying any irregularities detected. Upon the request of the Government Representative, the Contract Manager shall attend a monthly meeting or any ad-hoc meeting to discuss any issues related to this Contract.

## **6. Employment of Contractor Employees and Manner of Superintendence**

- (a) Each of the Security Staff employed by the Contractor for the provision of the Services shall be a holder of a valid Category B Security Personnel Permit issued under the Security and Guarding Services Ordinance (Cap. 460) which specifies at the back that the Contractor is the employer of the relevant Security Staff.
- (b) Each of the Supervisors shall possess the following qualities and minimum qualifications: –
  - (i) in good health and of good physique;
  - (ii) possess good customer service skill;
  - (iii) be able to deal politely but firmly with any person using the Barrier Gate including

but not limited to visitors/villagers/drivers/permit applicants;

- (iv) have a pass in 3 subjects in the Hong Kong Certificate of Education Examination including pass in English Language, or equivalent; OR  
Combination of results in 3 Hong Kong Diploma of Secondary Education Examination (HKDSEE) subjects including pass in English Language, or equivalent;
  - (v) speak fluent Cantonese and English, ability to speak Putonghua shall be advantageous;
  - (vi) have at least 1 year of experience at the rank of security supervisor in security guard company, disciplinary or military services; and
  - (vii) have basic knowledge of first-aid technique is preferable.
- (c) Each of the Security Guards shall possess the following qualities and minimum qualifications: –
- (i) in good health and of good physique for outdoor duties;
  - (ii) possess good customer service skill;
  - (iii) be able to deal politely but firmly with any person using the Barrier Gate including but not limited to visitors/villagers/drivers/permit applicants;
  - (iv) have completed secondary three level or above, or equivalent;
  - (v) be able to speak fluent Cantonese and simple English to the level at which they are capable of communicating with the Government Representative on matters concerning their duties in either of the languages;
  - (vi) have 1 year of working experience as a security guard;
  - (vii) preferably have work experience in military, disciplined or law enforcement agencies; and
  - (viii) have basic knowledge of first-aid technique is preferable.
- (d) Each of the Contract Managers shall possess the following qualities and minimum qualifications: –
- (i) in good health and of good physique;
  - (ii) possess at least three (3) years of experience at the rank of contract manager or equivalent in security guard company, disciplinary or military services during the ten (10) years immediately preceding the original Tender Closing Date;

- (iii) possess a post-secondary qualification;
  - (iv) be able to write and speak fluent Cantonese and English, ability to speak Putonghua shall be advantageous;
- (e) The Contractor shall provide such number of Security Staff for each of the work shifts as specified in Clause 3 of this Service Requirements for the performance of the Contract. In the event of resignation, dismissal, refused admission or absence of any staff (however temporary, whether due to vacation leave, sick leave or otherwise), an immediate replacement who meets the requirements specified in sub-Clause 6(a), (b) and (c) shall be provided.
- (f) Within fourteen (14) days after the date of the Letter of Conditional Acceptance issued by the Government, the successful Tenderer shall: –
- (i) nominate for the Government Representative's approval an individual to perform the duties of the Contract Manager and Supervisor under the Contract (which approval may be withdrawn anytime). The successful Contractor shall provide the name, qualifications and experience of the nominated individual as specified in this Clause together with full details of his address and means of direct contact; and
  - (ii) provide the Government Representative the personal details of each Security Staff, including the type of permits issued to him under the Security and Guarding Services Ordinance (Cap. 460), his name, sex, age, date of birth, identity card number, training records, a recent photograph and documentary evidence showing his previous working experience as specified in sub-Clause (b) and (c) above.
- (g) The Contractor shall circulate among the Security Staff the code of conduct for compliance and all the guidelines issued by the Government Representative to the Contractor once per month and submit the documentary proof to the Government Representative.
- (h) Notwithstanding any other provisions of the Contract, the Contractor shall not deploy any person other than the person approved by the Government Representative prior to the commencement of the Contract Period to discharge any duties as set out in this Contract.
- (i) The Contractor shall provide, upon request by the Government Representative, documentary evidence, to the satisfaction of the Government Representative, to substantiate that sub-Clauses (a) to (d) above have been fully complied with.

## **7. Contractor's Equipment, Materials and Tools**

- (a) The Contractor shall during the entire Contract Period provide at its own costs sufficient uniforms, facilities, tools and equipment for each Security Staff, including but not limited to torches, raincoats, lockers, stationery, cleansing tools and materials and reflective vest

for the safe, proper and efficient performance of the Services. For workers who need to undertake outdoor security work at the Sites, the Contractor shall provide the workers with umbrellas for protecting them against sunshine.

- (b) The Government shall not be liable for any loss of or damage howsoever caused to such equipment, materials, tools or vehicles belonging to the Contractor and used for or in connection with the performance of the Contract.

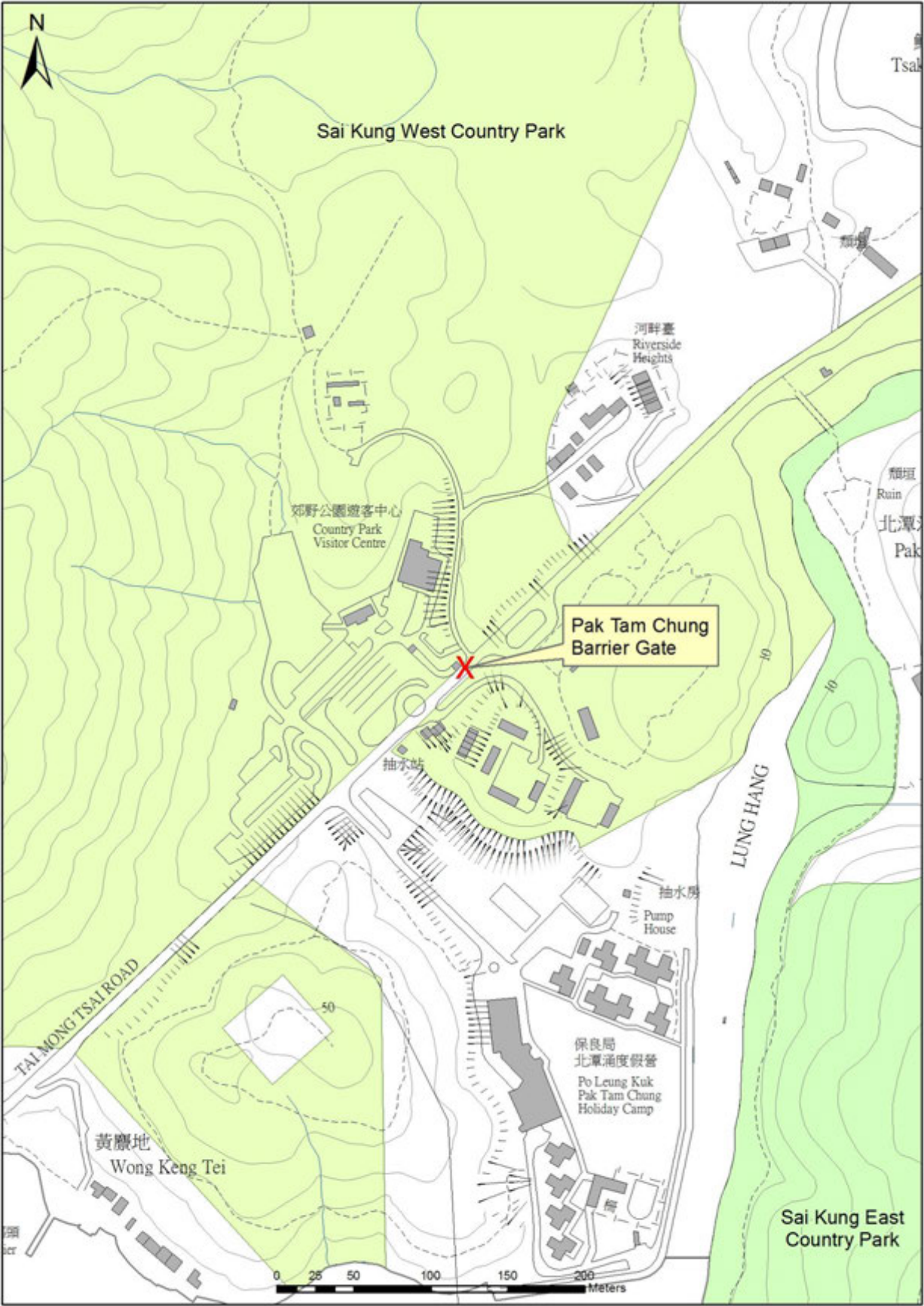
**8. Uniforms and Name Badges of Security Staff**

The Contractor shall ensure that all its Security Staff wear clean and tidy uniforms. Any such uniforms and equipment shall be provided, maintained and replaced as necessary by the Contractor at its own costs. The Contractor shall provide all its Security Staff with uniforms and badges with their photographs embedded thereon and showing their names and positions.

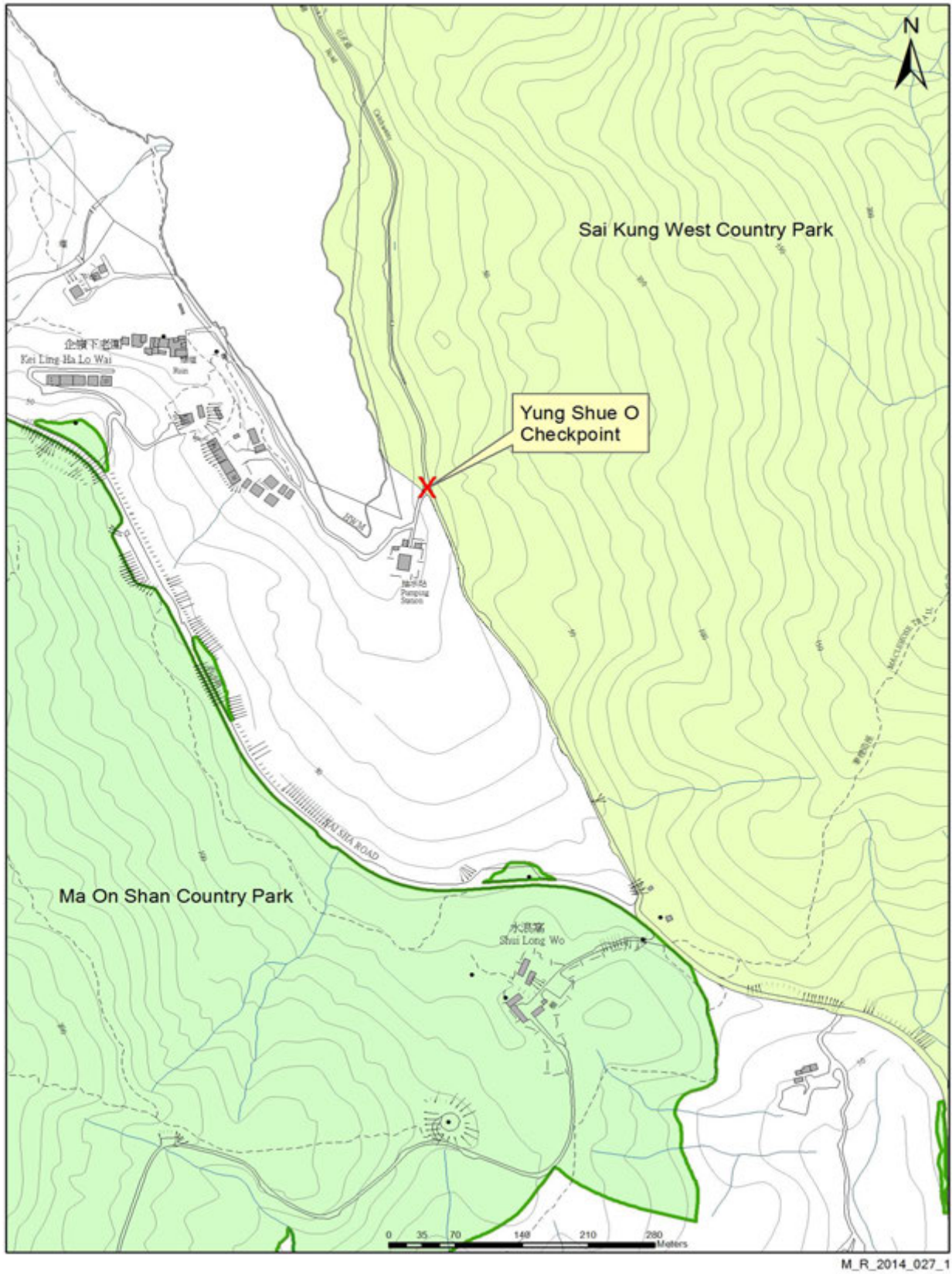
## **Contract Schedule 2**

### **Locations of Pak Tam Chung Barrier Gate & Yung Shue O Checkpoint**

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



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**Contract Schedule 3**

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

**Contract Schedule 4**

**Staffing Schedule and Monthly Wage for Security Staff**

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

**(It is contractual requirement of this Contract that each Security Staff be paid not less than the monthly wage of HK\$9,300 derived from the Statutory Minimum Wage (SMW) on the basis of thirty-one (31) days (twenty-seven (27) maximum number of normal working days plus four (4) paid rest days) per month and eight (8) hours of work per day.)**

**Contract Schedule 5**  
**Code of Conduct for the Contractor's Employees**

1. All the Contractor's Employees shall maintain a high standard of hygiene, courtesy and consideration in performing the Services.
2. The Contractor's Employees shall deal promptly and courteously with the Government Representative, visitors and the public as well as all others with whom they may have contact in performing the Services under the Contract.
3. The Contractor's Employees while on duty at the Contract Venue shall not commit any of the following acts: -
  - (a) idling and chatting;
  - (b) preparing and eating meals without permission from the Government Representative;
  - (c) vandalising any Government property or misusing any equipment/facility provided by the Government;
  - (d) gambling, stealing or committing any criminal offence;
  - (e) fighting or causing any disorder, disturbance or nuisance;
  - (f) using foul language or drinking liquor;
  - (g) behaving in a manner likely to endanger himself/herself or any other person or causing damage to Government property;
  - (h) indulging in poor timekeeping for work or absent from duty without approval or good cause;
  - (i) indulging in smoking, sleeping or any audio/visual entertainment;
  - (j) reading newspaper/magazine or playing mobile devices;
  - (k) committing fraud or dishonest acts;
  - (l) failing to wear full and proper uniform which is
    - (i) a vest, apron or jacket bearing the name/logo of the Contractor which is agreed by the Government Representative;
    - (ii) a safety reflective vest when working at car park or along roadside; and
    - (iii) a protective clothing and equipment when working at site;
  - (m) hanging and/or drying of clothing and/or around Government premises; and
  - (n) committing any act that will bring the Government into disrepute or embarrassment.
4. The Contractor's Employees shall not disclose any information/data collected during the service period, including verbal and written records in any format, by any means to any

unauthorized third party.

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

**Provision of Security Guard Services at Pak Tam Chung Barrier Gate &  
Access Road to Yung Shue O, Sai Kung**

**PART 4**

**OFFER TO BE BOUND**

1. Having read the Interpretation, Terms of Tender, Conditions of Contract, Contract Schedules and all other attachments of this Tender Document, I/we agree to be bound by the terms and conditions as stipulated therein.

2. I/We do hereby agree to carry out the whole of the Services which may, during the Contract Period or any extension thereto be required, by or on behalf of the Government Representative to be carried out, at the prices quoted by me/us in the Price Proposal free of all other charges, subject to and in accordance with the Interpretation, Terms of Tender, Conditions of Contract, Contract Schedules and all other attachments.

3. I am/We are duly authorized to bind the Tenderer hereafter mentioned by my/our signature(s).

4. The name of the Tenderer\* is .....

(\*The Tenderer must ensure that the name stated in this paragraph 4 is the **same** as the one indicated in the **Tenderer's Declaration at Appendix A to the Terms of Tender.**)

5. Name(s), Title(s) and address(es) of the authorized signatory/signatories:

.....  
.....

Signature(s):.....

.....

Dated this ..... day of ..... 20 .....

*Notes* (i) All the particulars required above must be provided.

(ii) Strike out clearly alternatives which are not applicable.

**THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**Agriculture, Fisheries and Conservation Department**

**INVITATION FOR TENDER FOR SERVICES**

**“Provision of Security Guard Services at Pak Tam Chung Barrier Gate  
& Access Road to Yung Shue O, Sai Kung”**

**PART 5  
MEMORANDUM OF ACCEPTANCE**

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

I

*(Name and position of officer)*

accept your tender for the Contract (as defined in the Tender Document) to provide the Services (as defined in the Tender Document) on and subject to the terms and conditions set out in the Contract so far as such offer relates to the following item(s) in the schedule:

.....  
.....

.....  
.....

.....  
.....

Dated this ..... day of ..... 20 .....

Signed by the said

in the presence of :

.....  
.....

.....  
.....

**Important Note**  
**Checklist for Submission of Tenders to**  
**Agriculture, Fisheries and Conservation Department (AFCD)**

Tenderers are requested to go through the entire Tender Document and ensure that all the information and documents required are submitted together with their tenders in accordance with the tender requirements before the Tender Closing Date.

**Tenderers are reminded to take the following actions before submitting their tenders.**

**Checklist**

Description	Tick and move to the next item
1. Have you completed, signed and submitted the following <b><u>essential information</u></b> ? (a) PART 1 – Appendix C - Price Proposal with the price information in Sections 2 and 3 of the Price Proposal duly completed; (b) PART 4 – Offer to be Bound which <b>must</b> be duly signed ***	
2. Have you completed, signed and submitted the following information? (a) PART 1 – Appendix A - Tenderer's Declaration (b) PART 1 – Appendix B - Information to be submitted by the Tenderer (c) PART 1 – Appendix D - Wage Proposal and Proposed Maximum Working Hours for Security Staff; (d) PART 1 – Appendix G - Tenderer's Business Experience in Provision of Security Guard Services; and (e) PART 1 – Appendix H - Statement of Convictions and Authorizations; (f) PART 1 – Appendix J – Proposed Plans; (g) PART 1 – Appendix K – Contract Manager Experience. (h) PART 1 – Appendix L – Non-collusive Tendering Certificate	
3. Have you submitted your price proposal (Appendix C) and other documents in two separate envelopes?	
4. Have you submitted your tender in <b><u>triplicate</u></b> (i.e. one set of originals and two sets of copies)?	

**\*\*\* If a Tenderer fails to complete, sign and submit any of the above essential information under Item 1 before the Tender Closing Date, its tender will not be considered further.**

This checklist is by no means exhaustive and is provided for Tenderers' reference only. It shall not be deemed to form part of the Tender Document.

Nothing in this checklist shall limit the Government's absolute right to request any

other information/supporting documents in connection with or arising out of this invitation to tender.