

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

Tender Ref. : AFCD/TTg/01/25

TENDER FORM

Contract No. : _____

LODGING OF TENDER

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked “Tender for
Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park

and addressed to the Chairman, Tender Opening Committee,

must be deposited in the Government Logistics Department

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

333 Java Road, North Point, Hong Kong

before 12:00 noon (time) on 7 November 2024 (date) (Hong Kong time). Late Tenders will not be accepted.

INTERPRETATION

PART 1 — TERMS OF TENDER

PART 2 — CONDITIONS OF CONTRACT

PART 3A — SERVICE SPECIFICATIONS

PART 3B — CONTRACT SCHEDULES

PART 4 — OFFER TO BE BOUND

PART 5 — MEMORANDUM OF ACCEPTANCE

Copies of the Tender Documents can be obtained from

General Registry of the Agriculture, Fisheries and Conservation Department

5/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon

(or downloaded from <https://pcms2.gld.gov.hk/iprod/#/home>)

Dated this the 27th day of September 20 24

YIP Yin

Government Representative
Agriculture, Fisheries and Conservation
Department

**PART 4 — OFFER TO BE BOUND
(PLEASE SIGN AND SUBMIT THIS PART 4
WITHOUT CHANGING THE ORIGINAL TEXT)**

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

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

Name of the Tenderer :

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

Date :

Notes:

- (i) *For Paper-based Tendering, the Offer to be Bound to be submitted shall be Part 4 of this Tender Form or a printed copy from a softcopy of Part 4 of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 4 of this Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will **not be considered further**.*
- (ii) **For Paper-based Tendering, this Part 4 – Offer to be Bound shall be signed (containing an original signature) and submitted in the Tender before the Tender Closing Time. This signed Part 4 – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further**.*
- (iii) *In compliance with the restriction set out in Clause 36.1(b) of the Terms of Tender, the Tenderer shall not make any alteration to the original text set out in this Part 4 – Offer to be Bound, otherwise **the Tender will not be considered further**. Deleting inapplicable word “I/we” or “me/us” or the alternative wording denoted by # above is however not to be treated as an alteration.*

Tender Ref.: AFCD/TTg/01/25

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 “Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park”. A copy of the contract for the said tender is hereby attached for identification purposes.

Dated this the _____ day of _____ 20 _____

Signed by the said _____	in the presence of : _____
_____	_____
_____	_____

Important Reminders for Tenderers

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

Checklist of documents to be completed and submitted

Tenderers should refer to Clauses 3, 7 and 8 of the Terms of Tender. **Please tick “✓” in the boxes** below to indicate you have completed and submitted the documents required.

<input type="checkbox"/>	Part 1 Appendix B –Working Background and Status of the Tenderer
<input type="checkbox"/>	<input type="checkbox"/> Section 1 Information of Tenderer <input type="checkbox"/> Section 2 Tenderer’s Experience in Provision of relevant cleansing services <input type="checkbox"/> Section 3 Statement of Compliance <input type="checkbox"/> Section 4 Statement of Convictions <input type="checkbox"/> Section 5 Tenderers’ Declaration of Being Government Service Contractor <input type="checkbox"/> Section 6 Government Discretion <input type="checkbox"/> Section 7 Details of Bank Account <input type="checkbox"/> Section 8 Election of method of payment of Contract Deposit <input type="checkbox"/> Section 9 Other information which is required to be provided or disclosed in this Schedule (if any) or otherwise any information which the Tenderer wishes to provide
<input type="checkbox"/>	Part 1 Appendix C – Certification of Heat Stroke Prevention Work Plan**
<input type="checkbox"/>	Part 1 Appendix F – Non-Collusive Tendering Certificate
<input type="checkbox"/>	Part 3B Contract Schedule 1 – Price Proposal**
<input type="checkbox"/>	Part 3B Contract Schedule 2 – Wages proposal and working conditions for Cleaners
<input type="checkbox"/>	Part 3B Contract Schedule 3 – Heat Stroke Prevention Work Plan **
<input type="checkbox"/>	Part 3B Contract Schedule 4 – Execution Plan **
<input type="checkbox"/>	Part 3B Contract Schedule 5 – Innovative Suggestion Schedule
<input type="checkbox"/>	Part 4 Offer to be bound duly <u>signed</u> (in case of Paper-based Tendering)**
<input type="checkbox"/>	A <u>two-envelope system</u> will be adopted for this tender exercise. Regardless of whether Paper-based Tendering or Electronic Tendering is used, a Tenderer should submit its Tender in two (2) SEPARATE proposals, one as to Technical Information and another as to Price Proposal. Tenderers should refer to Clause 8 of the Terms of Tender.

Failure to submit the documents with “**” before the Tender Closing Time shall render the Tender disqualified and the Tender will **not** be considered further.

Tender Ref.: AFCD/TTg/01/25

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

TABLE OF CONTENT

LODGING OF TENDER.....	0
IMPORTANT REMINDERS FOR TENDERERS.....	0
INTERPRETATION.....	1
PART 1 – TERMS OF TENDER.....	17
Appendix A Tender Evaluation Procedures, Criteria and Marking Scheme	67
Appendix B Working Background and Status of the Tenderer	81
Appendix C Certification of Heat Stroke Prevention Work Plan	89
Appendix D Sample Form of Banker’s Guarantee	90
Appendix E Registration Form for Attending Tender Briefing Session	95
Appendix F Non-collusive Tendering Certificate	96
PART 2 – CONDITIONS OF CONTRACT.....	99
Annex A Sample of Accountant’s Certificate for Payment Application	158
PART 3A – SERVICE SPECIFICATIONS.....	160
Section 1 Services Requirement	161
Section 2 Location Plan	172
Section 3 Facilities within Contract Area	173
PART 3B – CONTRACT SCHEDULES.....	174
Contract Schedule 1 Price Proposal	175
Contract Schedule 2 Wages Proposal and Working Conditions for Cleaners	178
Contract Schedule 3 Heat Stroke Prevention Work Plan	180
Contract Schedule 4 Execution Plan	182
Contract Schedule 5 Innovative Suggestion Schedule	184
Contract Schedule 6 Green Guidelines for the Services	185
Contract Schedule 7 Code of Conduct for the Contractor’s Employees	189
PART 4 – OFFER TO BE BOUND.....	0
PART 5 – MEMORANDUM OF ACCEPTANCE.....	0

INTERPRETATION

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

“Accepted Innovative Suggestion”	means an Innovative Suggestion and its specifications proposed by the Contractor, subject to negotiations if any, accepted by the Government in the version attached to the Memorandum of Acceptance for identification purposes;
“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government;
“Alternative Authentication Method” or “AAM”	means the use of an Identification Code for the submission of a Tender via the e-Tender Box in lieu of the use of a digital certificate;
“Annex”	means the annexs for the Contract hereto attached to the Tender Documents;
“Appendix”	means the appendices for the Contract hereto attached to the Tender Documents;
“Arbitration Ordinance”	means the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong);
“Assessment Criterion”	means an assessment criterion in the Marking Scheme for technical assessment of the Tenders received; and “Assessment Criteria” shall be construed accordingly;
“Banking Ordinance”	means the Banking Ordinance (Chapter 155 of the Laws of Hong Kong);
“Business Registration Ordinance”	means the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong);
“Cleaners”	means any one (1) or more of the cleaners deployed by the Contractor pursuant to Service Specifications for performing the general cleansing and related tasks;
“Cleansing Supervisor”	means one of the Cleaners appointed by the Contractor who directly monitor the delivery of Services by Cleaners under the Contract pursuant to Service Specifications;
“Commencement Date”	has the meaning given to it in Clause 1.1 of the Conditions of Contract, which may be postponed to another date specified by the Government in accordance with Clause 1.2 of the Conditions of Contract;

“Companies Ordinance”	means the Companies Ordinance (Chapter 622 of the Laws of Hong Kong);
“Companies Registry”	means the Companies Registry of the Government;
“Competition Ordinance”	means the Competition Ordinance (Chapter 619 of the Laws of Hong Kong);
“Conditions of Contract”	means the Conditions of Contract set out in Part 2 of these Tender Documents;
“Contract”	<p>means the contract between the Government and the Contractor comprising the following parts of the Tender Documents and other items as specified below:</p> <ul style="list-style-type: none"> (a) the “Tender Form” (or the equivalent Tender Form in the case of Electronic Tendering), the “Interpretation”, the “Terms of Tender”; the “Conditions of Contract” and the appendices, annexures and attachments to these documents; (b) the “Offer to be Bound” in the Tender Form; (c) the “Letter of Conditional Acceptance”; (d) the Contract Schedules in the form as appearing in the Tender Documents and those which were submitted by the Contractor as part of its Tender for the Contract, and accepted by the Government; (e) the “Service Specifications”; (f) all other schedules, plans, drawings and other documents which form part of the Contractor’s Tender or are incorporated by reference in any of the above documents,

in each case subject to such further changes as the Government may stipulate in exercise of its powers under the Terms of Tender, and/or otherwise subject to such further changes as the Government and the Contractor may agree. All of these documents shall be attached to the Memorandum of Acceptance to be issued under Clause 12.8 of the Terms of Tender for identification purposes.

Each of the above documents shall be referred to throughout the Tender Documents and the Contract by their respective titles as appearing in quotation marks above.

	References to “the Contract” or “this Contract” shall mean the same Contract as defined above;
“Contract Area”	means Tai Tong Recreation Area in Tai Lam Country Park which are, for identification only, delineated on the plans contained in Service Specifications, and include the Facilities;
“Contract Deposit”	means the deposit as more particularly described in Clause 15 of the Terms of Tender and Clause 24 of the Conditions of Contract;
“Contract Manager”	means the individual appointed by the Contractor as Contract Manager pursuant to Service Specifications whose responsibilities are particularly stipulated in Clause 2 thereof;
“Contract Period”	means, subject to early termination or extension provided for in the Contract, the period during which the Contract shall subsist and as specified in Clause 1.1 of the Conditions of Contract;
“Contracts (Rights of Third Parties) Ordinance”	means the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong);
“Contractor”	means the Tenderer whose Tender is accepted by the Government through the issue of the Letter of Conditional Acceptance;
“Contractor’s Employees” or “Employees”	means the persons deployed by the Contractor to perform the Services, including the individuals who perform the duties of a Contract Manager, Cleansing Supervisor, and Cleaners;
“Contract Schedule(s)”	means the schedules for the Contract hereto attached to the Tender Documents;
“Control of Exemption Clauses Ordinance”	means the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong);
“Copyright Ordinance”	means the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong);
“Crimes Ordinance”	means the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong);
“Criminal Procedure Ordinance”	means the Criminal Procedure Ordinance (Chapter 221 of the Laws of Hong Kong);
“Daily Rate”	means the rate for calculating remuneration for the Services provided in a particular day as set out in Table 1 of Contract Schedule 1 chargeable by the Contractor to the Government for

the provision of Services;

“Debarment Period” means the period, as provided under Clause 3.2.1 of the Terms of Tender, during which a Tenderer is debarred from tendering for any Non-skilled Worker Contract due to:

conviction of any of the Relevant Offences; or

accumulation of three (3) Dermit Points over a rolling period of thirty-six (36) months, as provided under Clause 3.2.2 of the Terms of Tender;

“Demerit Point” or “Demerit Points” means the demerit point issued by any Government bureaux or departments for breaches of contractual obligations under a Non-skilled Worker Contract in respect of:

- (a) wages;
- (b) holiday pay payable to Non-skilled Workers having been employed under a continuous contract for not less than one (1) month;
- (c) wages at a rate of at least 150% for the Non-skilled Workers who are required to work when the Tropical Cyclone Warning Signal or above is hoisted;
- (d) daily maximum working hours;
- (e) signing of Standard Employment Contracts with Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days;
- (f) payment of wages by means of autopay to Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);
- (g) gratuity payable to Cleaners as provided under Clause 12.1 or Clause 12.2 of the Conditions of Contract (where applicable);
- (h) gratuity payable to Cleansing Supervisor as provided under Clause 13.1 or Clause 13.2 of the Conditions of Contract (where applicable); and
- (i) compliance with all of the provisions in the Heat Stroke

Prevention Work Plan. For the avoidance of doubt, the Heat Stroke Prevention Work Plan is only applicable if the Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources.

“Electronic Record”	has the meaning given to it under the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;
“Employees’ Compensation Ordinance”	means the Employment Ordinance (Chapter 282 of the Laws of Hong Kong);
“Employment Ordinance”	means the Employment Ordinance (Chapter 57 of the Laws of Hong Kong);
“EPD”	means the Environmental Protection Department of Hong Kong;
“ESG Proposal”	means a proposed measure or arrangement that will improve environmental protection, sustainability or social responsibility or governance which may but need not be directly relevant to the procurement covered by this Invitation to Tender, but which can bring about positive value(s) and/or benefit(s) to the Government or the public at large;
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“Execution Plan”	means the proposed execution plan (containing the Management Plan, Work Plan and Innovative Suggestions (if any)) submitted by the Tenderer as approved by the Government;
“Facilities”	means all the facilities in the Contract Area as specified in Location Plan of Service Specifications;

“FIU Ordinance”	means the Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong);
“Force Majeure Event”	<p>means:</p> <p>(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</p> <p>(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 37.6 and 37.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;</p> <p>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;</p>
“General Holiday” or “Public Holiday”	means Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong);
“Good Industry Practice”	means the standards, practices, methods and procedures conforming to all laws and regulations, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Government”	means the Government of the Hong Kong Special Administrative Region of the People's Republic of China;
“Government Data” or “Government Property”	means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;
“Government Logistics Department” or “GLD”	means the Government Logistics Department of the Government;

“Government Representative”	means the Director of Agriculture, Fisheries and Conservation of the Government or any officer from time to time authorised to act on his behalf for the purposes of the Contract. The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;
“Heat Stroke Prevention Work Plan”	means a plan to be known as the Heat Stroke Prevention Work Plan and to be submitted by the Tenderer pursuant to Clause 7.5 of the Terms of Tender;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong dollars” or “HK\$”	means the lawful currency of Hong Kong;
“Hourly Rate”	means the rate for calculating remuneration for the Services provided in an extended working hour as set out in Table 1 of Contract Schedule 1 chargeable by the Contractor to the Government for the provision of Services;
“Identification Code”	means a unique 8-character code generated by the ETB and sent to the email account registered by the ETB User with the PCMS (viz., “registered email account”) upon the request of the ETB User for the submission of a Tender through the use of such code;
“Immigration Ordinance”	means the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong);
“Inland Revenue Department”	means the Inland Revenue Department of the Government;
“Innovative Suggestion”	means the Pro-innovation Proposal(s) and the ESG Proposal(s) proposed by the Tenderer in its Tender to be assessed under Assessment Criterion (A)(3) of the Marking Scheme; ;
“Innovative Suggestion Schedule”	means Contract Schedule 5 attached to the Tender Form for completion of the Innovative Suggestions to be offered by the Tenderer;
“Inspection Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract;
“Intellectual Property Rights” or “IPR”	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;
“Interpretation”	means this Interpretation section;
“Interpretation and General Clauses Ordinance”	means Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong);
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on the terms and conditions set out in the Tender Documents;
“Labour Department”	means the Labour Department of the Government;
“Letter of Conditional Acceptance”	has the meaning given to it in Clause 12.6 of the Terms of Tender;
“Management Plan”	means the proposed management plan, content requirements of which are set out in Note 2A to the Marking Scheme, to be submitted by the Tenderer as part of the Execution Plan, subject to approval of the Government;
“Marking Scheme”	means a scheme which collectively contains those procedures, requirements and criteria for the evaluation of such Price Proposal and Technical Proposal separately;
“Materials”	means any and all works and materials of whatsoever nature (including their drafts and uncompleted versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for the Contractor, in relation to the Services or for the purposes of the Contract including without limitation, any reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Contractor, its employees, agents or sub-contractors in relation to the Services or for the purposes of the Contract, recorded or stored by whatever means;
“Minimum Wage Ordinance”	means the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong);

“Monthly Fee”	means the monthly remuneration payable by the Government to the Contractor for the Services provided in a particular month calculated in accordance with Clause 18 of the Conditions of Contract subject to and after any deductions in respect of that month;
“MPFS Ordinance”	means the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong);
“Monthly Rate”	means the rate for calculating remuneration for the Services provided in a particular month as set out in Table 1 of Contract Schedule 1 chargeable by the Contractor to the Government for the provision of Services;
“Non-collusive Tendering Certificate”	means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 18(b) of the Terms of Tender;
“Non-skilled Workers”	means all unskilled workers employed or to be employed by the Contractor to work under the Contract, and for the present purpose, include the Cleansing Supervisor and the Cleaners;
“Non-skilled Worker Contract”	means a non-works service contract of the Government that rely heavily on the deployment of Non-skilled Workers, and for the purpose of this Invitation of Tender, include this Contract;
“Occupational Retirement Schemes Ordinance”	means the Occupational Retirement Schemes Ordinance (Chapter 426 of the Laws of Hong Kong);
“Official Secrets Ordinance”	means the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong);
“Original Tender Closing Date”	means the date and time specified in the Tender Form before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently;
“OSH Ordinance”	means the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong);
“Paper-based Tendering”	means the making and submission of a Tender in paper form in accordance with the “Lodging of Tender” section of the Tender Form;
“Parties” (in upper or lower case)	means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;

“person”	means any individual, corporation, partnership or firm;
“PD(P)O”	means the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);
“Prevention of Bribery Ordinance”	means the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong);
“Price Proposal”	means Contract Schedule 1 to be completed by the Tenderer;
“Professional Accountants Ordinance”	means the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong);
“Pro-innovation Proposal”	means a proposal that adopts any one (1) or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the Services;
“Public Order Ordinance”	means the Public Order Ordinance (Chapter 245 of the Laws of Hong Kong);
“recyclables”	means paper, metal, plastic materials and any other items as may be determined to be recyclables by the Government Representative from time to time;
“refuse”	means all kinds of non-infection refuse: <ul style="list-style-type: none"> (a) any dirt, dust, ashes or paper; (b) any glass, glass fragments, china, earthenware or tin; (c) used heavy duty paper carton container; (d) any plaster, concrete, mortar, wood, timber, sawdust, plastic, construction material, or excavated material; (e) any rubbish or debris, including domestic wastes (e.g. used take away boxes); (f) any filth, manure, dung, excreta and any other offensive, noxious or obnoxious matter or liquid; and (g) any substance likely to constitute a nuisance.
“Relevant Offences”	means the offences as defined in Clause 3.2.1 of Terms of Tender;
“Review Mechanism”	means the mechanism under which any person who is debarred from tendering for any Non-skilled Worker Contract due to conviction of any of the Relevant Offences may apply to the Central Tender Board of the Government to review the length of the Debarment Period. Details of the mechanism are set out in the

	homepage of the Treasury Branch of the Financial Services and the Treasury Bureau at http://www.fstb.gov.hk/tb/en/government-procurement-policy-procedures.htm . For the avoidance of doubt, the Review Mechanism does not apply to the Debarment Period imposed as a result of accumulation of Demerit Points;
“Services”	means the provision of cleansing services at the Contract Area and includes all other obligations, tasks and duties ancillary or incidental thereto in accordance with Service Specifications and subject to all the terms and conditions of the Contract;
“Service Specifications”	means the Service Specifications set out in Part 3A of these Tender Documents containing the specifications which set out the services requirements of the Government; references to Service Specifications include those specifications offered by the Tenderer and accepted by the Government (if any);
“Specified Tender Box”	means the tender box specified in the “Lodging of Tender” section of the Tender Form or, where applicable, other places assigned by a Government officer for depositing bulky tenders;
“Standard Employment Contract”	means the written employment contracts to be entered into between the Contractor and its Non-skilled Workers, a copy of such contracts and its guidance notes can be downloaded from the following hyperlinks: < https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.htm > for Chinese version or < https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.htm > for English version;
“Statement of Convictions”	means the Statement of Convictions in respect of the Relevant Offence in the form of Section 3 in Appendix B to the Terms of Tender;
“Statutory Minimum Wage” or “SMW”	means the hourly wage rate as specified in Schedule 3 to the Minimum Wage Ordinance;
“SMW plus rest day pay rate”	has the meaning given to “statutory minimum wage plus rest day pay rate” in the Guidance Notes on Signing of Standard Employment Contract (SEC) for Employees of Contractors of Government Service Contracts, which may be downloaded at the hyperlink provided in Clause 8.7 of the Conditions of Contract;
“Supply of Services (Implied Terms) Ordinance”	means the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong)

“Technical Proposal”	means all proposals, information and documents required to be submitted as part of the Tender apart from the Price Proposal;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to the Invitation to Tender;
“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 by the Government from time to time whether in accordance with Clause 8.2(b) or 8.2(c) of the Terms of Tender or otherwise;;
“Tender Closing Time”	means the time on the Tender Closing Date before which Tenders must be deposited with the Government in the manner stipulated in the Tender Form as the same may be extended from time to time whether in accordance with Clause 8.2(b) or 8.2(c) of the Terms of Tender or otherwise;
“Tender Documents”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued by the Government prior to the Tender Closing Date;
“Tender Form”	means: <ul style="list-style-type: none"> (a) in the case of a Tender submitted in paper form, the Tender Form issued for the Invitation to Tender; and (b) in the case of a Tender submitted electronically, the tender form available on the e-Tender Box for completion electronically;
“Tender Submission Date”	means the date of the Offer to be Bound;
“Tender Validity Period”	means the period of time mentioned in Clause 18.2 of the Terms of Tender during which a tender shall remain open;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“terms and conditions of use of the PCMS and the e-Tender Box”	means all those terms and conditions for the use of the PCMS and the e-Tender Box from time to time published on the website of the e-Tender Box including the “Terms and Conditions of Use of the PCMS and the e-Tender Box” and the “e-Tender Box System and File Attachment Requirements” in the version prevailing immediately prior to the Tender Closing Date;
“Theft Ordinance”	means the Theft Ordinance (Chapter 210 of the Laws of Hong Kong);

“Total Amount”	means total amount of service price as set out in Price Proposal which have been awarded to the Contractor;
“Unit Rate”	means the rate/unit price proposed by the Tenderer for the provision of one (1) additional Cleaner in a particular month as set out in Table 2 of Contract Schedule 1 and accepted by the Government for calculating remuneration for the Services chargeable by the Contractor to the Government ;
“Unsolicited Electronic Messages Ordinance”	means the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong);
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer;
“website of the e-Tender Box”	means the website of the following address: https://pcms2.gld.gov.hk ;
“working day”	means Monday to Friday, other than the following: <ul style="list-style-type: none"> (a) a public holiday; or (b) a day on which: <ul style="list-style-type: none"> (i) Tropical Cyclone Warning Signal No. 8 or above is hoisted; or (ii) Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any time during the normal business hours;
“working time”	means the period on each day from 7:30a.m. to 4:30p.m. which includes one hour meal break mentioned in Clause 3 of Service Specifications;
“Work Plan”	means the proposed work plan submitted by the Tenderer as approved by the Government; and
“WTO GPA”	means the Agreement on Government Procurement of the World Trade Organization.

2. Unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) references to a document shall:
 - (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;
- (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
- (f) references to “Government” shall 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 a Clause, Sub-clause, Section or Paragraph in or a Contract Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- (h) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
- (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as 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 mean a calendar month;

- (n) any negative obligation imposed on any Party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any Party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
 - (o) any act, default, neglect or omission of any employee, licensee, or agent of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
 - (p) words importing the whole shall be treated as including a reference to any part of the whole;
 - (q) the expressions “include” and “including” shall be construed without limitation to the words following;
 - (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
 - (s) references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, information which can be viewed on the e-Tender Box, and any other modes of representing and reproducing words in a legible form;
 - (t) reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature);
 - (u) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
 - (v) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance.
3. Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
4. All rights and powers of the Government under the Contract may be exercised by the Government 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) shall, in the absence of manifest error, be final and conclusive.

5. Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.
6. Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

PART 1
TERMS OF TENDER

<u>Content</u>	<u>Sheet</u>
1. Tender Documents.....	19
2. Invitation to Tender	19
3. Essential Requirements.....	21
4. Execution Plan	25
5. Innovative Suggestions.....	25
6. Working Conditions of the Proposed Non-skilled Workers.....	25
7. Tender Preparation	28
8. Submission of Tender.....	31
9. Company/Business Organisation Status	37
10. Tender Evaluation	42
11. Basis of Acceptance	42
12. Award of Contract.....	42
13. Prices Quoted	44
14. Financial Vetting	46
15. Contract Deposit.....	49
16. Request for Information	50
17. Tenderer's Enquiries	51
18. Tenders to Remain Open	51
19. Documents of Unsuccessful Tenderers	52
20. Complaints about Tendering Process or Contract Award	52
21. Relationship of the Parties.....	53
22. Personal Data Provided	53
23. Warranty against Collusion	54
24. Warning against Bribery	55
25. New Information.....	55
26. Consent to Disclosure.....	55
27. Contractor's Performance Monitoring	56
28. Cancellation of the Invitation to Tender Exercise.....	57
29. Cost of Tender	57
30. Environmental Friendly Measures	57
31. Tenderer's Commitment.....	58

32. Tender Briefing Session	58
33. Supplementary Information/Tender Addenda	58
34. The Attachments.....	59
35. Negotiations.....	59
36. Counter-Proposals.....	59
37. Government Discretion	61
38. Licence to use the materials submitted by Tenderers.....	65
39. Communication with the Government	66
Appendix A Tender Evaluation Procedures, Criteria and Marking Scheme	67
Appendix B Working Background and Status of the Tenderer	81
Appendix C Certification of Heat Stroke Prevention Work Plan.....	89
Appendix D Sample Form of Banker's Guarantee.....	90
Appendix E Registration Form for Attending Tender Briefing Session	95
Appendix F Non-collusive Tendering Certificate	96

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT

**Provision of Cleansing Services to Tai Tong Recreation Area
in Tai Lam Country Park**

PART 1

TERMS OF TENDER

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

1. Tender Documents

- 1.1 The Tender Documents, identified as Tender Ref. AFCD/TTg/01/25 comprise the following documents:
- (a) “Lodging of Tender” section of the Tender Form;
 - (b) Interpretation;
 - (c) PART 1 – Terms of Tender with Appendices A to F;
 - (d) PART 2 – Conditions of Contract with Annex A;
 - (e) PART 3A – Service Specifications;
 - (f) PART 3B – Contract Schedules 1 to 7;
 - (g) PART 4 – Offer to be Bound; and
 - (h) PART 5 – Memorandum of Acceptance.
- 1.2 The Interpretation shall apply to the whole set of the Tender Documents and the Contract unless the context requires otherwise.

2. Invitation to Tender

- 2.1 Tenders are invited for the provision of the Services at the Contract Area to the Government on such terms and conditions as set out in these Tender Documents.
- 2.2 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 2.3 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 2.4 Each Tenderer should check the numbers of pages of the Tender Documents. If it

finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.

- 2.5 Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any matter or fact relating to the Tender Documents or the Contract.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts. The Government's actual requirements may vary depending on the actual need of the procuring department and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.8 Without prejudice to Clause 2.7 above, the requirements of the Services specified in the Price Proposal or Service Specifications (if any) are estimation(s) of the quantity of the Services that may be required by the Government. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of AFCD and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.9 By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Documents.

- 2.10 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

3. Essential Requirements

3.1 No Subcontracting of Services

No proposal for sub-contracting of any or all parts of the Contract shall be made. A Tender containing a sub-contracting proposal **will not be considered further** and **will be disqualified**.

3.2 Debarment on Convictions and Demerit Points.

3.2.1 Past Convictions

- (a) 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 subject to the Debarment Period of a maximum of five (5) years from the date of the Tenderer’s last conviction, during which period the Tenderer is debarred from tendering for this Contract. The length of the Debarment Period is determined in accordance with Clauses 3.2.1(d) and 3.2.1(e) below and may be reviewed under the Review Mechanism in Clause 3.2.1(f) below. The Relevant Offences are as follows:

- (i) any offence under the Employment Ordinance or the Employees’ Compensation Ordinance, 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; or
- (ii) Section 17I(1) or 38A(4) of the Immigration Ordinance; or
- (iii) Section 89 of the Criminal Procedure Ordinance and Section 41 of the Immigration Ordinance (aiding and abetting another person to breach his condition of stay); or
- (iv) Section 7, 7A, 7AA, 43B(3A), 43BA(5) or 43E of the MPFS Ordinance; or
- (v) any offence under the OSH Ordinance or the FIU Ordinance,

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.

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

- (b) 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.
- (c) 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 and is currently debarred from tendering for any Non-skilled Worker Contract.
- (d) If a sentence of imprisonment of any duration (including a suspended sentence) is imposed by the court on the Tenderer following the conviction of any of the Relevant Offences, the Tenderer shall be subject to a Debarment Period of five (5) years from the date of conviction, irrespective of whether a fine is also imposed.
- (e) For a Tenderer convicted of any of the Relevant Offences receiving a sentence other than imprisonment (including a suspended sentence), the applicable Debarment Period shall be determined with reference to the level of maximum fine that the Relevant Offence individually carries under the relevant ordinance in accordance with the following table:

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

- (f) The Debarment Period applicable to the relevant Tenderer shall stand unless and until a revised Debarment Period is determined by the Central Tender Board. The revised Debarment Period, if any, will only be applicable for the purpose of this Invitation to Tender if it is determined by the Central Tender Board under the Review Mechanism on a date before the Tender Closing Date. However, the revised Debarment Period will become invalid as soon as the Tenderer is convicted of any of the Relevant Offences subsequent to the Central Tender Board's determination, and in such a case, the Tenderer is debarred from tendering for this Contract for a period determined in accordance with Clauses 3.2.1(d) and 3.2.1(e) above in regard to 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>.
- (g) The Tenderer shall submit as part of the Tender the Statement of Convictions in the form in Section 4 of **Appendix B** whether it has been convicted in respect of the Relevant Offences (if any) for a period of five (5) years immediately preceding the Tender Closing Date. The Statement of Convictions shall be submitted in respect of:
- (i) the Tenderer itself; and
 - (ii) where applicable, each of its partners if it is a partnership or each of its shareholders if it is a company.

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.

- (h) 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.
- (i) Notwithstanding Clause 3.2.1(a) 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 MPFS Ordinance; and
 - (ii) any offence under the OSH Ordinance or the FIU Ordinance, 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.

3.2.2 Demerit Points

- (a) If a Tenderer has accumulated three (3) Demerit Points over a rolling period of thirty-six (36) months, it shall be debarred from tendering for this Contract for a period of five (5) years from the date on which the third Demerit Point was obtained. Any Tender submitted by a Tenderer who is so debarred from tendering for this Contract will not be considered.
- (b) The Tenderer shall complete Section 5 of **Appendix B** to these Terms of Tender whether it has demerit point within thirty-six (36) months immediately before the Tender Closing Date. The record of Demerit Point(s) of a Tenderer will be evaluated under the separate Assessment Criterion (C)7 to be known as “Record of Demerit Point(s) under all Government Contracts” as part of the technical assessment in the Marking Scheme.

3.3 A Tenderer shall comply with all the essential requirements stipulated in Clause 3.1 to 3.2 above. If a Tenderer fails to do so, its Tender will **not** be considered further.

4. Execution Plan

- 4.1 A Tenderer shall submit with its Tender Sections A (Management Plan) and B (Work Plan) of the Execution Plan in **Contract Schedule 4**. The information submitted in the Execution Plan will form part of the Tender to be evaluated by the Government under Assessment Criteria (A)(1) and (A)(2) of the Marking Scheme. The Tenderer is required to incorporate information outlined in **Contract Schedule 4** into its proposed Execution Plan. Tenderer may also include other materials or suggestions as appropriate to facilitate consideration of its Tender by the Government.
- 4.2 Without prejudice to any other provision of these Terms of Tender, if the Management Plan and Work Plan are accepted by the Government, it/they will be legally binding on the successful Tenderer and form part of the Contract.
- 4.3 A Tenderer who fails to submit an Execution Plan before the Tender Closing Time will be disqualified.

5. Innovative Suggestions

- 5.1 Tenderers are encouraged to submit information in **Contract Schedule 5** to these Terms of Tender with the Tender their Innovative Suggestions. The information submitted in **Contract Schedule 5** will form part of the Execution Plan and will be evaluated by the Government under Assessment Criteria (A)(3) of the Marking Scheme. The Tenderer shall submit all relevant supporting documents in its Tender **before the Tender Closing Time** to substantiate the practicability and effectiveness of its Innovative Suggestions. **Tenderers may be requested, at the Government's discretion, to provide further supporting documents (e.g. test reports / certificates) in relation to any Innovative Suggestion within five (5) working days or such other period as specified in the request.**
- 5.2 The Government may, at its absolute discretion and subject to negotiations under Clause 35 below, accept or reject one or more of the Innovative Suggestions submitted by the successful Tenderer in its Tender. The Accepted Innovative Suggestions shall form an integral part of the Contract.

6. Working Conditions of the Proposed Non-skilled Workers

- 6.1 Wage Requirements
- (a) A Tenderer shall commit that the monthly wage of the Non-skilled Workers to be employed for the Contract shall be not less than the monthly wage rate derived from the Statutory Minimum Wage ("SMW") under the Minimum

Wage Ordinance plus paid rest days, i.e. HK\$9,920, with current minimum hourly wage rate (HK\$40.0), calculated on the basis of six (6) working days per week, eight (8) working hours per day and thirty-one (31) calendar days (twenty-seven (27) working days plus four (4) paid rest days) in a month.

- (b) The successful Tenderer shall commit that the monthly wage(s) payable to its Non-skilled Workers during the Contract Period shall not be less than

- (i) the monthly wage(s) committed in **Contract Schedule 2**; or
- (ii) the monthly wage(s) referred to at (i) above as the same may be adjusted as a result of future revision of the SMW,

whichever is the higher.

- (c) A Tenderer is required to state in its Tender the committed monthly wages to be paid to its Non-skilled Workers as required in **Contract Schedule 2**. In case the Tenderer fails to commit the monthly wage or the monthly wage committed by the Tenderer to its Non-skilled Workers is less than the “SMW plus rest day pay rate”,

- (i) then such wage submitted by the Tenderer will be deemed to be not less than the “SMW plus rest day pay rate” for the purpose of tender evaluation. Such presumption will be revoked immediately if the Tenderer fails to confirm in writing the correctness of this presumption upon request by the Government Representative at any time before the tender exercise is completed; and
- (ii) if the Tenderer commits an amount which is higher than the “SMW plus rest day pay rate” in subsequent clarification in writing pursuant to (i), its Tender will only be assessed on the basis that the monthly wage offered by the Tenderer is the same as the “SMW plus rest day pay rate”. However, the higher monthly wage committed by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.
- (iii) The Government may at any time before this 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, such proposal will amount to a counter-proposal

and may render its Tender to be disqualified by the Government in accordance with Clause 36 below;

- (d) In case the Tenderer offers other than a definite committed monthly wage rate for its Non-skilled Workers, the Tender will only be assessed on the basis on the lowest monthly wage stated for evaluation purpose. For avoidance of doubt, if the lowest monthly wage stated by the Tenderer to its Non-skilled Workers is less than the SMW plus rest day pay rate, Clause 6.1(c) above shall prevail.
- (e) 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.

6.2 Working Hours

- (a) A Tenderer is required to state in its Tender the daily maximum allowable net working hours for its Non-skilled Workers as required in **Contract Schedule 2**. If a Tender fails to indicate any maximum allowable net working hours per day for all Non-skilled Workers in its Tender before the Tender Closing Time, the Tender will be evaluated but the respective working hours proposed will be deemed to be more than ten (10) hours excluding meal break for the purpose of Tender evaluation. If the Tenderer offers the maximum allowable net working hours per day of a ten (10) hours or less in a subsequent clarification in writing upon request by the Government Representative at any time before the tender exercise is completed, the Tender will only be assessed on the basis that the maximum allowable net working hours per day offered by the Tenderer is more than ten (10) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer. The proposed daily maximum allowable net working hours is on the basis of the net total working hours excluding meal break in respect of a same Cleaner in a working day.
- (b) In case the Tenderer offers other than a definite number on the daily maximum allowable net working hours for its Non-skilled Workers, the Tender will only be assessed on the basis on the greatest daily maximum allowable net working hour stated for evaluation purpose.

6.3 Other Requirements

A Tenderer shall note the Non-skilled Workers to be employed for the Contract shall be paid for a gratuity, statutory holiday pay and extra wages for working under Tropical Cyclone Warning Signal No. 8 or above in accordance with Clauses 11, 12, 13 and 14 of the Conditions of Contract.

7. **Tender Preparation**

7.1 The Tenderer shall complete and submit all relevant Contract Schedules in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.

7.2 A complete list of all proposals, documents and information which are required to be submitted is set out in the checklist on “Important Reminders for Tenderers” attached at the front of this Tender Documents and Clause 7.4 below.

7.3 The Tenderer shall submit, in one of the following manners, its completed Tender before the Tender Closing Time, otherwise its Tender will **not** be considered further:

(a) **Paper-based Tendering**

(i) The Tender (including the Tender Form) shall be completed in writing on hardcopy and shall be submitted in **TRIPLICATE** (i.e. three (3) sets of identical documents) in accordance with the “Lodging of Tender” section of the Tender Form. The Tenderer shall ensure that all the three (3) sets of Tenders submitted by it are identical. The Government may pick just any one set for the evaluation and for Contract formation purpose on the assumption that all three sets are identical.

(ii) An originally signed Part 4 “Offer to be Bound” of the Tender Form in English containing an original signature by or on behalf of the Tenderer. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part 4 of the Tender Form or a printed copy from a softcopy of Part 4 of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 4 of the Tender Form (including

copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further; or

(b) Electronic Tendering

The box signifying the Tenderer's agreement with Part 4 "Offer to be Bound" of the Tender Form must have been checked; and the Tender shall be submitted:

- (i) in accordance with the terms and conditions of use of the PCMS and the e-Tender Box; and
- (ii) through the e-Tender Box through the use of any one type of digital certificates recognised by and uploaded to the e-Tender Box or through an Identification Code.

7.4 A Tenderer is required to submit the followings in the Tender Documents:

- (a) PART 1 – Appendix B – Working Background and Status of the Tenderer
- (b) PART 1 – Appendix C – Certification of Heat Stroke Prevention Work Plan
- (c) PART 1 – Appendix F – Non-collusive Tendering Certificate
- (d) PART 3B – Contract Schedule 1 – Price Proposal
- (e) PART 3B – Contract Schedule 2 – Wage Proposal and Working Conditions for Non-skilled Workers
- (f) PART 3B – Contract Schedule 3 – Heat Stroke Prevention Work Plan
- (g) PART 3B – Contract Schedule 4 – Execution Plan
- (h) PART 3B – Contract Schedule 5 – Pro-innovation Proposals and ESG Proposals
- (i) PART 4 of the Tender Form – Duly signed Offer to be Bound (in case of Paper-based Tendering)
- (j) Other proposals, documents and information as specified in the Tender Documents

7.5 (a) Failure to submit the documents in above sub-clauses 7.4 (b), (d), (f), (g) and (i) before the Tender Closing Time shall render the Tender **disqualified** and the Tender **will not be considered further**.

(b) In these Terms of Tender, there are also requirements for the submission of documents and/or information as required in Appendix B and Appendix F, whereby it is provided that if not supplied by the Tender Closing Time, or upon subsequent request of the Government after the Tender Closing Time, the tender will **not** be considered further. Even so, for this type of documents and / or information, the Government is not obliged to make any request for resubmission after the Tender Closing Time. If the Government chooses not to do so, or even if the Government chooses to do so but the Tenderer fails to supply the missing document or information, the tender will also not be considered further.

7.6 Failure to submit other documents which are not covered by Clause 7.5(a) and 7.5(b) above before the Tender Closing Time, the Government reserves the right to seek submission under Clause 16.1 below or evaluate the Tender on an “as is” basis.

7.7 When completing the Tender Documents (including the “PART 4 – Offer to be Bound” of the Tender Form), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

(a) if the Tenderer is a company incorporated in Hong Kong under the Companies Ordinance:

(i) the Certificate of Incorporation of the Tenderer; or

(ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or

(iii) the current business registration certificate of the Tenderer issued under the Business Registration Ordinance;

(b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance; or

- (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 7.7 (a)(i), (a)(ii), (a)(iii) or 7.7(b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

A Tender will **not** be further considered if Part 4 “Offer to be Bound” of the Tender Form is not completed in the manner described in Clause 7.7 above or submitted with the Tender before the Tender Closing Time.

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

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

7.9 Tenderers should tick the checklist on “Important Reminders for Tenderers” attached at the front of this Tender Documents and ensure all the necessary documents are completed and submitted.

8. **Submission of Tender**

8.1 **Two-Envelope System**

A two-envelope system shall be adopted for this tender exercise. Regardless of whether Paper-based Tendering or Electronic Tendering is used, the Tenderer shall submit its Tender in two (2) SEPARATE proposals, one as to the Technical Proposal and another as to the Price Proposal as follows:

(a) **Paper-based Tendering**

- (i) A Tender submitted through Paper-based Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part 4 “Offer to be Bound” of the Tender Form is signed in the following applicable manner:

- (1) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship),

or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;

- (2) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
 - (3) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.
- (ii) Documents relating to the **price information** in triplicate (i.e. the original and two (2) copies of **Contract Schedule 1 – Price Proposal**) shall be enclosed in a sealed envelope clearly marked “**Envelope A**” and “**Tender Ref.: AFCD/TTg/01/25 – Tender for the Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park – Price Proposal**”; and
 - (iii) Documents relating to the **technical information** in triplicate (i.e. the original and two (2) copies of all other remaining information, the duly signed “Offer to be Bound”, forms, Contract Schedules and supporting documents required by these Tender Documents but **without any indication on the price information**) shall be enclosed in another sealed envelope clearly marked “**Envelope B**” and “**Tender Ref.: AFCD/TTg/01/25 – Tender for the Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park – Technical Proposal**”.
 - (iv) The Tender comprising both Envelope A and Envelope B shall be enclosed into one single large sealed envelope (**Envelope C**) clearly marked “**Tender Ref.: AFCD/TTg/01/25 – Tender for the Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park**” without bearing any reference to the identity of the Tender, and addressed to the Chairman, Tender Opening Committee, Government of Logistics Department and be deposited in the Government Logistics Department Tender Box situated at the lift lobby on Ground Floor, North Point Government Offices, 333 Java Road,

North Point, Hong Kong before the Tender Closing Time. The envelopes must not bear any indication which may relate them to a particular Tenderer. Late Tender or Tender not deposited in the Specified Tender Box will not be accepted.

(b) Electronic Tendering

- (i) The technical information and price information shall be submitted as two (2) separate attachment files in accordance with the manner specified in Clauses 7.3(b) above and 8.2(b)(ii) below, and using the file names as specified below:

(1) Technical Proposal – any file names except “envelope2”; and

(2) Price Proposal – the file name must be “envelope2”

- (ii) A Tender submitted through Electronic Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if it is submitted in any one of the following ways:

- (1) submission of the Tender via the e-Tender Box through the use of an Identification Code; or
- (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate which is issued in its name as appearing in the applicable document mentioned in Clause 7.7(a) or (b) or (c) above; otherwise the Tender will not be considered further. In the case that the Tenderer is a partnership, the Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will not be considered further.

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

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

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 7.3(b) or 7.5(a) above before the Tender Closing Time, the Tender will **not** be considered further and its Tenderer will be notified of such.

- (iv) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of a Tenderer's digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.
- (v) A Tender will **not** be considered further if the digital certificate used by a Tenderer for submission of Tender via the e-Tender Box is found invalid (i.e. expired, revoked, or it is not a digital certificate recognised in the e-Tender Box for submission of Tenders) upon verification.

8.2 Tender Closing Time

- (a) (i) Paper-based Tendering

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

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Time. Save as otherwise provided for in the Tender Documents, a Tender will **not** be considered if the relevant proposal, document or information as described in Clause 7.3(b) or 7.5(a) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.

- (b) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 0900 and 1200 hours on the date specified in the “Lodging of Tender” section of the Tender Form, the Tender Closing Time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be extended to 1200 hours on the next working day on which no Tropical Cyclone Warning Signal No. 8 or above, or Black Rainstorm Warning Signal or “extreme conditions” is/are hoisted or in force.
- (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 hours on the Tender Closing Date, the Government will announce extension of the Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended Tender Closing Time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- (d) The Government reserves the right to extend at its sole discretion the Tender Closing Date and the Tender Closing Time at any time and from time to time.

- 8.3 The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Tender submission submitted and/or deposited by Tenderers in the Specified Tender Box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following any event which

results in such loss, destruction or damage, the Government will announce any arrangements concerning Tender submission as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

- 8.4 If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e-Tender Box as set out in or referred to in the e-Tender Box.

8.5 Modification of Tender

- (a) Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
- (b) Paper-based Tendering
In case of modification to the submitted Tender, any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be initialled by the Tenderer in manuscript.
- (c) Electronic Tendering
In case of modification to the submitted Tender, the Tenderer shall submit either a complete set of the revised Tender superseding the original Tender, or just the revisions to the original Tender. Either way, this shall be stated clearly in the submission.

- 8.6 Apart from Part 4 “Offer to be Bound” of the Tender Form (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Clause 7.3 (a)(ii) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Clause 8.6(a)(ii) below to be submitted as part of the Tender,

- (a) in the case of Paper-based Tendering, (i) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Clause 8.1(a)(i) above; (ii) in the case of any certificate which is required to be issued by a specified body or a recognised certification body (if

applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (iii) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (i) or (ii) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may **not** be considered further if the certified true copy is not provided; and

- (b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 8.6(a)(i) or (ii) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. The Tender may **not** be considered further if the certified true copy (hardcopy) is not provided.
- (c) Nothing in this Clause 8 shall limit the Government’s absolute right to determine or to request any other information/supporting documents in connection with or arising out of this Invitation to Tender.

9. Company/Business Organisation Status

9.1 A Tenderer must provide the information/documents as required in **Appendix B** to these Terms of Tender on information and status of Tenderer.

- (a) name and principal place of business of the Tenderer;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the Tenderer and their percentage of ownership;
- (d) names of the following:
 - (i) managing director and other directors;
 - (ii) partners; or
 - (iii) sole proprietor;

- (e) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance; or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (f) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance;
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance, a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance;
- (h) place and date of its incorporation or formation;
- (i) business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) notwithstanding the deeming provision specified in Clause 8.1(a)(i) and 8.1(b)(ii) of the Terms of Tender, a Tenderer shall provide a certified extract of the Tenderer's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited

partnership) (as the case may be). In any of the aforesaid applicable situations, the name of the person authorised to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification;;

- (k) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing sub-paragraphs of this Clause 9.1 may not apply and may not be available. Regardless of the mode of submission of its Tender, the Government reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved; and
- (l) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

9.2 If a Tenderer is incorporated, formed or established outside Hong Kong, a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government may be requested by the Government. The legal opinion, if required, should be made available upon request during the Tender Validity Period. Upon such request, the Tenderer shall provide such legal opinion covering the following issues and any other issues as may be required by the Government:

- (a) the Tenderer is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract. By "validly existing and in good standing", it is meant that no event mentioned in any of the Clauses 25.1(a) to (j) of the Conditions of Contract or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer;
- (b) the Tenderer has the full power, authority and legal capacity to:

- (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder
- (c) the proposed Contract with the Government will, upon its formation pursuant to Clause 12 below, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms;
- (d) the submission of its Tender and the performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and

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

9.3 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer and acceptable to the Government on any other matters arising from its Tender. Where the opinion on the question specified in Clause 9.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Clause 9.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer (“additional opinion on arbitration”). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that Clause 49.2 of the Conditions of Contract shall be replaced by the arbitration clause in Clause 9.4 below.

9.4 Where the opinion on the question specified in Clause 9.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in Clause 9.3 above, Clause 49.2 of the Conditions of Contract shall be deemed deleted and replaced by the following: “Any dispute arising from the Contract shall not be adjudicated by the courts of Hong Kong but shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Clause

26.2 below”.

10. Tender Evaluation

A two-envelope approach with a technical to price weighing of 50:50 will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. The Government will use the Marking Scheme as set out in **Appendix A** to these Terms of Tender to assess the Tenders.

11. Basis of Acceptance

11.1 All Tenders will be evaluated on an overall basis by taking into account all offered Services in the whole Contract Area specified in the Service Specifications in accordance with Clause 12.1 below. A Tender with only partial offers will result in the Tender **not** being considered further.

11.2 Without prejudice to and in addition to the provisions of these terms and conditions, the Government will award the Contract to the Tenderer who meets the following criteria:

- (a) the Government is of the opinion that the Tenderer is fully capable of undertaking the Contract; and
- (b) the Government considers that, in terms of the evaluation criteria specified in the Tender Documents, the tender is or appears to be the most advantageous one to the Government.

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

12. Award of Contract

12.1 Subject to the other provisions of the Tender Documents, the Government will normally award the Contract to the Tenderer which the Government has determined to be capable of fulfilling the terms of the Contract and complies with the following evaluation criteria:

- (a) the Tenderer's Technical Proposal and Price Proposal have respectively passed the completeness check,

- (b) the Tenderer and its Technical Proposal conform with all the essential requirements stipulated in the Tender Documents (if any);
- (c) the Tenderer has not been disqualified (or having its Tender not being considered further) for failing to comply with any other requirements set out in the Tender Documents, and
- (d) the Tenderer's Technical Proposal and Price Proposal have attained the highest combined score amongst all the Tenders which fulfil the evaluation criteria as specified in (a) to (c) above based on the Marking Scheme.

The foregoing evaluation criteria (a) to (d) (as further elaborated in the remaining paragraphs of this Clause 12) shall be deemed to be incorporated into the Marking Scheme and in the event of any inconsistency, the foregoing shall prevail.

- 12.2 The term "completeness check" referred to in Clause 12.1 above shall mean the checking of (a) whether or not all proposals, documents and information which are, as per provisions in the Tender Documents, required to be submitted before the Tender Closing Time (and failing which the Tender will not be considered further), have been so submitted; and (b) whether or not those which are, as per the provisions in the Tender Documents, required to be submitted before the Tender Closing Time or upon subsequent request (and failing which the Tender will not be considered further), have been so submitted before the Tender Closing Time, or upon such request if a subsequent request has indeed been made by the Government.
- 12.3 Regardless of the applicable requirement as mentioned in Clause 12.1 above, each Tenderer acknowledges and agrees that the Government may elect at its sole option to accept all or any part of the Tenderer's Tender.
- 12.4 Subject to the other provisions of the Tender Documents, if two (2) or more Tenders achieve the same highest combined technical and price score, the Government will normally award the Contract to the Tenderer whose Tender obtains the highest technical score.
- 12.5 Notwithstanding anything herein to the contrary, the Government is not bound to accept the Tender with the lowest price offer or the Tender with the highest combined score or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.

12.6 The Government will issue to the recommended Tenderer a letter of acceptance (the “Letter of Conditional Acceptance”) containing the following conditions precedent either by post or facsimile transmission to the successful Tenderer’s address or facsimile number (as the case may be) specified in the **Appendix B**:

- (a) the Government having completed its check to confirm that the recommended Tenderer not being debarred up to the date of the Letter of Conditional Acceptance due to (i) conviction of any of the Relevant Offences in Clause 3.2.1 above or (ii) accumulation of three (3) or more Demerit Points in Clause 3.2.2 above;
- (b) delivery of the Contract Deposit to the Government pursuant to Clause 15 below; and
- (c) other conditions precedent as the Government may specify therein.

12.7 Upon issuance of the Letter of Conditional Acceptance, unless the expiry date of the Tender Validity Period of the Tender of the successful Tenderer is a date which is one hundred and fifty (150) days or more after the date of the Letter of Conditional Acceptance, such expiry date must be automatically extended to the date which is one hundred and fifty (150) days from the date of the Letter of Conditional Acceptance.

12.8 For the avoidance of doubt, the subsequent issuance of the duplicate copy of the Contract with Part 5 (Memorandum of Acceptance) of Tender Form duly completed is entirely a matter of procedural formality. Subject to the fulfillment of the conditions precedent as mentioned in the Letter of Conditional Acceptance by the Tenderer to the satisfaction of the Government, a binding Contract would be deemed to have been constituted between the Government and the successful Tenderer on the Commencement Date as specified in Clause 1.1 of the Conditions of Contract.

12.9 Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.

13. Prices Quoted

13.1 Each Tenderer shall ensure that all prices and other proposals offered in its Tender are accurate and complete before submitting its Tender. The Tenderer shall be

bound by all prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment of its Tender after the Tender Closing Time on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Clause 16 of the Terms of Tender, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Time) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.

13.2 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the price(s) for Services in the Price Proposal in Hong Kong dollars. If accepted by the Government, the quoted price(s) shall remain valid and binding throughout the Contract Period. The quotations shall be subject to the following deeming provisions:

- (a) The prices quoted by the Tenderer for the Services shall be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for such Services or concerning or in relation to such Services including without limitation, the Accepted Innovative Suggestions in relation to such Services; and where the price(s) are payable recurrently over each month, then the foregoing shall apply to the price(s) for each such month; or
- (b) where an Accepted Innovative Suggestion does not concern any Services, the Total Amount payable over the entire Contract Period to be calculated only based on the price(s) for the Services procured under the Contract shall include and be deemed to include all charges payable for such Accepted Innovative Suggestion. No separate amount shall be payable for any Accepted Innovative Suggestion.

13.3 Prices quoted by a Tenderer shall only be shown in the **Contract Schedule 1 - Price Proposal**. In accordance with the deeming provisions as set out in Paragraphs 13.2(a) and (b) above, the Tenderer shall not submit any separate price

quotation in relation to any item covered by such deeming provisions including any innovative suggestions where it is not expressly asked to do so in the Price Proposal. Any separate price quotation submitted in contravention of the aforesaid restriction shall be disregarded and will not form part of the Contract, or otherwise the Tender will be disqualified.

13.4 Payment to a successful Tenderer from a place outside Hong Kong and does not have a bank account in Hong Kong will be made by telegraphic transfer. Unless otherwise specified and agreed, payment under the Contract will be made direct to the successful Tenderer's bank account as stated in Section 7 of **Appendix B** to these Terms of Tender.

13.5 Without prejudice to the generality of the terms and conditions of these Tender Documents, the Government may require a Tenderer who, in the opinion of the Government, has submitted unreasonably low price, to justify and demonstrate to the reasonable satisfaction of the Government that it is capable of carrying out and completing the Contract. Failing to justify and demonstrate to the Government's satisfaction would entitle the Government not to consider the Tender further without having the need to give any reason(s) for not considering the Tender.

14. Financial Vetting

14.1 If the Total Amount of a Tender exceeds HK\$15 million, the Tenderer has to demonstrate its financial capability before it can be considered for the award of the Contract. For this purpose, the Tenderer is required to submit the following documents for financial vetting:

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
 - (i) The audited accounts must be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance.
 - (ii) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Submission Date.

- (iii) The audited accounts must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income statement), statement of changes in equity, statement of cash flows and notes to the accounts.
- (iv) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by the local law of the place of the company's establishment.
- (v) If any such accounts are in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided.
- (vi) If the Tenderer is a joint venture or partnership, audited accounts for each member of the joint venture or partnership must be submitted if the members are incorporated bodies.

Remarks: Unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required, or the Tenderer is a newly established business where the first accounts are not yet available. For unincorporated businesses, tax records such as profits tax assessment issued by the Inland Revenue Department for the past three (3) financial years (if available) shall be provided. The unaudited accounts and tax records must be certified by the sole proprietor, partners or directors of the Tenderer, certified public accountants or other accountants acceptable to the Government.

- (b) Management accounts with a period ending not more than three (3) months before the Tender Submission Date if this has not been covered by the latest audited accounts. The accounts shall be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (i) the sole proprietor, partners or a director of the Tenderer, or (ii) certified public accountants or other accountants acceptable to the Government as mentioned in Clause 14.1(a)(iv) above;
- (c) Projected statement of profit or loss and other comprehensive income and statements of cash flows of the Contract for each contract year and the pre-operating period (if applicable) and, if possible, those of the Tenderer during the Contract Period, setting out the revenue, details of operating

expenses, capital expenditure including the initial investments and the sources of finance, and other particulars showing how the Tenderer will perform the Contract. The projected accounts and statements must comply with the following requirements:

- (i) For a company, they should be certified by a director or company's chief executive secretary. For a joint venture or partnership, separate certification from each member of the joint venture or partnership is required.
 - (ii) The assumptions used in preparing the projections shall be reasonable and must be clearly stated. All the supporting schedules and detailed calculations shall also be provided.
 - (iii) The assumptions by the Government included in the Tender Documents shall be reflected in the Tenderer's projections.
- (d) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
- (e) Copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable; and
- (f) Written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable.

14.2 Tenderers shall upon the request in writing by the Government provide the documents mentioned in Clause 14.1 above and any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract within the time stipulated in the written request by the Government.

14.3 If the successful Tenderer has passed the financial assessment, it shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong dollars in an amount equivalent to two percent (2%) of the

Total Amount in accordance with Clause 15.2(a) below.

- 14.4 If the successful Tenderer fails in the financial assessment, or it is a newly established company, or it is unable to submit adequate information for conducting a meaningful financial assessment, the Tenderer shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong dollars in an amount equivalent to five percent (5%) or the percentage specified in the Terms of Tender, if any, whichever is the higher, of the Total Amount in accordance with Clause 15.2(b) below.

15. Contract Deposit

- 15.1 If the Total Amount payable by the Government to the successful Tenderer exceeds HK\$1.36 million but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government within twenty-one (21) days from the date of Letter of Conditional Acceptance or at such other time as shall be directed by the Government an amount equivalent to two percent (2%) of the Total Amount.
- 15.2 If the Total Amount payable by the Government to the successful Tenderer exceeds HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government, at such time as shall be directed by the Government an amount equivalent to:
- (a) two percent (2%) of the Total Amount (if it passes the financial vetting); or
 - (b) five percent (5%) of the Total Amount (if it fails the financial vetting or in cases where the financial information available is inadequate for a meaningful assessment of the Tenderer's financial capability to fulfil the Contract requirements to be conducted).
- 15.3 The successful Tenderer shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. Each Tenderer should state clearly in Section 8 of **Appendix B** to these Terms of Tender the method of providing the Contract Deposit. If the successful Tenderer fails to do so, it will be regarded to have undertaken to pay the Contract Deposit to the Government in cash.
- 15.4 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:

- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance and acceptable to the Government;
- (b) unless otherwise agreed by the Government, it must be on the terms set out in **Appendix E** to these Terms of Tender; and any authorisation used by the bank for the execution of the banker's guarantee shall be acceptable to the Government; and
- (c) the banker's guarantee shall come into immediate effect upon execution as the date on which the banker's guarantee is to take effect. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.

15.5 The Contract Deposit, whether paid by way of cash (if any is remaining) or banker's guarantee shall be returned to the Contractor or released in accordance with the Contract.

16. Request for Information

16.1 In the event that the Government determines that:

- (a) clarification in relation to any Tender is necessary; or
- (b) a document or a piece of information, other than those specified in Clauses 7.5(a) and 7.5 (b) above, is missing from any Tender,

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

16.2 Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to Clause 16.1 above will be ignored for the purposes of the tender evaluation or will entitle (but not oblige) the

Government not to consider the Tender further.

16.3 (Applicable to Paper-based Tendering) For the avoidance of doubt, if the original signature is missing from Part 4 “Offer to be Bound” of the Tender Form or the entire Part 4 “Offer to be Bound” is missing from the Tender, the Tenderer will be disqualified and no request for resubmission will be made. Otherwise, for any other missing information to be completed in Part 4 “Offer to be Bound” or in relation to any ambiguity (including in relation to the signature), the Government may, but is not obliged to, seek clarification from the Tenderer under Clause 16.1(a) above. In the case that the date is missing from the Offer to be Bound, it shall be deemed that the date shall be the Tender Closing Date and no request for clarification will be made.

17. Tenderer’s Enquiries

17.1 For any enquiries from a Tenderer concerning the submission of tender procedures and technical issues such as Service Specifications, Contract Schedules, tender briefing session, etc. up to the date of lodging its Tender with the Government, please contact the Field Officer/Contract Management (FO/CM) of AFCD by telephone at (852) 2150 7174 or by fax at (852) 2317 0482 no later than three (3) working days before the Tender Closing Date. The Government officers may at any time request any Tenderer to make enquiries in writing.

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

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

18. Tenders to Remain Open

18.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By

submitting a Tender, the Tenderer shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.

18.2 It is an essential requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of one hundred and fifty (150) days after the Tender Closing Date (“Tender Validity Period”).

18.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 18.2 above, or if it rejects the Tender Validity Period prescribed in Clause 18.2 above, its Tender will **not** be further considered.

18.4 If a Tenderer withdraws its Tender before expiry of the Tender Validity Period, without prejudice to other rights and claims of the Government, due notice will be taken of the Tenderer’s action which may prejudice its future standing as a Government contractor.

19. Documents of Unsuccessful Tenderers

The Government may destroy all documents submitted by unsuccessful Tenderers three (3) years after the Contract has been constituted under Clause 12.9 above.

20. Complaints about Tendering Process or Contract Award

20.1 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 AFCD who will personally examine the complaint and refer it to the approving authority or relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

20.2 This Tender is covered by the WTO GPA and the provisions of the WTO GPA will apply to this tender exercise.

20.3 Tenderers are requested to note that a Review Body on Bid Challenges under the WTO GPA (“Review Body”) has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA. The relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body which are available for inspection at the Secretariat of the Review

Body located at the Trade and Industry Department. They may also be sent to the interested parties upon request to the Secretariat of the Review Body. Where the Invitation to Tender is subject to WTO GPA, and that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may, within ten (10) working days after it knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless the Tenderer is encouraged to seek resolution of its complaint in consultation with the AFCD before lodging a complaint to the Review Body. In such instances, the AFCD shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body. The Review Body may receive and consider a late challenge but a challenge will not be considered if it is filed later than thirty (30) working days after the basis of the challenge is known or reasonably should have been known to the Tenderer.

21. Relationship of the Parties

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

22. Personal Data Provided

- 22.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from the Invitation to Tender, and the disclosure pursuant to Clause 26 below).
- 22.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 22.1 above, or the disclosure pursuant to Clause 26 below.
- 22.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the PD(P)O. The right of access includes the right to obtain a copy of the

individual's personal data provided in the Tender.

- 22.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the procuring department.

23. Warranty against Collusion

- 23.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to Clause 23.2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance. Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 23.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in **Appendix F** to these Terms of Tender) as part of its Tender.
- 23.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Clause 23.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 23.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Tenderer's Tender;
 - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under Clause 25 of the Conditions of Contract.
- 23.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 23.1 above or in the Non-collusive

Tendering Certificate submitted by it under Clause 23.2 above.

23.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in Clause 23.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 23.2 above may prejudice its future standing as a Government contractor or service provider.

23.6 The rights of the Government under Clause 23.3 to 23.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

24. Warning against Bribery

24.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance. Any such offence committed by a Tenderer or any of its officers (including directors) or employees will render its Tender null and void.

24.2 The successful Tenderer shall inform its officers, Employees (whether permanent or temporary) who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

25. New Information

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

26. Consent to Disclosure

26.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer,

- (a) a brief description of the Services provided or to be provided by the successful Tenderer;
- (b) the Total Amount and any other fees, cost and expense payable to the successful Tenderer pursuant to the Contract;

- (c) the engagement by the Government of the successful Tenderer under the Contract and the name and address of the successful Tenderer; and
- (d) the date of award of the Contract.

26.2 Nothing in Clause 26.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not the information is specified in Clause 26.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Clause 26.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, a request made by the Review Body mentioned in Clause 20.3 above, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 26.1 above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

27. Contractor's Performance Monitoring

If a Tenderer is awarded the Contract, its subsequent performance will be monitored and

may be taken into account when its future offers for other tenders or quotations exercises are evaluated.

28. Cancellation of the Invitation to Tender Exercise

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

29. Cost of Tender

Each Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender and the doing of all acts required for the purpose of this Invitation to Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the Government and (b) site visits or surveys made by the Tenderer, whether before, at or after the Tender Closing Time.

30. Environmental Friendly Measures

30.1 Tenderers are encouraged to minimise the impact of their activities on the environment and to observe the general guidelines in **Contract Schedule 6** Green Guidelines.

30.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:

- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
- (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
- (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

31. Tenderer's Commitment

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

32. Tender Briefing Session

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

Date:	14 October 2024 (Monday)
Time:	4:00 p.m.
Venue:	Room 701A, 7/F, Cheung Sha Wan Government Office 303 Cheung Sha Wan Road, Kowloon

32.2 Tenderers who wishes to attend a briefing session is required to complete the reply slip attached at **Appendix F** to the Terms of Tender and send it to Field Officer/Contract Management of AFCD to register via email: fo_cm@afcd.gov.hk before noon of 10 October 2024 (Thursday).

32.3 In case a Black Rainstorm Warning or Tropical Cyclone Warning Signal No.8 or above is issued or Black Rainstorm Warning Signal or “Extreme Conditions” announced by the Government is/are in force at or after 2:00 p.m. (Hong Kong time) on 14 October 2024, the briefing session will be cancelled and AFCD will notify the arrangement of the briefing session to the Tenderers who have submitted the reply slip.

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

33. Supplementary Information/Tender Addenda

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

34. The Attachments

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

35. Negotiations

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

36. Counter-Proposals

36.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract which shall mean all provisions in all Tender Documents (excluding only (but subject to (c) below) (i) those provisions which are not identified as essential requirements in the Service Specifications (if any) and (ii) the Conditions of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Terms of Tender.

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

36.3 If a Tenderer fails to comply with Clause 36.1 or 36.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.

36.4 Counter-proposal to other provisions of the Tender Documents not specified in Clause 36.1 or 36.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Clause 36.1 or 36.2 above

("Counter-Proposals"), the Counter-Proposals shall be submitted in the following manner:

- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part 4 "Offer to be Bound" of the Tender Form; or
 - (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
- (b) the original provisions to which the Counter-Proposals relate shall be fully recited before the proposed alteration or deletion;
- (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
- (d) if it is an addition, the additional provisions shall be underlined;
- (e) words to be deleted shall be crossed out by a single line only; and
- (f) an explanation shall be given below the alteration or deletion and put in square brackets "[]".

36.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 36.4 above will not be considered by the Government and will not be regarded as forming part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter Proposals relate and the Government will continue to consider the Tenderer's Tender on this basis.

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

eventually awarded to it.

37. Government Discretion

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

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Time or an order is made or a resolution is passed for the winding up of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body has been made that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person ("IPR infringement") (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government has grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in Clauses 37.6 and 37.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government

contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied ("Contract Default(s)"); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;

- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions has or have been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (g) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award.

The grounds specified in Clause 37.1(a) to 37.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

37.2 For the purposes of Clause 37.1 above, each Tenderer shall provide at the time of

submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 37.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 37.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 37.1(d) above;
- (d) details of conviction as mentioned in Clause 37.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 37.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 37.1(g) above.

If none of the events as mentioned in Clauses 37.1(a) to 37.1(g) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing Section 6 of **Appendix B** to the Terms of Tender at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 37.3 below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 37.3 In addition to the information mentioned in Clause 37.2 above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 37.1 above.

- 37.4 If the Tenderer fails to comply with the request made by the Government pursuant to Clause 37.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 16 above. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 37.1(b) above.
- 37.5 In providing the information required under Clause 37.2 and 37.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 37.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 37.6 If the Tenderer is a company, the expression “related person” of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer (“majority shareholder”);
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

- 37.7 If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of

both the natural parent and of any step parent; or

- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

37.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable sub-clause of Clause 37.1 above include persons who were in such capacity at such time of the event referred to in that sub-clause.

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

38. Licence to use the materials submitted by Tenderers

A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed in accordance with Clause 19 above. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

39. Communication with the Government

- 39.1 Without prejudice to the requirements set out in Clause 12 above concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing or formally documented in writing and sent or delivered to the other Party in the manner provided in Clause 35 of the Conditions of Contract at the address and facsimile number or email address specified in Section 1 of **Appendix B** to the Terms of Tender, save that in the case of lodging any enquiries under Clause 17.1 above, the Tenderer shall lodge such enquiries by facsimile and telephone. The Tenderer shall complete its postal address, facsimile number and email address in **Appendix B** to the Terms of Tender and should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- 39.2 All communications in relation to the Invitation to Tender shall be conducted directly between the Government Representative and the Tenderers unless the Government elects to contact any customer or client of the Tenderer directly.

Appendix A

**Tender Evaluation
Procedures, Criteria and Marking Scheme**

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

Stage 1 – Completeness Check on the Tender Offers Submitted

All Tenders received will be checked on whether all the documents and information required in Clause 7.5(a) of the Terms of Tender have been submitted. Failure to submit any of the required documents before the Tender Closing Time may render a Tender invalid and will not be considered further.

Stage 2 – Compliance with Essential Requirement

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

Stage 3 – Technical Assessment

The maximum total technical marks are 100 and are distributed among seven (7) Assessment Criteria. There is no passing mark set for the total marks scored in the technical assessment. The technical assessment comprises three (3) parts: Parts A, B and C. The Tenderers who have passed the technical assessment would be awarded with a weighted technical score calculated by the formula in Note 1(c).

The submission for Part A Execution Plan, excluding related annexes and documentary proof, **shall not be more than [100] pages in A4 size paper for text** (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit and/or not complying with the specified requirements on margin and/or font size will be considered in the tender evaluation but marks will be deducted from the total technical marks as follows-

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

Appendix A**Stage 4 – Price Assessment**

The price information of Tenders that have passed “Stage 3 – Technical Assessment” will be assessed according to the formula stated under Part (II) below.

Stage 5 – Calculation of Combined Score

The combined score of the Tenders which have passed the “Stage 3 – Technical Assessment” and the “Stage 4 – Price Assessment” will be calculated by the formula stated in Part (III) below. Subject to other provisions in these Terms of Tender, the Tender that has achieved the highest combined score will normally be recommended for acceptance. If two (2) or more Tenders obtain the same highest combined score, the Tender which obtains the highest weighted technical score will be recommended for acceptance.

Appendix A

I. Technical Assessment

Assessment Criteria		Maximum marks	Unit mark (M)	Standard score (S)						Marks scored	Basis of assessment
				(See Note 1)						(M x S)	
				5	4	3	2	1	0		
Part A – Execution Plan											
1	Management Plan	20	4								See Notes 2 and 2A
2	Work Plan	20	4								See Notes 2 and 2B
3	Innovative Suggestions										
	(a) Pro-innovation Proposals – directly relevant to the Services	8	4	N.A.							See Notes 3 and 3A
	(b) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services	4	2	N.A.							See Notes 3 and 3B
Part B – Tenderer’s Experience											
4	Tenderer’s experience in providing of outdoor cleansing services in the 8-year period immediately before the Original Tender Closing Date	15	5	N.A.							See Note 4
Part C –Wages, Working Hours & Record of Demerit Point(s)											
5	Proposed monthly wage of Cleaners for this Contract	26	N.A.								See Note 5
6	Proposed maximum allowable working hours per day of Cleaners	2	2	N.A.							See Note 6
7	Record of Demerit Points under all Government contracts	5	2.5	N.A.							See Note 7
Total Technical Mark			100								

Appendix A**Note 1**

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

For Assessment Criteria (A)(1) and (A)(2)

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

For Assessment Criteria (A)(3) and (C)(7)

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

For Assessment Criterion (B)(4)

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

For Assessment Criterion (C)(5)

See Note 5.

For Assessment Criterion (C)(6)

Standard score of 1 or 0 will be awarded.

- (b) The total technical mark is 100.

- (c) A tender which has passed Stage 3 assessment shall be considered as a "conforming tender". The calculation of weighted technical score for a conforming tender is:

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

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

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

Tenderer A gains the highest total technical mark of 80;

Tenderer B gains a total technical mark of 65;

Tenderer C gains a total technical mark of 50.

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

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

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

Appendix A

$$\text{Tenderer C} = 50 \times 50/80 = 31.25$$

Note 2: Management Plan and Work Plan

(a) Standard scores will be given to Management Plan and Work Plan in accordance with the following six-grade approach:

- 5 – The proposed plan is **practicable** with **detailed information covering all items** as well as proposals that could **effectively enhance/improve the quality/performance** of the Services **on at least two (2) of the items** of the respective plan as listed in Note 2A / Note 2B below.
- 4 – The proposed plan is **practicable** with **detailed information covering all items listed** in Note 2A / Note 2B below.
- 3 – The proposed plan is **practicable** with **detailed information covering three (3) items listed** in Note 2A / Note 2B below .
- 2 – The proposed plan is **practicable** with **detailed information covering two (2) items listed** in Note 2A / Note 2B below.
- 1 – The proposed plan is **practicable** and provides **brief information for at least two (2) items listed** in Note 2A / Note 2B below.
- 0 – The proposed plan is **impracticable for all items or** provide information for **only one (1) practicable item listed** in Note 2A / Note 2B below.

(b) For the avoidance of doubt, “proposals that could effectively enhance/improve the quality/performance of the Services” to be assessed under Assessment Criteria (A)(1) and (A)(2) will normally not alter the existing or conventional mode of service delivery, e.g. shortening the response time when the level of cleanliness fails to meet the requirements set out in the contract/increasing the percentage of time meeting the level of cleanliness required in the contract.

(c) All practical information included in the proposed plans submitted by the successful Tenderer under Assessment Criteria (A)1 and (A)2 and accepted by the Government shall form part of the Contract.

Note 2A: for Assessment Criterion (A)(1) – Management Plan

The Management Plan shall cover the items set out in Part A of the **Contract Schedule 4**.

Note 2B: for Assessment Criterion (A)(2) – Work Plan

The Work Plan shall cover the items set out in Part B of the **Contract Schedule 4**.

Appendix A**Note 3: for Assessment Criterion (A)(3) – Innovative Suggestions**

Tenderers who intend to propose Pro-innovation Proposals and/or ESG Proposals shall list the suggestions by filling in the tables in **Contract Schedule 5** to facilitate tender evaluation. The Pro-innovation Proposals / ESG Proposals proposed by the Tenderers should be able to:

- (i) improve the delivery of the Services as compared with how the Services were previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general (Pro-innovation Proposals); or
- (ii) improve environmental protection, sustainability or governance or social responsibility, which may but need not be directly relevant to the Services, but can bring about positive values/benefits to the Government or the public at large (ESG Proposals).

Note 3A. Pro-innovation Proposals – directly relevant to the Services

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

- 2 – **More than one (1) effective and practicable** Pro-innovation Proposals are proposed covering any of the items as required in (d) of the Note below.
 - 1 – **One (1) effective and practicable** Pro-innovation Proposal is proposed covering any of the items as required in (d) of the Note below.
 - 0 – **No** effective or practicable Pro-innovation Proposal is proposed
- (a) Marks will be given if the proposed Pro-innovation Proposals are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general. Pro-innovation Proposals are technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the Services outcome. The emphasis is on output-based Services delivery of which the contributions should be visible, and preferably be quantifiable and measurable.
 - (b) Paragraph (b) of Note 2 above is also applicable to this Note.
 - (c) The Pro-innovation Proposals to be assessed under Assessment Criterion (A)(3)(a) are suggestions that are **not** featured in the existing or conventional mode of service delivery.
 - (d) Tenderers may propose Pro-innovation Proposals involving application/adoption of new technology/ inventions and/or innovative application of existing/matured technology that may enhance Services delivery while contributing to the development of “Smart

Appendix A

City” and innovation and technology development. Pro-innovation Proposals may not necessarily be technology-related, but should bring all or some or any one of the improvements/positive values/benefits in terms of the following:

- (i) enhance Services delivery in cleansing services e.g. automatic cleansing equipment and hygiene sensing devices; and/or
 - (ii) enhance Services delivery in property and facility management e.g. smart bulletin boards and self-developed mobile app, etc.
- (e) Mark will **not** be given to Pro-innovation Proposal / ESG Proposal which (i) is related to labour benefit measures scored under the Assessment Criterion “C. Wages, Working Hours & Record of Demerit Point(s)”; (ii) the provisions and requirements are already set out in the Contract; (iii) a Tenderer will neither be capable of nor responsible for implementation; (iv) a Tenderer only proposes a concept without sufficient details; or (v) do not contain detailed information to demonstrate their practicability and effectiveness. Mark will also **not** be given for Assessment Criterion (A)(3) if the tables provided in **Contract Schedule 5** are not completed or no indication of using separate sheet(s) for the Pro-innovation Proposals and ESG Proposals proposed in the tables before the Tender Closing Time.
- (f) A suggestion that scores marks under Pro-innovation Proposals will not earn marks again under ESG Proposals and vice versa. In case a Tenderer specified the type of a suggestion under both Pro-innovation Proposals and ESG Proposals and the Tender Assessment Panel (“TAP”) considers that the same suggestion could earn marks under Pro-innovation Proposals and ESG Proposals, it will be taken as scoring marks under Pro-innovation Proposals only. Each suggestion will be counted once, irrespective of the number of improvements/positive values/benefits involved.
- (g) Tenderers should propose Pro-innovation Proposals and ESG Proposals and explain clearly with sufficient details on what improvements/positive values/benefits to which their proposed Pro-innovation Proposals and ESG Proposals can bring about as well as how they are to be implemented by filling in the details in the **Contract Schedule 5** to facilitate tender evaluation.
- (h) Apart from the Pro-innovation Proposals and ESG Proposals mentioned in (g) above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the Pro-innovation Proposals / ESG Proposals. Marks will **not** be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following:

Appendix A

- 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 Pro-innovation Proposals / ESG Proposals within five (5) working days or such other period as specified in the request. No marks will be given to the Innovation Suggestion in Assessment Criterion (A)(3) if the requested supporting documents are not provided by the deadline specified in the request or are not acceptable to the Government. All proposed Pro-innovation Proposals / ESG Proposals will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the tender assessment panel to have a better understanding of the Pro-innovation Proposals / ESG Proposals proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original tender submissions.
- (j) All practicable Pro-innovation Proposals / ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such accepted Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the contract.

Appendix A**Note 3B. ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be not directly relevant to the Services**

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

- 2 – **More than one (1)** effective and practicable ESG Proposals contributing to any of the positive values/benefits as listed in (b) of this Note below.
 - 1 – **One (1)** effective and practicable ESG Proposals contributing to any of the positive values/benefits as listed in (b) of this Note below.
 - 0 – **No** effective or practicable ESG Proposals is proposed
- (a) Marks will be given if the ESG Proposals will improve environmental protection, sustainability or governance or social responsibility, which may but need not be directly relevant to the Services, but can bring about positive values/benefits to the Government or the public at large.
- (b) ESG Proposals shall contribute to all or some or any one any of the following positive values/benefits:
- (i) environmental protection (e.g. use of electric vehicle, use of renewable energy, in the execution of the contract, etc.);
 - (ii) social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the contract, etc.); and/or
 - (iii) governance.
- (c) Sub-clauses (e) to (j) of Note 3A above are also applicable to this Note.

Note 4: for Assessment Criterion (B)(4) –Tenderer's experience

Assessment will be based on the aggregate number of years of experience in providing cleansing services to any outdoor public venues, such as recreation areas, parks or gardens in the past eight (8) years immediately before the Original Tender Closing Date.

- 3 – An aggregate of **six (6) or more 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 provide documentary proof to support its claim of experience.

Remarks:

- (a) Tenderers shall submit valid documentary proof (i.e. copy of contract(s), client

Appendix A

reference letter, etc.) showing the contract description, the contract commencement and completion dates, the contract value, the contract area and the scopes of services etc., to substantiate their claims of experience. Tenderer's experience not substantiated will not be taken into account, **and zero (0) mark** will be given for Assessment Criterion (B)(4) **if the Tenderer fails to complete the table in Section 2 of Appendix B or no indication of using separate sheet in the table in Section 2 of Appendix B before the Tender Closing Time.**

- (b) The service experience shall be cleansing services to any outdoor public venues, such as recreation areas, parks or gardens.
- (c) Local and/or outside Hong Kong experience will be counted.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) It is not necessary for a Tenderer to have continuous experience in providing cleansing services in the past eight (8) years period immediately before the Original Tender Closing Date.
- (h) For the purpose of tender assessment, the relevant experience in providing cleansing services could be gained under the same contract or different contracts through direct employment. However, a Tenderer's experience under different contracts of the same type **will not be double-counted** for those overlapping periods. A Tenderer's experience under different contracts with overlapping periods is to be counted in accordance with the following examples:

Appendix A

Contracts performed by a Tenderer	Contract period	Contract period without overlapping with the earlier contract	Number of days of experience counted in the tender evaluation
Contract A	16.4.2021 - 15.4.2023	16.4.2021 - 15.4.2023	730 days
Contract B	1.10.2022 - 31.3.2024	16.4.2023 - 31.3.2024	351 days
Contract C	1.6.2023 - 30.4.2024	1.4.2024 - 30.4.2024	30 days
		Total	1,111 days

Note 5: for Assessment Criterion (C)(5) –Proposed Monthly Wage

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

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

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

H = Highest proposed monthly wage rate for Cleaners among all conforming Tenders

S = The prevailing SMW monthly wage rate plus paid rest days for Cleaners, derived on the basis of thirty-one (31) days (i.e. twenty-seven (27) working days plus four (4) paid rest days per month), eight (8) normal hours of work per day and current minimum hourly wage rate (HK\$40.0) i.e. HK\$9,920.

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

P = HK\$12,000 H = HK\$14,500 S = HK\$ 9,920	Marks scored (Example)
	$26 \times \frac{12,000 - 9,920}{14,500 - 9,920}$ = 11.81 (Marks)

Remarks:

- (a) If H is equal to S, no marks will be given to all Tenderers.
- (b) If a Tenderer fails to submit the **Contract Schedule 2** or indicate any monthly wage or its P is less than S, the Tender will be evaluated but the respective P will be deemed to be equal to S 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 after the Tender Closing Time. If the Tenderer offers a higher monthly wage than the SMW in subsequent clarification in writing, the Tender will only be assessed on the basis that the monthly wage offered by the Tenderer is same as the SMW. However, the higher wage offered

Appendix A

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

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

Note 6: for Assessment Criterion (C)(6) – Proposed daily maximum working hours for Cleaners

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

Remark:

If a Tenderer fails to submit the **Contract Schedule 2** or fails to indicate any daily maximum working hours for all Cleaners in its Tender before the Tender Closing Time, the Tender will be evaluated but the respective working hours proposed will be deemed to be more than ten (10) hours excluding meal break for the purpose of tender evaluation. If the Tenderer offers the daily maximum working hours of ten (10) hours or less in a subsequent clarification in writing upon request by the Government Representative at any time before the tender exercise is completed, the Tender will only be assessed on the basis that the daily maximum working hours offered by the Tenderer is more than ten (10) hours. However, the smaller number of working hours offered by this Tenderer shall become binding if the Contract is subsequently awarded to this Tenderer.

Note 7: for Assessment Criterion (C)(7) – Record of Demerit Points under all Government Contracts

- (a) Where the information declared by a Tenderer in Section 5 of **Appendix B** is inconsistent with the Government's record, without prejudice to the Government's right to seek clarification from the Tenderer pursuant to Clause 16 of the Terms of Tender, the Government's record shall prevail and form the basis of the assessment.
- (b) Where a Tenderer has been a Government service contractor of Non-skilled Worker Contract within thirty-six (36) months immediately before the Tender Closing Date ("previous Government Contractor"), standard scores will be given to Assessment Criterion (C)7 in accordance with the following rule:

Appendix A

- 2 – No Demerit Points issued within thirty-six (36) months immediately before the Tender Closing Date.
 - 1 – One (1) Demerit Point issued within thirty-six (36) months immediately before the Tender Closing Date.
 - 0 – Two (2) Demerit Points issued within thirty-six (36) months immediately before the Tender Closing Date.
- (c) Where a Tenderer has not been a previous Government Contractor of Non-skilled Worker Contract, it will be given an average mark which is calculated by dividing the aggregate marks under Assessment Criterion (C)(7) of all Tenderers who have been a previous Government Contractor of Non-skilled Worker Contract by the number of such Tenderers rounded to the nearest two (2) decimal places according to the rounding method as shown in **Note 1(c)** above.
- (d) Any Demerit Point which is under appeal to the procuring department of the Government which issued the same will still be counted for the purpose of debarment and for the purpose of tender evaluation under Assessment Criterion (C)(7).

II. Price Assessment

- (a) Failure to submit a Price Proposal in the form of **Contract Schedule 1** with price information duly completed will render a Tender invalid and will not be considered further. The price assessment is based on the Total Amount of the Tenders which have passed Stage 3 assessment.
- (b) A maximum weighted price score of 50 will be allocated to the conforming Tender with the lowest Total Amount, while the weighted price score for other conforming Tenders will be calculated by the following formula-

$$\text{Weighted price score} = 50 \times \frac{\text{The lowest Total Amount among the conforming Tenders}}{\text{Total Amount of the conforming Tender being assessed}}$$

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

III. Combined Score

- (a) The combined score of a conforming Tender will be determined by the following formula-

Terms of Tender

Appendix A

Weighted Technical Score + Weighted Price Score

- (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 (2) or more Tenders obtain the same highest combined score, the Tender which obtains the highest weighted technical score will be recommended for acceptance.

Appendix B

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

Section 1 – Information of Tenderer

1.	Name of Tenderer : _____
2.	Principal place of business of the Tenderer (in address form) : _____
3.	Length of business experience (in years up to the Tender Closing Date): _____
4.	Shareholders / partners / proprietor of the Tenderer and their percentage of ownership: _____
5.	Name of the followings: managing director and other directors/ partners / sole proprietor <i>(please delete as appropriate)</i> _____
6.	Business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise: _____
7.	Place and date of its incorporation or formation: _____
8.	<div>Person authorised to sign Tender:</div> <div> <div>(a) Name: _____</div> <div>(b) Telephone no.: _____</div> </div> <div> <div>(c) Post title: _____</div> </div>
9.	<div>Enquiries (In the event of any queries relating to the offer or tender)</div> <div> <div>(a) Name: _____</div> <div>(b) Telephone no.: _____</div> </div> <div> <div>(c) Post title: _____</div> <div>(d) Fax no: _____</div> </div> <div> <div>(e) Email address: _____</div> </div>
10.	<div>Employee's Compensation Insurance Policy</div> <div> <div>Name of Insurer: _____</div> <div>Policy no.: _____</div> <div>Expiry date: _____</div> </div>

Name of Tenderer: _____

Terms of Tender

Appendix B

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

11.	(If the Tenderer is a company) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance.
12.	(if the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents issued by the authority of the place of incorporation of the Tenderer
13.	A certified extract of the Tenderer's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of limited partnership) (as the case may be). In any of the aforesaid applicable situations, the name of the person authorised to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification
14.	A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance; or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Tenderer.
15.	Copy of Certificate of employer's liability insurance in respect of all its employees and other staffs

Section 2 – Tenderer's experience in provision of relevant cleansing services

[Please refer to Note 4 of Appendix A – Marking Scheme]

(a) Assessment on a Tenderer's experience as stipulated in Marking Scheme for tender evaluation will be solely based on all items specified in the table below substantiated with valid documentary proof. Tenderer shall provide copy of documentary evidence of relevant experience including but not limited to client name, contract period, contract area, place of business, areas served and description of business.

(b) Experience in the provision of cleansing services to any outdoor public venues, such as

Name of Tenderer: _____

Terms of Tender

Appendix B

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

recreation areas, parks or gardens during the eight (8) years immediately before the Original Tender Closing Date will be evaluated. Tenderers shall complete Paragraph (c) and Paragraph (d) (if applicable) below by the time subsequently stipulated by the Government.

Zero (0) mark will be given for Assessment Criterion (B)(4) **if the Tenderer fails to complete the table below or no indication of using separate sheet in the table below before the Tender Closing Time.** A Tenderer's experience under different contracts will not be double-counted for any overlapping periods. Please refer to Note 4 of **Appendix A - Marking Scheme** for details.

Details of Contract (with client's name)		Contract Period	
		Start Date	End Date
1.	<i>e.g. AFCD, Provision of Cleansing Services in Country Parks (Contract Ref: AFCD/XX/XX)</i>	<i>1.1.2021</i>	<i>31.12.2024</i>
2.			
3.			
4.			
5.			

(Use separate sheets if required)

(c) The Tenderer shall declare if any contract in the table above was terminated due to the Tenderer's default:

- * (i) NO CONTRACT in the table above has been terminated due to my/our default, or
- * (ii) The contracts mentioned in paragraph (d) below have been terminated due to my/our default.

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

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

Name of Tenderer: _____

Terms of Tender

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

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

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

- (f) The Tenderer shall declare that all information given in (e) above and any additional sheets attached hereto are accurate and complete in all material respects and not misleading. The Tenderer agree that, if any of such information is found to be inaccurate, incomplete and/or misleading, the Tender may not be considered any further.

Section 3 – Statement of compliance

A Tenderer is requested to confirm whether its offer submitted complies with the required **Service Specifications** by completing the following statement:

I / We confirm that the services offered * **are / are not** in full compliance with the required specifications.

** please delete as appropriate*

Note: Should the services offered not be in full compliance with the required specifications, Tenderers should provide details below.

<u>Clause</u>	<u>Details of non-compliance with the required specifications</u>
---------------	---

Name of Tenderer: _____

Terms of Tender

Appendix B

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

Section 4 – Statement of convictions

[Please refer to Clause 3.2.1 of the Terms of Tender]

A Tenderer hereby declares if the following person(s) has/have obtained any conviction of the Relevant Offences for a period of five (5) years immediately before 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.

Yes/No *(please delete as appropriate)*

If yes, please complete the following table:

Date of the Relevant Offence	Location of the Relevant Offence	Date of conviction	Ordinance and the Sections breached	Court penalties

(Use separate sheets if required)

AUTHORIZATION

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

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

Name and Title of the authorised Signatory of the Tenderer:

Name of Tenderer: _____

Terms of Tender

Appendix B

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

Section 5 – Tenderers’ declaration of being Government service contractor

For the purpose of assessing the marks to be awarded in connection with Assessment Criterion (C)(7), Tenderers shall declare if they have been Government service contractors of Non-skilled Worker Contract as well as whether have got demerit point in the period of **thirty-six (36) months immediately before the Tender Closing Date**. If a Tenderer fails to complete the table below or no indication of using separate sheet in the table below before the Tender Closing Time and no demerit point is found in Government’s record, such Tenderer will be considered as a Tenderer has not been a previous Government contractor of Non-skilled Worker contract.

A Tenderer shall provide information as specified in the table below **before the Tender Closing Time**. Assessment Criterion (C)(7) will be assessed on the basis of the information provided in the table below:

Contract Period	Description of Government Non-skilled Worker Contract undertaken by the Tenderer in the period of thirty-six (36) months immediately before the Tender Closing Date	Name of Government department hiring the services	No. of demerit point received
<i>For example 1.1.2022 to 31.12.2024</i>	<i>Cleansing services for XXX Recreation Areas in XXX Country Park (Contract Ref.: AFCD/ABC/2088)</i>	<i>AFCD</i>	<i>0</i>

(Use separate sheets if required)

Note:

In scoring a tender against Assessment Criterion (C)(7), Note 7 of **Appendix A - Marking Scheme** shall apply.

Name of Tenderer: _____

Terms of Tender

Appendix B

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

Section 6 – Government discretion

[Information Required under Clause 37.2 of the Terms of Tender]

☐ *(a) I/We confirm that none of the events as mentioned in Clause 37.1(a) to 37.1(g) of the Terms of Tender has ever occurred.

☐ *(b) I/We confirm that the following event(s) as mentioned in Clause 37.1(a) to 37.1(g) of the Terms of Tender has occurred:

Date	Details of the event

(Use separate sheets if required)

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

Section 7 – Details of bank account

[Please refer to Clause 13.4 of the Terms of Tender and Clause 18.5 of the Conditions of Contract.]

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

Banker's name : _____

Banker's address : _____

Account holder's name : _____

Bank account no. : _____

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

Name of Tenderer: _____

Terms of Tender

Appendix B**Working Background and Status of the Tenderer
(To be Inserted into the Technical Envelope)****Section 8 – Election of method of payment of Contract Deposit**

[Please refer to Clause 15 of the Terms of Tender and Clause 24 of the Conditions of Contract.]

If the Tender is accepted, the Tenderer shall elect, pursuant to Clause 15 of the Terms of Tender to deposit with the Government, not later than twenty-one (21) days from the Date of Tender Acceptance or at such other time as shall be directed by the Government, a sum stated in Clause 15 of the Terms of Tender as security for the due and faithful performance of the Contract -

- * (i) in cash,
- * (ii) in the form of a banker's guarantee in accordance with Clause 24 of the Conditions of Contract and Clause 15 of the Terms of Tender^{Note 1}.

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

^{Note 1}: In case the Tenderer select to pay Contract Deposit by way of a banker's guarantee, the proposed guarantor and the form and substance of the banker's guarantee shall be submitted in accordance to the terms set out in Clause 15 of the Terms of Tender.

**Section 9 – Other information which is required to be provided or disclosed in this Appendix
(if any) or otherwise any information which the Tenderer wishes to provide**

Name of Tenderer: _____

Terms of Tender

Appendix C

Certification of Heat Stroke Prevention Work Plan**(To be Inserted into Technical Envelope)***[Please refer to the details of Contract Schedule 3]*

Tender reference : _____

Invitation to Tender / Contract title : _____

Name of Tenderer : _____

I, _____ [full name of registered safety officer] (“Safety Officer”), hereby certify that the Heat Stroke Prevention Work Plan prepared and submitted by the Tenderer in respect of the above-mentioned Invitation to Tender has been checked in full compliance with the requirements set out in **Contract Schedule 3** issued by the Government in relation to the above-mentioned Invitation to Tender. Unless specified otherwise, capitalized terms used herein shall have the meaning as ascribed to them in the tender documents in respect of the Invitation to Tender.

Signature of Safety Officer : _____

Registration reference under the Labour Department : _____

Expiry date of registration under the Labour Department : _____

Date : _____

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

Note 2: Regardless of the mode the Tender is submitted (viz. via Paper-based Tendering or Electronic Tendering), this must be signed and submitted as part of the Tender before the Tender Closing Time, otherwise the Tender will not be considered further. However, if a photocopy or scanned copy of this document signed by the above Safety Officer has been submitted (and which will be the case for electronic tendering if applicable), the Government reserves the power, but not the obligation, to request the original for further verification after the Tender Closing Time. In preparing this certification, please adopt the above wording, otherwise, the Tender may not be considered further. Where any blank has not been completed (apart from the name block and signature block), the Government reserves the power, but not the obligation, to request resubmission after the Tender Closing Time.

[Please refer to Clause 15 of the Terms of Tender]

**Sample Form of
Banker's Guarantee**

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

In favour of

The Government of the Hong Kong Special Administrative Region (hereinafter called the "Government")
of the other part.

WHEREAS

(A) By an invitation to tender issued by the Government (Tender Ref: AFCD/TTg/01/25), the Government invited tenders for a contract for "Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park" ("Contract") upon the terms and conditions of the Contract.

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

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

Now this Guarantee executed as a deed witnesses as follows:

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

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

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be

[Please refer to Clause 15 of the Terms of Tender]

incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.

- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

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

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

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

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

[Please refer to Clause 15 of the Terms of Tender]

Contract for any reason;

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

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

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

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

whichever is the applicable.

(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

[Please refer to Clause 15 of the Terms of Tender]

other security which the Government may at any time hold (collectively “Other Security”) and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.

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

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

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

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

(a) upon the Government, at the Agriculture, Fisheries and Conservation Department of 5/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon marked for Director of Agriculture, Fisheries and Conservation (Attn: Country Parks Officer/Protection), facsimile number (852) 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 delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

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

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

IN WITNESS whereof this Guarantee was executed as a deed and the said Guarantor has caused <its

[Please refer to Clause 15 of the Terms of Tender]

Common Seal/Seal to be hereunto affixed>*<its lawful attorney to execute this Guarantee as a deed>* the day and year first above written.

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

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

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

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

* Please delete as appropriate

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

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

Appendix E

[Please refer to Clause 32 of the Terms of Tender]

To: Field Officer / Contract Management
Agriculture, Fisheries and Conservation Department
(Email address: fo_cm@afcd.gov.hk)

Registration Form for Attending Tender Briefing Session

**Provision of Cleansing Services to Tai Tong Recreation Area
in Tai Lam Country Park
(Tender ref.: AFCD/TTg/01/25)**

Details of the Briefing Session

Date : 14 October 2024 (Monday)
Time : 4:00 p.m.
Venue : Room 701A, 7/F, Cheung Sha Wan Government Office, 303 Cheung Sha Wan Road, Kowloon

Details of Registration

The following person will attend the briefing session:

Name and post title of representative : _____
Name of company / partnership / sole proprietor : _____
Contact phone no. : _____
Email address : _____

Notes:

- (a) This form should be completed and returned by email to the Agriculture, Fisheries and Conservation Department at or before 12:00 noon on **10 October 2024 (Thursday)**. Late registration may not be accepted.
- (b) For enquiries concerning briefing session, please contact **Ms. CHIU** at Tel.: **2150 7174**.

Appendix F**NON-COLLUSIVE TENDERING CERTIFICATE**

(To be completed and returned together with the tender submission)
[Please refer to Clause 23 of the Terms of Tender]

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

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

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

Non-collusion

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

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

Terms of Tender

Appendix F**NON-COLLUSIVE TENDERING CERTIFICATE**

(To be completed and returned together with the tender submission)
[Please refer to Clause 23 of the Terms of Tender]

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the Government;
 - (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
 - (c) my/our consultants, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement;
 - (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.

Consequences of breach or non-compliance

4. 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 23.1 of the Terms of Tender, the Government may exercise any of the rights under Clause 23.3 to 23.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.
5. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Appendix F

NON-COLLUSIVE TENDERING CERTIFICATE

(To be completed and returned together with the tender submission)
[Please refer to Clause 23 of the Terms of Tender]

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

Name of the authorised signatory (where :
applicable)

Title of the authorised signatory (where :
applicable)

Date :

PART 2

CONDITIONS OF CONTRACT

Content	Sheet
1. Contract Period	101
2. Total Services and Variation.....	101
3. Warranties and Representations.....	102
4. Assignment.....	104
5. Costs and Expenses.....	104
6. Contractor's Acknowledgement, Obligations and Contract Performance.....	104
7. Performance of Contractor's Employees	107
8. Contractual Obligations under the Standard Employment Contract.....	109
9. Wages to Cleaners.....	111
10. Committed Daily Maximum Working Hours for Cleaners	112
11. Holiday Pay to Cleaners.....	112
12. Gratuity to Cleaners	112
13. Gratuity to Cleansing Supervisor.....	113
14. Extra Wages to Cleaners for Working under Tropical Cyclone Warning Signal No. 8 or above.....	114
15. Heat Stroke Prevention Work Plan	115
16. Debarment Mechanism and Demerit Point System	116
17. Inspection and Rejection.....	117
18. Payment to Contractor	118
19. Deduction in Monthly Fee	121
20. Suspension of Services	122
21. Liability and Indemnities	122
22. Public Liability Insurance	124
23. Recovery of Sums Due	126
24. Contract Deposit	126
25. Termination of Contract.....	129
26. Termination Consequences	131
27. Failure to carry out Accepted Innovative Suggestions	134
28. Use of Electricity and Water Supplies	135
29. Government Property	136
30. Government Premises / Contractor's Premises.....	136
31. Admission of Contractor Personnel to Government Premises	138
32. Corrupt Gifts	138
33. Disclosure of Information	139
34. Publicity	139
35. Service of Notice.....	140
36. General Services Arrangements.....	141
37. Monies or Valuables Found by the Contractor's Employees	142
38. Contractor's Employees.....	142

39.	Intellectual Property Rights	143
40.	Conflict of Interest	145
41.	Government's Confidential Information.....	147
42.	Confidentiality	147
43.	Force Majeure	150
44.	Probity	152
45.	Illegal Workers	153
46.	Entire Agreement.....	153
47.	Relationship of the Parties	153
48.	Execution of Further Documents	154
49.	Governing Law and Jurisdiction	154
50.	Variations	154
51.	Severability.....	154
52.	Waiver	154
53.	Assistance in Legal Proceedings.....	155
54.	Contracts (Rights of Third Parties) Ordinance	155
55.	Disputes.....	155
56.	Retention of Record.....	156
57.	Matters in which the Decision of the Government is Final	156
58.	Review of the Management Plan and Work Plan.....	156
59.	United Nations Convention on Contracts for the International Sale of Goods not applicable.....	156
60.	Order of Precedence	156
Annex A Sample of Accountant's Certificate for Payment Application.....		158

PART 2

CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 The Contractor shall provide the Services to the Government for a period of **thirty-six (36) months commencing on 1 February 2025 (“Commencement Date”) and expiring on 31 January 2028**, both dates inclusive, subject to Clause 1.2 below and any provision for sooner termination or extension of the Contract as is provided for in the Contract.
- 1.2 The Government may, on giving the Contractor a seven (7)-day prior written notice **before 1 February 2025**, postpone the Commencement Date of the Contract Period to a date specified by the Government in the notice.
- 1.3 The Government shall have the option to extend the Contract Period for further period(s) of not more than six (6) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) month prior to the expiry of the Contract Period, by giving the Contractor a written notice to that effect specifying in such notice the period of extension whereupon the Contract Period shall be deemed to be so extended on and subject to the same terms and conditions set out in the Contract.
- 1.4 The Contractor shall agree to the extension of the Contract made under Clause 1.3 above when the Government exercises its right to extend the Contract.

2. Total Services and Variation

- 2.1 The Services to be performed under the Contract shall be as laid down in the Service Specifications, this Conditions of Contract, Contract Schedules and Appendices and shall be carried out, in accordance with the timetable as set out in the Contract; or for those Services which are to be performed on demand, as and when required, to the satisfaction of the Government Representative.
- 2.2 Without prejudice to other provisions of the Contract enabling the Government to stipulate variations, the Contractor agrees and acknowledges that the Government shall have the absolute power to unilaterally vary, without obtaining further consent from the Contractor, the form, quality of any labour (including the number of Cleaner required) or work as well as any of the specifications or requirements set out in the Contract. A variation pursuant to this Clause 2 shall not in any way vitiate or invalidate the Contract.

- 2.3 The Contractor shall not extend the Services beyond the requirements specified in the Contract except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Contract.
- 2.4 Notwithstanding anything to the contrary herein contained, the Government Representative may from time to time and at any time during the Contract Period vary the number of Cleaner(s) in addition to the estimation stated in Clause 3 of Service Specifications by giving orders in a way specified below:
- (a) by giving a prior written notice to the Contractor so that the Contractor will, within seven (7) days, to provide additional number of Cleaners in the Contract Area
- 2.5 No variation shall be made by the Contractor without approval in writing from the Government Representative.
- 2.6 Where a variation has been made to the Contract, the amount to be added to the Monthly Fee in accordance with that variation shall be determined in accordance with the Daily Rate specified in Item 4 of Table 1 of **Contract Schedule 1** or the Unit Rate specified in Table 2 of **Contract Schedule 1** so far as the same may be applicable.

3. Warranties and Representations

- 3.1 The Contractor warrants, represents and undertakes that:
- (a) the Contractor and the Contractor's Employees shall have the necessary training, skills, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b) the Contractor shall carry out and provide the Services with all due diligence and in a timely, safe, proper, skillful and professional manner;
- (c) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;

- (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform all its obligations under the Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, its authorised users, assigns and successors-in-title in accordance with Clause 39 below;
- (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (g) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
- (h) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (i) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) throughout the Contract Period, no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and
- (k) throughout the Contract Period, it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

3.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 3.1 above and Clause 39.1 below and in other provisions of the Contract and those

made by the Contractor in its Tender for the Contract including all Contract Schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as “Warranties”, and each, a “Warranty”.

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

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

4. Assignment

4.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.

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

4.3 The Contractor shall remain fully liable for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers and Employees as if they were its own.

5. Costs and Expenses

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

6. Contractor’s Acknowledgement, Obligations and Contract Performance

6.1 The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Service Specifications and other provisions of the Contract.

6.2 The Contractor further acknowledges that the Government relies on the skill and

judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract. Save to the extent expressly set out in the Contract, the Contractor does not expect, and the Contractor agrees that it is unnecessary for, the Government to do anything to facilitate or assist the Contractor's provision of the Services and the performance of its obligations under the Contract.

6.3 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence. They should include but not limited to the following:
 - (i) at least one (1) Contract Manager;
 - (ii) at least one (1) Cleansing Supervisor;
 - (iii) the number of Cleaners as specified in Clause 3 of Service Specifications.
- (b) in accordance with Good Industry Practice.

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

- (a) comply with the Employment Ordinance and the Immigration Ordinance. The Contractor shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;
- (b) make its own arrangements to provide mandatory provident fund schemes to its employees in accordance with the provisions of the MPFS Ordinance; and
- (c) comply with the requirements of the OSH Ordinance and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.

6.5 The Contractor shall:

- (a) duly and unconditionally secure, obtain and maintain throughout the Contract Period all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in

any relevant jurisdiction which are or may be required or necessary to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where the Contractor's procedures so require, the consent of its parent company) ("Consents");

- (b) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Contract Period; and
 - (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.
- 6.6 The Contractor shall, through the Government Representative, keep the Government informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the Government Representative.
- 6.7 The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.
- 6.8 To the extent that the Government considers it reasonably necessary and that the information (in whatever media) is in the possession of the Government and is not subject to any confidentiality restriction, the Government may at the request initiated by the Contractor (but not otherwise required in the Contract), provide all such information for the Contractor's guidance in the execution of the Contract free of charge provided such request from the Contractor is made in a timely manner to avoid any delay on the part of the Contractor to perform the Contract. If required by the Government, the Contractor shall return all such information (in whatever media) to the Government upon the expiry or early termination of the Contract.
- 6.9 The Contractor shall be responsible for the completeness and accuracy of all drawings, documents and information supplied by the Contractor to the Government in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the Government in accordance with Clause 21.2 below in connection with, any discrepancies, errors or omissions therein.

6.10 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the Government free of charge but shall be returned to the Government on completion of the Contract.

6.11 The Contractor acknowledges that it does not have the right to provide the Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

7. Performance of Contractor's Employees

7.1 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:

- (a) is fit for their tasks;
- (b) maintains the standard of discipline, courtesy, behaviour and consideration in performing the Services;
- (c) is efficient, honest and acceptable to the Government in terms of ability, working attitude and personal behavior;
- (d) abides by the Government's instructions and any law and regulations applicable to the provision of Services
- (e) 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
- (f) is on duty during the period of a day as specified in Service Specifications as applicable to the post set out therein for which the Contractor's Employee is assigned to perform his/her duties for the purpose of this Contract and is punctual at all times.

7.2 The Government Representative may require on reasonable grounds (including but not limited to medical, security and disciplinary grounds) the immediate removal or replacement of any of the Contractor's Employees engaged or deployed for the purpose of the Contract.

7.3 Any Employees 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 other location.

7.4 The Government shall in no circumstances be liable to the Contractor, its Employees in respect of any liability, loss or damage occasioned by such removal and the Contractor hereby agrees to fully indemnify the Government against any aforesaid claim made by such Employees.

7.5 The Contractor shall, and shall use its best endeavour to procure the Contractor's Employees to:

- (a) 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;
- (b) 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;
- (c) upon being requested by the Government Representative, accompany the Inspecting Officer(s) and/or Government Representative to the locations specified by the Government Representative to inspect the performance of the Services;
- (d) give proper training, supervision and guidance to Contractor's Employees in performing the Services;
- (e) conduct surprise checks at such frequency agreed by the Government Representative and record the findings of his surprise checks in a record book;
- (f) provide the record book for inspection whenever requested by the Government Representative;
- (g) 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;
- (h) 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

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

8. Contractual Obligations under the Standard Employment Contract

- 8.1 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.
- 8.2 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.
- 8.3 The Contractor shall enter into a written Standard Employment Contract with each of its Cleaners employed for the performance of this Contract if the employment period exceeds seven (7) days.
- 8.4 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.
- 8.5 Without prejudice to the generality of Clause 8.4 above, the Contractor shall, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:
 - (a) paying wages;
 - (b) paying holiday pay payable to the Cleaners having been employed under a continuous contract for not less than one (1) month;

- (c) paying wages at a rate of at least 150% for the Cleaners who are required to work when the Tropical Cyclone Warning Signal No. 8 or above is hoisted;
 - (d) paying wages by means of autopay to the Cleaners (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);
 - (e) paying the gratuity to the Cleaners as provided under Clause 12 below (where applicable);
 - (f) paying the gratuity to the Cleansing Supervisor as provided under Clause 13 below (where applicable);
 - (g) not allowing the Cleaners to work beyond the committed daily maximum working hours under the Contract.
- 8.6 If the Contractor fails to comply with any of its obligations in Clause 8.3 to Clause 8.5 above, without prejudice to any other rights, actions or remedies available to the Government including but not limited to the issuance of one (1) or more Demerit Points to the Contractor, the Government may terminate the Contract immediately.
- 8.7 The Contractor shall ensure that all Contractor's Employees fully understand all contents of the Standard Employment Contract. Copies of the signed Standard Employment Contract should be kept by the Contractor, each of the Contractor's Employees and the Government for record and for monitoring of the Contractor's compliance with the Contract. The Standard Employment Contract can be downloaded from the following hyperlink:
- (a) for Chinese version
<https://www.afcd.gov.hk/tc_chi/tender/tender_rel/tender_rel.html>; or
 - (b) for English version
<https://www.afcd.gov.hk/english/tender/tender_rel/tender_rel.html>
- 8.8 The Contractor shall within fourteen (14) days from the Commencement Date provide the Government Representative with copies of the Standard Employment Contracts (and amendments or variations thereto, if any) entered into at its own costs. In the event that there is any subsequent change of concerned Contractor's 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.

8.9 Any breach of the undertaking in Clauses 8.3, 8.5 to 8.7 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 pursuant to Clause 25 below.

8.10 The Contractor shall not vary the terms and conditions of the Standard Employment Contract without the prior written approval of the Government Representative.

8.11 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 one (1) Demerit Point.

8.12 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.

9. Wages to Cleaners

9.1 The Contractor shall pay each Cleaner a monthly wage in an amount not less than:

(a) the monthly wages specified in **Contract Schedule 2**; or

(b) the monthly wages referred to at (a) above as the same may be adjusted as a result of future revision of the Statutory Minimum Wage,

whichever is the higher.

9.2 The Contractor shall promptly pay wages to the Contractor's Employees, and the failure to do so will entitle the Government to terminate the Contract.

9.3 The Contractor shall use autopay for payment of wages to each Cleaner except that upon termination of an employment contract with a Cleaner, the Contractor may pay his wages by cheque if so requested by him.

9.4 The Contractor shall also make available to the Government all such other information and documents as the Government may request such as wage books, bank autopay return, receipts of wages and record of contributions made under the MPFS Ordinance or under the Occupational Retirement Schemes Ordinance to enable the Government to crosscheck the accuracy of the supporting documents submitted to the Government in return for each Monthly Fee.

10. Committed Daily Maximum Working Hours for Cleaners

10.1 The Contractor shall not allow any Cleaners to work each day for more than the maximum allowable net working hours per day as specified in **Contract Schedule 2**.

10.2 The Contractor shall allow each Cleaner not less than one (1) hour meal break each day. The period of meal break of each Cleaner shall be specified in the Standard Employment Contract.

11. Holiday Pay to Cleaners

The Contractor shall provide the holiday pay to a Cleaner provided that the Cleaner has been employed by the Contract or under a continuous contract (as defined in the Employment Ordinance) in respect of this Contract for not less than one (1) month immediately preceding a statutory holiday. The holiday pay shall be calculated according to the relevant provisions under the Employment Ordinance. 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.

If the Employee is employed by the Contractor to work under more than one (1) government service contract, details of the holiday pay payable is set out in Clause 4 of the Schedule to the Standard Employment Contract.

12. Gratuity to Cleaners

12.1 The Contractor shall pay a gratuity to a Cleaner upon the expiry or termination of the Standard Employment Contract for reason(s) other than in accordance with section 9 of the Employment Ordinance, provided that the Cleaner has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance) in respect of this Contract for a period of not less than twelve (12) months immediately before the expiry or termination of the Standard Employment Contract.

12.2 Notwithstanding Clause 12.1 above, for each Cleaner who has been employed by the Contractor under the Standard Employment Contract in respect of this Contract for a

period of service of less than twelve (12) months immediately before the termination of the Standard Employment Contract (and yet still satisfying the requirement of continuous contract under the Employment Ordinance), the Contractor shall still have to pay a gratuity to the Cleaner in respect of that shorter period of service provided that the Standard Employment Contract is terminated by the Contractor and the termination of the Standard Employment Contract is due to the termination by the Government of this Contract or is timing wise after the issue of the termination notice by the Government for the termination of this Contract (regardless of whether or not such termination by the Government is due to the default of the Contractor or otherwise).

For the avoidance of doubt, for the purpose of this Clause 12.2, where the termination of the Standard Employment Contract is due to reason(s) in accordance with section 9 of the Employment Ordinance or due to the Cleaner terminating the Standard Employment Contract, no gratuity shall be payable in respect of the period of service of less than twelve (12) months. In addition, for this Clause 12.2 to apply, this Contract shall originally be scheduled to have a contract duration of not less than twelve (12) months had it not been the termination by the Government.

- 12.3 If a Cleaner is entitled to the gratuity in Clause 12.1 or Clause 12.2 above, the amount of gratuity shall be a sum equivalent to six percent (6%) of the total wages earned by the Cleaner during the period of service as mentioned therein.
- 12.4 The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance and may be offset against the severance payment or long service payment in accordance with the Standard Employment Contract. Detailed requirements on the gratuity payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.

13. Gratuity to Cleansing Supervisor

- 13.1 The Contractor shall pay a gratuity to each Cleansing Supervisor upon the expiry or termination of the contract of employment as defined in the Employment Ordinance entered into by the Contractor and the Cleansing Supervisor (referred to “the employment contract” hereafter for the purpose of this Clause 13.1 and Clause 13.2 below, for reason(s) other than in accordance with section 9 of the Employment Ordinance, provided that the Cleansing Supervisor has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance) in respect of this Contract for a period of service of not less than twelve (12) months immediately before

the expiry or termination of the employment contract.

- 13.2 Notwithstanding Clause 13.1 above, for each Cleansing Supervisor who has been employed by the Contractor under the employment contract in respect of this Contract for a period of service of less than twelve (12) months immediately before the termination of the employment contract (and yet still satisfying the requirement of continuous contract under the Employment Ordinance), the Contractor shall still have to pay a gratuity to the Cleansing Supervisor in respect of that shorter period of service provided that the employment contract is terminated by the Contractor and the termination of the employment contract is due to the termination by the Government of this Contract or is timing wise after the issue of the termination notice by the Government for the termination of this Contract (regardless of whether or not such termination by the Government is due to the default of the Contractor or otherwise).

For the avoidance of doubt, for the purpose of this Clause 13.2, where the termination of the employment contract is due to reason(s) in accordance with section 9 of the Employment Ordinance or due to the Cleansing Supervisor terminating the employment contract, no gratuity shall be payable in respect of the period of service of less than twelve (12) months. In addition, for Clause 13.2 to apply, this Contract shall originally be scheduled to have a contract duration of not less than twelve (12) months had it not been the termination by the Government.

- 13.3 If a Cleansing Supervisor is entitled to the gratuity in Clause 13.1 or Clause 13.2 above, the amount of gratuity shall be a sum equivalent to six percent (6%) of the total wages earned by the Cleansing Supervisor during the period of service as mentioned therein.
- 13.4 The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance and may be offset against the severance payment or long service payment.

14. Extra Wages to Cleaners for Working under Tropical Cyclone Warning Signal No. 8 or above

If Tropical Cyclone Warning 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 Cleaner has worked, the Contractor shall pay the Cleaner for that day/shift at least 150% of the Cleaner's original pay for the hours worked in that day/shift. Detailed requirements on the extra wages payable for working under Tropical Cyclone Warning 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 Cleaner with whom the Contractor is not required to enter into the Standard Employment Contract.

15. Heat Stroke Prevention Work Plan

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

- (a) making suitable work arrangement of heat stress such as rescheduling work to cooler periods and cooler places;
- (b) carrying out measures included in the Heat Stroke Prevention Work Plan after making reference to the Labour Department's "Guidance Notes on Prevention of Heat Stroke at Work" published on 15 May 2023 at https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf (as may be updated from time to time) which shall cover at least the following:
 - (i) to conduct heat stress risk assessments for the specific work taking account of the environmental (such as airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatisation of Cleaners);
 - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers/shelters; providing ventilation equipment, and providing sheltered/ventilated resting places) based on the risk assessment results. Such measures shall complement the Country Park environment and shall not obstruct, disturb or interrupt visitors to the Country Park; and
 - (iii) to arrange hourly rest breaks as appropriate for Cleaners working outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources, based on the recommendations and criteria provided in the "Guidance Notes on Prevention of Heat Stroke at Work", when the Heat Stress at Work Warning issued by the Labour Department is in force;
- (c) providing potable water at all times during work;
- (d) providing uniforms with dry-fit properties; and

(e) providing wide-brimmed hats, arm sleeves and portable fans, and/or umbrellas.

15.2 The Contractor is required to keep written records of (a) heat stress risk assessments for its Cleaners exposed to heat stress at work by using the Labour Department's sample form as set out in "Guidance Notes on Prevention of Heat Stroke at Work" published on 15 May 2023 at https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf (as may be updated from time to time) as provided in Contract Schedule 3; and (b) the performance of all of the requirements set out in Clause 15.1 above.

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

16. Debarment Mechanism and Demerit Point System

16.1 Under the Debarment Mechanism, 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.

16.2 If the Contractor is in breach of any of the following contractual obligations in one (1) separate incident (or two (2) separate incidents in the case of Clause 16.2(i) below over any continuous period of twelve (12) months within the Contract Period), the Government is entitled to issue one (1) Demerit Point to the Contractor:

- (a) wages;
- (b) holiday pay payable to Cleaners having been employed under a continuous contract for not less than one (1) month;
- (c) wages at a rate of at least 150% for Cleaners who are required to work when the Tropical Cyclone Warning Signal No. 8 or above is hoisted;
- (d) daily maximum working hours;
- (e) signing of Standard Employment Contracts with Cleaners employed for the performance of a Cleaner Contract if the employment period exceeds seven (7) days;
- (f) payment of wages by means of autopay to Cleaners employed for the performance of

a Cleaner Contract if the employment period exceeds seven (7) days (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);

(g) gratuity payable to Cleaners as provided under Clause 12.1 or 12.2 above (where applicable);

(h) gratuity payable to Cleansing Supervisor as provided under Clause 13.1 or Clause 13.2 of the Conditions of Contract (where applicable); and

(i) compliance with all of the measures in the Heat Stroke Prevention Work Plan. For the avoidance of doubt, the Heat Stroke Prevention Work Plan is only applicable if the Contract involves Cleaners performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources.

16.3 For the purpose of each of Clauses 16.2(a) to (i) above, whether there is one (1) separate incident of breach of the contractual obligations referred to therein shall be determined by the Government. For the purpose of each of Clauses 16.2(a) to (h) above, for every separate incident of non-compliance with the contractual obligations referred to therein, the Government is entitled to issue one (1) Demerit Point to the Contractor. For the purpose of Clause 16.2(i) above, a non-compliance with the Heat Stroke Prevention Work Plan is a substantiated complaint or breach with respect to the Heat Stroke Prevention Work Plan determined by the Government. For every two (2) separate incidents of non-compliance with the Heat Stroke Prevention Work Plan by the Contractor under this Contract over any continuous period of twelve (12) months within the Contract Period, the Government is entitled to issue one (1) Demerit Point to the Contractor.

16.4 The Demerit Point(s) will be mandatorily taken into account in the assessment of the Contractor's offer (as the case may be) in future tender or quotation exercises.

17. Inspection and Rejection

17.1 The Services performed shall be subject to inspection by the Inspecting Officer and/or the Government Representative. All costs incurred by the Contractor in complying with this Clause 17 shall be borne by the Contractor and shall not be chargeable to the Government unless and to the extent otherwise expressly specified in the **Contract Schedule 1**.

17.2 In the event that the Contractor fails to comply with any of the requirements of the

Contract, or in the event that there is a breach of or non-compliance with any warranty, undertaking or obligation on the part of the Contractor to observe and perform which is capable of remedy, the Government may by notice in writing to the Contractor at any time require the Contractor to make good failure or remedy the breach at its sole costs and expenses within such time as may be stipulated by the Government in the notice.

17.3 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 have 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.

17.4 Within twenty-four (24) hours of being notified verbally or in writing of any of the Services being unsatisfactory, the Contractor shall be required to take immediate and necessary action to rectify such unsatisfactory Services. If the Contractor fails to rectify such unsatisfactory Services in accordance with Clause 17.3 above or fails to provide required number of Cleaners in accordance with the Services Requirement, 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 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 Contract or other contracts with the Government.

18. Payment to Contractor

18.1 Subject always to the terms and conditions hereof, and in consideration of the Contractor having performed the Services in accordance with the terms and conditions of the Contract to the satisfaction of the Government, the Government shall pay to the Contractor a service charge on a monthly basis (the "Monthly Fee") in accordance with the following way:

$$\begin{aligned}
 & \text{(Monthly Rate, Hourly Rate and Daily Rate as set out in Table 1} \\
 & \quad \text{of Contract Schedule 1)} \\
 & \quad + \\
 & \quad \text{(Any total charges for additional Cleaner(s) provided by the} \\
 & \quad \text{Contractor, under Clause 2 above, calculated on the basis of the} \\
 \text{Monthly Fee} = & \quad \text{Daily Rate as set out in Table 1 of Contract Schedule 1 or the} \\
 & \quad \text{Unit Rate per month as set out in Table 2 of Contract Schedule 1)} \\
 & \quad - \\
 & \quad \text{(Total deductions calculated under Clause 19)} \\
 & \quad - \\
 & \quad \text{(Such other sums the Government is entitled to deduct} \\
 & \quad \text{pursuant to other provisions of the Contract)}
 \end{aligned}$$

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

18.3 Unless specifically stated in the Contract, apart from the Monthly Fee, no other money shall be payable by the Government to the Contractor or any other person under the Contract. Save as otherwise expressly provided for in the Contract, the Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses.

18.4 Without prejudice to Clause 18.3 above, the Monthly Fee set out in Clause 18.1 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 transportation, equipment, materials, uniforms, tool and the Accepted Innovative Suggestions 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, authorisation or permit from any Government or other authority. Save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Monthly Fee for any reason (including foreign exchange fluctuations). For the avoidance of doubt, where an Accepted Innovative Suggestion does not concern any provision of the Services, all Contract Prices payable and/or having been paid under the Contract over the entire Contract Period shall be deemed to cover and shall have covered the charge for such Accepted Innovative Suggestion. No separate charges shall be payable.

18.5 Payment shall be made in Hong Kong dollars. The Contractor shall at the beginning of

each month deliver to the Government Representative an invoice in respect of the Services rendered to the Government in the preceding month. Subject to the Government Representative being satisfied that the calculations of the Monthly Fee is correct, the Government should pay the Contractor the Monthly Fee within thirty (30) days after having received from the Contractor the invoice and the statement in accordance with Clause 18.1 above. The Monthly Fee will be directly paid by the Government into the Contractor's bank account as stated in Section 7 of **Appendix B** to the Terms of Tender. The Contractor shall, upon request by the Government Representative, provide a statement in the form as at **Annex A** which shall be certified by a certified public accountant (practicing) or a corporate practice registered under the Professional Accountants Ordinance.

18.6 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Monthly Fee and any other sum payable by the Government to the Contractor under the Contract if:

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

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

18.8 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 35 below. The Government shall not be held responsible or liable for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the Government due to (a) invoices not having been issued in accordance with this Clause 18, or (b) the amount

billed in the invoices not having been duly calculated in accordance with the provisions of the Contract (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Contractor disputing any deductions or set-off or withholding made by the Government pursuant to the Contract, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in the Contract. Each invoice shall include all deductions, set-off and withholding which may be made pursuant to the terms of the Contract and shall show the net amount payable. If the Contractor does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the Government may, but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.

18.9 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.

18.10 Where the Contractor is from a place outside Hong Kong and does not have a bank account in Hong Kong, payment will be made by telegraphic transfer to the Contractor's bank account as specified in Section 7 of **Appendix B** to the Terms of Tender. All charges imposed by the banks outside Hong Kong shall be borne by the Contractor. In addition, any charges imposed by the banks in Hong Kong for carrying out any special request(s) by the Contractor shall be borne by the Contractor, or the Contractor shall reimburse the Government for the same if the Government has settled such charges with the bank.

18.11 Where and to the extent this Contract constitutes a standing offer to provide the Services to the Government if and when demanded during the Contract Period, the Contractor and the Government hereby acknowledge and agree that the consideration for the standing offer shall be one (1) Hong Kong dollar, payable by the Government to the Contractor, if and when demanded, and that the Contractor irrevocably undertakes to keep the standing offer open throughout the Contract Period.

19. Deduction in Monthly Fee

19.1 The Contractor shall ensure the Cleaners employed for the work are not less than the number stipulated in Service Specifications. Without prejudice to any other rights and remedies of the Government under the Contract or otherwise at law, the Government is entitled to make deductions from the Monthly Rate quoted in Table 1 of Contract

Schedule 1 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.

$$\frac{\text{Monthly Rate}}{\text{(quoted in Table 1 of Contract Schedule 1)}} \times \frac{\text{Duration of absence from duty (in total number of absence man-hour) of all Cleaners}}{\text{Total working man-hours of all Cleaners of the month concerned}}$$

19.2 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:

- (a) the number of Cleaners is found to be less than that specified in Service Specifications;
- (b) the Cleaner is found to be absent from duty without reasonable excuse or is found to be sleeping whilst on duty or in any other way present but not performing his or her duties; and
- (c) the Cleaner fails to obey instructions, supply required equipment, dress in proper attire, and any other minor infringement of his or her specified duties.

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

20. Suspension of Services

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

21. Liability and Indemnities

21.1 Neither the Government nor any of its Employees shall be under any liability whatsoever for or in respect of:

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

21.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its Employees (each an "Indemnified Party") from and against:

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

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

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor and its Employees;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the Materials or Third Party Materials infringes the Intellectual Property Rights or any other rights of any person; or

- (v) the non-compliance by the Contractor and its Employees with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor, or its Employees, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in Clause 21.1 above save and except injury or death caused by the Negligence of the Government or any of its Employees (in the course of employment); or
- (viii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its Employees.

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

21.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government 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.

21.4 For the purposes of this Clause 21, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance.

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

22. Public Liability Insurance

22.1 The Contractor shall effect and keep in force and renew upon expiry, throughout the Applicable Period (as defined in Clause 22.3 below) and at its own expense a public liability policy of insurance exclusively for the Contract in the joint names of the

Government and the Contractor, subject to a maximum indemnity amount in the sum of not less than an indemnity amount often million Hong Kong dollars (HK\$10,000,000) for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property. The insurance policy shall cover liability to pay damages and compensation for injury to or death of any persons and for loss or damage to any properties whatsoever where such injury, death, loss or damage (as the case may be) is caused by or arises out of any act, negligence or default of the Contractor, the Contractor’s Employees.

- 22.2 For the purposes of obtaining the Government’s approval of the terms and conditions of the insurance policy mentioned in Clause 22.1 above, before taking out the same, if required by the Government, the Contractor shall submit the draft insurance policy to the Government for review no later than one (1) week after the date specified in the Letter of Conditional Acceptance.
- 22.3 The applicable period (“Applicable Period”) for the public liability insurance policy shall be the Contract Period.
- 22.4 Without prejudice to Clause 22.1 above, the Contractor shall effect and maintain employer’s liability insurance in respect of all its Employees and other staffs in accordance with all applicable laws and regulations.
- 22.5 If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 22.6 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim covered by the relevant insurance policy.
- 22.7 If the Contractor fails to give effect to or maintain any insurance policy required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of

putting such in place and maintaining such arrangements.

22.8 No provision including any indemnity limit specified in any insurance policy required under the Contract shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

23. Recovery of Sums Due

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

24. Contract Deposit

24.1 The Contractor shall pay the Contract Deposit in accordance with Clause 15 of the Terms of Tender.

24.2 If the Contractor fails to comply with Clause 24.1 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 25.5 below.

24.3 Without prejudice to Clause 24.2 above, if the Contractor fails to comply with Clause 24.1 above, the Government may deduct from any sum due or payable by the Government to the Contractor from time to time, an amount equal to the Contract Deposit to serve as the Contract Deposit.

24.4 If:

- (a) the Contractor fails to comply with any provision of the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or
- (b) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable,

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

- 24.5 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one (1) or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 24.6 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty one (21) days after the date of the written demand by the Government, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Clauses 15.4(a) to (c) of the Terms of Tender.
- 24.7 Where the total fees payable for all Services to be procured under the Contract for the whole of the Contract Period is likely to exceed the original Total Amount, the Government may, by written notice to the Contractor, require the Contractor to submit to the Government such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to two percent (2%) (or five percent (5%) if the Contractor failed in the financial assessment in the tender evaluation stage) of the revised Total Amount specified by the Government in the notice.
- 24.8 If a notice is issued by the Government under Clause 24.7 above, the Contractor shall within twenty-one (21) days deliver to the Government the additional amount of further Contract Deposit required in the notice in the form of either cash or a further banker's guarantee. The further banker's guarantee must comply with the requirements in Clauses 15.4(a) to (c) of the Terms of Tender. A further Contract Deposit paid by the Contractor to the Government shall form part of the Contract Deposit.
- 24.9 If the Contractor fails to comply with Clauses 24.6, 24.7 or 24.8 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 25.5 below.

24.10 Upon the expiry or termination of the Contract Period:

- (a) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit (if any) in cash and without interest to the Contractor by the date specified in (i) or (ii) below, whichever is applicable:
 - (i) the end of three (3) months counting from the date of early termination or expiry of the Contract Period; or
 - (ii) in the case if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing).
- (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with the guarantee period as stated therein.

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

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

25. Termination of Contract

25.1 In the event that:

- (a) the Contractor fails to perform any Services pursuant to the Contract;
- (b) any Services are rejected pursuant to the Contract;
- (c) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (d) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (e) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (f) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (g) the Contractor, any officer (including director) or the Contractor's Employees commits an offence under the Prevention of Bribery Ordinance or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government;
- (h) the Contractor abandons the Contract in whole or in part;
- (i) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (j) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provisions:
 - (i) Clause 8 – Contractual Obligations under the Standard Employment Contract;
 - (ii) Clause 24 - Contract Deposit;
 - (iii) Clause 31 – Admission of Contract Personnel to Government Premises;
 - (iv) Clause 32– Corrupt Gift;

- (v) Clause 40– Government’s Confidential Information
- (vi) Clause 43 – Force Majeure;
- (vii) Clause 44 – Probity;
- (viii) Clause 45 – Illegal Workers of the Conditions of Contract; or
- (ix) Clause 23 – Warranty against Collusion of the Terms of Tender,

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

25.2 Without prejudice to other provisions of the Contract and to any other rights, actions or remedies available to the Government, the Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) the Contractor is convicted of any of the Relevant Offences arising from this Contract;
- (b) the Contractor has accumulated three (3) or more Demerit Points arising from this Contract over a rolling period of thirty-six (36) months;
- (c) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors;
- (d) if the Contractor is an incorporated body, a shareholders’ or members’ resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
- (e) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (f) the Contractor is or becomes insolvent, or any order is made for the Contractor’s bankruptcy or winding up or dissolution;
- (g) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor’s business or assets;
- (h) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or

a substantial part of its business;

- (i) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (j) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (k) the Government reasonably believes that any of the events mentioned above is about to occur.

25.3 Separate from the event mentioned in Clause 25.1(j)(vi) above and Clause 43.3 below, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole pursuant to Clause 43.7 below.

25.4 Notwithstanding anything herein to the contrary, the Government may at any time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one (1) month's written notice of such suspension or termination. In the case of suspension, the written notice shall specify the period of the suspension ("Suspension Period") and the scope of the suspension (viz., the Section(s) of the coastline to be suspended, which may be all or any of the Section of the coastal area covered by the Contract) ("Suspended Services").

25.5 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 25.1 to 25.4 above and in each sub-clause of Clauses 25.1 and 25.2 above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

26. Termination Consequences

26.1 Upon expiry or early termination of the Contract (howsoever occasioned) ("Termination"):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);

- (ii) the rights and claims which have accrued to a Party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned);
- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 21.2 above, in the event of the Termination under Clause 25.1 or 25.2 above, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amount in excess of the Total Amount incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 25.1 or 25.2 above. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause 26, no further payments shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;
- (d) the Contractor shall immediately return to the Government all Government Property which is supplied or in respect of which access is granted to the Contractor by the Government for the purposes of or in relation to the Contract;
- (e) the Contractor shall provide all such assistance as the Government may request from time to time after the Termination to ensure an orderly and effective transition of the provision of the Services to the Government or another contractor to be appointed by the Government and/or completion of any work-in-progress;

- (f) the Contractor shall within twenty-eight (28) days of the date of Termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of Termination; and
- (g) at the request of the Government, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

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

26.2 Upon the issue of a suspension notice pursuant to Clause 24.4 above in relation to the Suspended Services for the Suspension Period specified therein ("Suspension"):

- (a) the Contract in relation to the Suspended Services shall be of no force and effect during the Suspension Period but subject to the same provisions set out in Clauses 26.1(a)(i) to (iii) above save that references therein to Termination shall mean Suspension;
- (b) the Contract in relation to the Suspended Services shall resume immediately upon expiry of the Suspension Period (or such other date as the Government may subsequently stipulate by varying the Suspension Period by serving at least fourteen (14) days' notice on the Contractor);
- (c) unless and to the extent waived by the Government Representative in writing, Clauses 25.1(b) and (e) shall apply in the case of a Suspension save that references therein to Termination shall mean Suspension;

- (d) the Government has no obligation to pay any outstanding Monthly Fee (or any part thereof) to the Contractor for any Suspended Services performed but unpaid as at the date when the Suspension comes into effect or at any time during the Suspension Period; and any such obligation shall only resume as the Contract resumes pursuant to Clause 25.2(b) above but strictly on and subject to the terms and conditions of the Contract; any Monthly Fee paid in advance of the Suspension need not be refunded; no Monthly Fee shall be payable during the Suspension Period; and
- (e) the Contractor shall not and has no obligation to perform its obligations in relation to the Suspended Services as at the date when the Suspension comes into effect or at any time during the Suspension Period; and save as directed by the Government in relation to any uncompleted part of the Contractor's obligations in relation to the Suspended Services as at the date of the Suspension, any such obligation will resume as the Contract resumes pursuant to Clause 26.2(b) above whereupon the Contractor shall resume its obligations in relation to the Suspended Services strictly on and subject to the terms and conditions of the Contract.

27. Failure to carry out Accepted Innovative Suggestions

27.1 The Contractor warrants that it shall perform the Contract in full compliance with all Accepted Innovative Suggestions. In the event that the Contractor fails to deliver any of the Accepted Innovative Suggestions, the Contractor shall, subject to Clauses 27.2 and 27.3 below, pay to the Government a sum of money calculated according to the following formula as liquidated damages for EACH of such Accepted Innovative Suggestions which it fails to deliver:

$$C \times W(T) \times \frac{M(IS)}{M(TP)} \times \frac{P}{CP}$$

where C = *the Total Amount payable under the whole of the Contract (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)*

$W(T)$ = *the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme (i.e. 50%)*

$M(IS)$ = *(depending on whether the non-complied Accepted Innovative Suggestion is a Pro-innovation Proposal or an ESG Proposal) the marks that would be given to one (1) Innovative Suggestion in accordance with the Marking Scheme (regardless of whether marks are actually given to the relevant Accepted Innovative Suggestion that the Contractor fails to deliver)*

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

P = *duration of time expressed in number of days during which the Contractor fails to fully carry out the relevant Accepted Innovative Suggestion within the Contract Period up to the day the amount of the liquidated damages is determined for the time being or up to the end of the Contract Period as the case may be*

CP = *Contract Period expressed in number of days*

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

27.2 For any given point of time within the Contract Period, the number of Accepted Innovative Suggestions which the Contractor fail to deliver and upon which liquidated damages are payable under Clause 27.1 above shall not exceed the maximum number of Innovative Suggestions to which marks could be awarded to a tenderer in the tender evaluation process.

27.3 The aggregate amount of liquidated damages payable pursuant to the first formula and the second formula in Clause 27.1 above may not exceed six percent (6%) of the Total Amount.

28. Use of Electricity and Water Supplies

28.1 The Government shall permit the Contractor to use free of charge water supplies and to consume electricity made available at the supply points installed at the Contract Area for the purpose of provision of the Services. The Contractor shall warrant and undertake to

the Government that it has made known to all its Employees that the water and electricity supplies shall only be used for purposes under and in accordance with the Contract.

28.2 The Contractor shall ensure that all Contractor's Employees exercise their utmost care in the use of the water or electricity supplies to avoid wastage and damage to Government Property. The Contractor shall not use any electrical equipment in such manner that will overload the fuses in the electricity supply of the Contract Area. Particular attention must be given to the maintenance of cleansing equipment in order that it does not run below rated speed and draw excessive electricity current. Double adaptors shall not be permitted.

28.3 Permission to use the said water and electricity supplies shall cease at the end or sooner determination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.

28.4 The Contractor shall adopt the green measures in the Green Guidelines for Cleansing Services developed by Environmental Protection Department and Government Logistics Department stipulated at **Contract Schedule 6** in using the electricity and water supplies for the performance of the Services.

29. Government Property

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

29.2 The safety of any equipment, tools and materials 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 any Government premises caused by such equipment, tools and materials on the terms set out in Clause 21.2 above.

30. Government Premises / Contractor's Premises

30.1 The Contractor, shall ensure that all persons engaged by him in carrying out the Contract

remain at such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

30.2 The Government may at its sole discretion provide free of charge office and/or storage space within the Contract Area for use by the Contractor's Employees, or for the storage of the tools, equipment and materials employed in the Services provided that:

- (a) 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;
- (b) the Contractor shall keep the said office or storage space clean, tidy, in reasonably good state of repairs and properly secured, as appropriate;
- (c) all equipment, materials, tools and articles of the Contractor or of the Contractor's Employees(if any) stored in the said space shall be at the Contractor's own risk. The Government accepts no liability for loss or damage to such equipment, materials, tools and articles held within the said space and Contract Area.
- (d) 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
- (e) 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, tools, equipment and materials stored at such office or storage space and restore the same to its original state. If the Contractor shall fail to do so within a reasonable time, the Government shall be entitled to remove and dispose of any properties, chattels, fixtures or fitting left uncollected in the Contract Area in any manner deemed appropriate by the Government (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 30 shall be recoverable as a debt due from the Contractor.

30.3 The safety of any tools, equipment, vehicles and vessels used by the Contractor and brought alongside or onto Government premises, piers or wharves shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves caused by such tools, equipment, vehicles and vessels.

- 30.4 The Contractor shall not use any space provided to it by the Government for conducting any fee-charging activities.
- 30.5 Nothing in this Contract shall create a tenancy or licence of whatsoever nature in favour of the Contractor.
- 30.6 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.

31. Admission of Contractor Personnel to Government Premises

- 31.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's Employees (collectively "Relevant Personnel") who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.
- 31.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 31.3 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.
- 31.4 In the event that the Contractor fails to comply with this Clause 31 and it is determined that such failure is prejudicial to the interests of the Government, the Government may thereupon terminate the Contract pursuant to Clause 25.1 above.

32. Corrupt Gifts

- 32.1 The Contractor shall prohibit its Employees who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance when conducting business in connection with this Contract.
- 32.2 If the Contractor or any of the Contractor's Employees breach Clause 32.1 above or commit an offence under the Prevention of Bribery Ordinance 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.

32.3 The Contractor shall be liable for all expenses incurred by the Government as a result of the termination of the Contract under this Clause 32.

33. Disclosure of Information

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

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

33.2 Disclosure may also be made by the Government under any of the circumstances specified in Clause 26.2 of the Terms of Tender in relation to any information concerning or relating to the Contractor or the Contract or the Services or the materials, recorded in whatever media.

33.3 Nothing in this Clause 32 or in Clause 26.2 of the Terms of Tender shall imply or be construed that the Government owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Services or the materials.

34. Publicity

34.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the Government's name in any document, publication,

advertisement or publicity material without the prior written consent of the Government.

34.2 Subject to Clause 34.1 above, the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Services or other services provided or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.

34.3 Notwithstanding any consent or approval given under Clause 34.1 or 34.2 above, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

35. Service of Notice

35.1 Notices, demands, invoices or other communications given or made under this Contract by the Contractor to the Government shall be in writing and sent to the relevant party at its address or facsimile number stated below, or to such other address or fax number as the Government Representative may designate by prior notice given to the Contractor in accordance with the provisions of this Clause 35:

	<u>Address</u>	<u>Fax. no.</u>
(a) the Government:	Contract Management Unit Protection Section Country Parks Technical Services Division Country Parks Branch, Agriculture, Fisheries and Conservation Department, 6/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, Hong Kong	2317 0482
(b) the Contractor:	As stated in Appendix B to the Terms of Tender	As stated in Section 1 of Appendix B to the Terms of Tender

35.2 Such notices shall be deemed to have been properly given hereunder and shall be effective

- (a) on the date of delivery if hand-delivered;
- (b) on the date of transmission if sent by facsimile (as evidenced by a successful transmission report);
- (c) if dispatched by mail (whether registered or not), on the day on which the same shall have been tendered for delivery by postal authority in Hong Kong ; and
- (d) if sent by e-mail (email address as stated in **Appendix B** to the Terms of Tender), on the date of transmission.

35.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 35.2 above (whether from a Government Representative of the department specified in (1) or specified in (2) of the Appendix) shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in the Appendix B.

35.4 Notice, demand, correspondence or other communication to the Government shall be to the applicable contact(s) as specified in the Appendix B (as the same may from time to time be revised) depending on the subject matter to which it relates.

35.5 Nothing in this Clause 35 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 35.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

36. General Services Arrangements

The Contractor shall:

- 36.1 submit, within seven (7) days before each month, a monthly cleansing programme and work schedule (including but not limited to the planned roster of the Cleaners, names of Cleaners on-duty and their areas of responsibility) in respect of each working day.
- 36.2 provide an attendance record in such manner and at such location(s) as may be approved by the Government Representative to monitor the attendance of the Cleaners at the Contract Area;
- 36.3 ensure the Cleaners to use the attendance monitoring system to keep proper attendance records;
- 36.4 submit, within seven (7) days after each month, a monthly management report and site records/return, including but not limited to payroll report for workers, pay slip for workers, mandatory provident fund schemes contribution report for workers, duty roster for workers and weekly anti-mosquito work record; and
- 36.5 make available the records, (which upon request by the Government shall be verified by a certified public accountant (practising) or a corporate practice registered under the Professional Accountants Ordinance), for inspection by the Government Representative at any time;
- 36.6 keep a detailed record of the distribution of consumables, cleansing equipment, cleansing materials and tools, as stipulated in Clauses 5(a), 5(b) and 6(a) of Service Specifications, to Cleaners. Such records shall be produced for inspection upon request by the Government Representative; and
- 36.7 keep a detailed record of the distribution of personal protective equipment, as stipulated in Clauses 38.2 to 38.5 below, to Cleaners. Such records shall be produced for inspection upon request by the Government Representative.

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

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

38. Contractor's Employees

38.1 The Contractor shall refer to the guidelines published by the Labour Department on the

prevention of heat stroke at work in a hot environment. Related pamphlets and leaflets can be downloaded from the website of the Labour Department.

- 38.2 For Cleaners who need to undertake outdoor work in summer, the Contractor shall provide them with uniforms made of dry-fit fabric with moisture management treatment. The fabric must be thin knitting fabric providing good water vapour permeability and ultraviolet protection function. The shirt shall be light-coloured and loose-fitting.
- 38.3 For Cleaners who need to work close to road traffic in performing the Services, the Contractor shall provide them with means of safety. Their uniforms shall have retroreflective strips. The design and specification of the uniform shall conform to BS EN ISO 20471:2013 class 2 or later version or equivalent standard.
- 38.4 All Contractor's employees working at site or on board shall be provided with proper protective clothing, protective gears such as life jackets, sunglasses, gloves, suitable footwear, and other protective equipment.
- 38.5 The Contractor shall provide potable water to its employees at all times during work. In addition, the Contractor shall provide each of the Cleaners with wide-brimmed hats, arm sleeves, portable fans and/or umbrellas.
- 38.6 The Contractor shall provide the Cleaners with training and information on prevention of heat stroke at work.
- 38.7 The Contractor shall be responsible for the good conduct of its employees while they are performing the Service under the Contract and shall ensure they behave accordingly. The Contractor shall ensure that its employees engaged in the provision of Service are fit for their tasks and have received proper training in particular on use of equipment on site.
- 38.8 The Contractor shall not permit its employees to solicit or accept any money or gift from the users of the area.

39. Intellectual Property Rights

- 39.1 The Government shall be the exclusive owner of the Materials. Except for the Third Party Materials, all the Intellectual Property Rights in the materials shall vest in the Government immediately upon creation. Subject to Clause 39.3 below, the Contractor warrants that such materials shall be original works created, developed or made by or on behalf of the Contractor.

39.2 The Contractor shall not use or allow to be used directly or indirectly the materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. “Use” includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance.

39.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the materials or supplied or used by the Contractor in the performance of the Contract (“Third Party Materials”), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance) the Third Party Materials.

39.4 The Contractor warrants that:

- (a) prior to the use and incorporation of the Third Party Materials into the materials or in providing the Services, the Contractor shall have obtained from the third party Intellectual Property Rights owners the grant of all necessary clearances and licences for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;
- (b) the provision of the materials, Services and Third Party Materials by the Contractor and the use or possession by the Government, its authorised users, assigns and successors-in-title of the materials and the Third Party Materials for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights or any other rights of any person; and
- (c) the exercise of any of the rights granted under the Contract by the Government, its authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights or any other rights of any person.

39.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, Employees, agents and all authors concerned to irrevocably waive

all moral rights (whether past, present or future) in respect of the materials and Third Party Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of the materials or upon the grant of the licence to the Government, its authorised users, assigns and successors-in-title or upon the delivery of the Third Party Materials to the Government (as the case may be).

39.6 The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licences, documents and instruments and do or procure the doing of any further things as may be required by the Government to give full effect to Clause 21.2 above, this Clause 39 and Clause 42 below , and shall provide all such assignments, deeds, licences, documents and instruments to the Government within fourteen (14) days from the date of the Government's written request or such longer period as may be agreed by the Government in writing.

39.7 The provisions of this Clause 39 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

40. Conflict of Interest

40.1 The Contractor shall during the Contract Period and for six (6) months thereafter:

- (a) ensure that it (including each and every officer and Employee of the Contractor) engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively "Restricted Group") shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the Government; and
- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

40.2 The Contractor shall ensure that itself and each other member of the Restricted Group

shall keep themselves informed and that each other member of the Restricted Group shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.

40.3 In the Contract:

(a) "associate" of a person means:

- (i) a relative or partner of that person; or
- (ii) a company one (1) or more of whose directors is in common with one (1) or more of the directors of that person;

(b) "associated person" of a person means:

- (i) any person who has control, directly or indirectly, over the second-mentioned person;
- (ii) any person who is controlled, directly or indirectly, by the second-mentioned person; or
- (iii) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;

(c) "control" over another person ("person under control") means the power of a person to secure:

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

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

- (d) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and
- (e) “relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.

40.4 “Restricted Group” has the meaning given to it in Clause 40.1 above.

41. Government’s Confidential Information

The Contractor shall treat as confidential all information supplied by the Government under this Contract which is designated as confidential by the Government or which is by its nature clearly confidential provided that this Clause 41 shall extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this contract or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 41). The Contractor shall not divulge or use any confidential information except for the purpose of the Contract. The Contractor shall ensure that its Employees are aware of and comply with the provisions of this Clause 41. This Clause 41 shall survive termination of this Contract.

42. Confidentiality

42.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government Data, any other information, report, document, plan, record, data (including any personal particulars records and personal data (as defined in the PD(P)O, database, code or particulars (a) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor; or (b) otherwise is accessible by or available to the Contractor in the course of performing the Contract; or (c) any materials, advice, recommendations, reports or any other materials containing information belonging to the Government or specifically relating to or relevant to the Services provided to the Government (collectively “Confidential Information”) in whatever form or media. The restrictions on disclosure contained in this Clause 42.1 shall not apply to the disclosure of any Confidential Information if:

- (a) such disclosure to any person employed, used or engaged by the Contractor in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor for the performance of the Contractor’s duties and obligations under the Contract, provided that the Contractor has imposed

on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the Confidential Information to a third party;

- (b) such Confidential Information is already known to the recipient other than as a result of disclosure by the Contractor or any other member of the Restricted Group; or
- (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
- (d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
- (e) with the prior consent in writing of the Government.

42.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 21.2(a) and 21.2(b) above which the Government may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any other member of the Restricted Group;
- (b) any actions or claims made in respect of information subject to the PD(P)O, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its Employees in connection with the performance of the Contract; and
- (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance.

42.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 42.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes

without the Government's prior written consent.

- 42.4 When requested by the Government, the Contractor shall forthwith require any of its officers or Employees as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 42.1 above, to execute a written undertaking in favour of the Contractor and the Government in a form to be determined by the Government agreeing to the restrictions attached to the Confidential Information set out in this Clause and the Contractor agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.
- 42.5 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 42.6 The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).
- 42.7 The Contractor shall ensure that each of its Employees and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause and the Official Secrets Ordinance.
- 42.8 The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause.
- 42.9 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause and/or specific performance ensuring the compliance of this Clause in light of any threatened or actual breach of this Clause, without prejudice to its other rights and claims

including those available under the Contract or at law arising from such breach.

42.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or Employee use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.

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

43. Force Majeure

43.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.

43.2 Within three (3) 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.

43.3 Provided the Government is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract

under any applicable sub-clause of Clause 25.1 or Clause 25.2 above.

43.4 Without prejudice to the generality of Clause 43.3 above, whilst the Suspension due to Force Majeure subsist:

- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event (“Affected Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
- (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
- (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
- (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
- (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.

43.5 Following the issue of a notice by the Contractor under Clause 43.1 above which has led to Suspension due to Force Majeure under Clause 43.3 above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
- (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise

the effects of that Force Majeure Event (“Mitigation Actions”); and

- (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.

43.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Resumption Date, the Government’s decision shall be final in the absence of manifest error.

43.7 Should a Suspension due to Force Majeure subsist for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract pursuant to Clause 25.3 above.

44. Probity

44.1 The Contractor acknowledges it has been reminded that:

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

44.2 The Contractor shall inform its officers and Employees (whether permanent or temporary), and agents that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted.

44.3 The Government shall have the right to terminate the entire Contract pursuant to Clause

25.1 above in the event that the Contractor or any of its officers and Employees is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

44.4 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 44.3 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the Employees.

45. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of this Contract or any other Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice, terminate this Contract pursuant to Clause 25.1 above.

46. Entire Agreement

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

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

47. Relationship of the Parties

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

48. Execution of Further Documents

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

49. Governing Law and Jurisdiction

49.1 The Contract shall be governed by and construed in accordance with the laws of Hong Kong.

49.2 The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to the Contract.

50. Variations

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

51. Severability

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

52. Waiver

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

deemed to be a waiver of any subsequent breach of that or any other provision hereof.

52.2 Without prejudice to the generality of Clause 52.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

53. Assistance in Legal Proceedings

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

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

54. Contracts (Rights of Third Parties) Ordinance

The Parties hereby declare that nothing in this Contract confers or purports to confer on any person not being a Party to this Contract any benefit or any right to enforce any term of this Contract under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance.

55. Disputes

If disputes arise between any officer of the Government and the Contractor in respect of 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.

56. Retention of Record

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

57. Matters in which the Decision of the Government is Final

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

- (a) as to the quality of materials and workmanship;
- (b) as to the method or means (including any question as to what equipment should be provided and used by the Contractor) by which the Services or any part thereof should be provided;
- (c) as to the assessment/judgment on the quality of the Services;

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

58. Review of the Management Plan and Work Plan

The Government Representative may from time to time and at any time require in writing the Contractor to revise any of the plans contained in **Contract Schedule 4** in such manner as the Government Representative may specify.

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

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

60. Order of Precedence

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

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

60.2 The materials are items to be prepared and/or supplied by the Contractor pursuant to requirements of the Contract. They shall form part of the Contract. No materials shall seek to waive, alter, cancel or amend any provisions of any documents listed in Clause 60.1 above. No general approval of, or signature by, the Government of any such material shall be taken as agreement or approval of any such waiver, cancellation, alteration or amendment, unless the Government expressly acknowledges and agrees on a case-by-case basis to this effect. This shall apply even if any such material is signed or given approval after the Letter of Conditional Acceptance.

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 refer to the captioned contract. Unless specified otherwise, capitalized terms used herein shall have the meaning as ascribed to them in the said Contract.

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

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

(※Accountant's Signature)

(※Accountant's Name)

(Date)

※ To be certified by a certified public accountant (practising) or a corporate practice registered under the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong) when requested by Government Representative.

Conditions of Contract

Annex A
(continued)

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

DEPLOYMENT AND WAGES OF CLEANERS

REQUIRED UNDER CONTRACT NO. _____

IN RELATION TO THE CONTRACTOR'S PAYMENT APPLICATION NO.

FOR THE MONTH: _____

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

Post	Name	Committed wages Note 1 (HK\$)	Total days on duty	No-pay leave taken (including no-pay statutory holidays)	Total paid statutory holidays and annual leave	Total overtime hours	Extra Wages under Tropical Cyclone Warning Signal No. 8 or above Note 4	Gratuity Note 4	Statutory holiday pay Note 4	Wages for the month Note 2	Provident Fund contributed		Remarks Note 3
											by Cleaners	by Contractor	
										(a)	(b)	(a) x 5%	
e.g. CS / CL													

CS = Cleansing Supervisor CL = Cleaner

Note 1 Committed wages means wage as set out in **Contract Schedule 2** by successful Tenderer.

Note 2 Wage received refers to that before deduction of employees' contribution to the Mandatory Provident Fund.

Note 3 Among other things, any non-compliance with the committed daily maximum working hours for Cleaners shall be stated.

Note 4 The Contractor shall submit separate statements in details showing the amount payable to each of the Contractor's Employee.

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

(※Accountant's Signature)

(※Accountant's Name)

(Date)

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

Conditions of Contract

PART 3A - SERVICE SPECIFICATIONS

<u>Content</u>	<u>Sheet</u>
Section 1 - Services Requirement	
1. Qualification Requirements of the Contractor's Employees.....	161
2. Responsibilities/Duties of the Contractor's Employees.....	161
3. Manpower Requirements on Provision of Services	163
4. Provision of Mobile Phone Contact of Contract Manager and Cleansing Supervisor.....	165
5. Supply of Transport, Cleansing Equipment, Materials and Tools for the Services	165
6. Supply of Hand Soap, Toilet Paper and Signage in Public Toilet	167
7. Employment of Staff and Manner of Superintendence.....	167
8. Performance and Measurement Standard of Services.....	169
 Section 2 - Location Plan	 172
Section 3 - Facilities within Contract Area	173

PART 3A – SERVICE SPECIFICATIONS

Section 1 – Services Requirement

The Contractor shall provide Services to Tai Tong Recreation Area in Tai Lam Country Park (as specified in Section 2 - Location Plan and Section 3 – Facilities within Contract Area) during the whole Contract Period in accordance with this Service Specifications.

1. Qualification Requirements of the Contractor's Employees

The Contractor should deploy the Contractor's Employees of the following qualifications, capabilities and experience to carry out their duties under the Contract:

	Rank	Qualification and other requirements
(a)	Contract Manager	(i) possess a minimum of three (3) aggregate years' experience in management of contracts for cleansing services within five (5) years prior to the Original Tender Closing Date; and
		(ii) be able to write and speak fluent English and Chinese.
(b)	Cleansing Supervisor	(i) possess a minimum of two (2) aggregate years' experience in cleansing services within five (5) years prior to the Original Tender Closing Date, one (1) year of which shall be in the capacity of a supervisor or foreman; and
		(ii) be able to speak fluent Cantonese.
(c)	Cleaner	(i) be physically fit to carry out cleansing and related tasks; and
		(ii) be able to speak fluent Cantonese.

2. Responsibilities/Duties of the Contractor's Employees

(a) The Contract Manager shall be responsible for:

- (i) responding promptly to any queries raised and implementing instructions given by the Government Representative in relation to the provision of the Services on behalf of the Contractor;
- (ii) attending meetings and discussions with Government Representative in relation to the provision of Services as required by Government Representative; and
- (iii) giving proper training, supervision and guidance to the Cleaners and Cleansing Supervisor in performing the Services.

(b) The Cleansing Supervisor is one of the Cleaners. In addition to his/her general

cleansing duties set out in Clause 2(c) below, the Cleansing Supervisor shall also be responsible for:

- (i) coordinating and overseeing the Cleaners in their execution of general cleansing and other related tasks at the Contract Area in accordance with the Service Specifications;
 - (ii) liaising with the Government Representative on the timing and other arrangements for carrying out specific cleansing tasks;
 - (iii) reporting to the Government Representative on the execution of general cleansing tasks at the Contract Area under the Contract from time to time; and
 - (iv) keeping a log book of the daily attendance record of each Cleaner.
- (c) The Cleaners shall be responsible for
- (i) performing the cleansing and related tasks at the Contract Area as assigned by the Contractor; and
 - (ii) carrying out the tasks in the manner/schedule as described in Clause 8 below.
- (d) The Contractor is also required to
- (i) clean all open outdoor areas within the Contract Area, inside and beyond one (1) metre from the boundary fence as delineated in Section 2 – Location Plan and described in Clause 8 below;
 - (ii) clean all facilities listed in Section 2 – Location Plan and Section 3 - Facilities within Contract Area;
 - (iii) clean the flushing toilets and indoor areas and provide toilet paper, hand soap, and plastic litter bags as described in Clause 5 below;
 - (iv) keep the Contract Area free of blockage, rodents and mosquitos at all surface drains, gutters, rainwater pipes, and trap gullies, etc. within the boundary of the site. Quarterly and accidental pest control exercise shall be carried out and as required by the Inspecting Officer;
 - (v) replace black plastic litter bags into the litter bins/stockades;

- (vi) clean and remove all wax after the day of Mid-Autumn Festival;
- (vii) carry out the tasks in the manner/schedule as described in Clause 8 below;
- (viii) collect and deliver all refuse except recyclables to AFCD's refuse collection point (RCP) within the Contract Area, as specified in Section 2 – Location Plan, by appropriate transport support as agreed by Government Representative at Contractor's own cost and expense. Subject to the type of transport support, the Contractor shall obtain necessary road restriction permits by relevant Government's departments on the use of road with restricted access as indicated in Section 2 – Location Plan ;

Note: The Contractor shall consider the distances between various barbecue sites and RCP. The longest distance is the road between barbecue site No. 2 and RCP, which is approximately five hundred (500) metres.

- (ix) deliver all sorted recyclables, such as barbecue forks, plastic and metal cans with individual transparent plastic litter bags to AFCD Tai Tong Management Centre by appropriate transport support at Contractor's own cost and expense;
- (x) sign on the refuse collection record book each time immediately after collection of the refuse, or any other records as required by the Inspecting Officer; and
- (xi) submit monthly records/return, as stipulated in Clause 36.1 to Clause 36.4 of Conditions of Contract, for inspection by the Government Representative; and
- (xii) keep a detailed record of the distribution of consumables, cleansing equipment, cleansing materials etc. as stipulated in Clause 36.6 and Clause 36.7 of Conditions of Contract, for inspection upon request by the Government Representative.

3. Manpower Requirements on Provision of Services

- (a) The Contractor shall provide the number of Cleaners as specified below with the Monthly Wage specified in the **Contract Schedule 2**:

Period	Day of the week	Working Hours	No. of Cleaners Required (including the Cleansing Supervisor)

Non-Peak Season (March to September)	Tuesday to Friday (<u>Excluding</u> Public Holiday and the day immediately following a Public Holiday)	7:30a.m.-4:30p.m. ^{Note 1} (including one- hour meal break)	3 Cleaners
	Monday, Saturday, Sunday, Public Holiday and the day immediately following a Public Holiday		4 Cleaners ^{Note 2}
Peak Season (October to February)	Tuesday to Friday (<u>Excluding</u> Public Holiday and the day immediately following a Public Holiday)		8 Cleaners
	Monday, Saturday, Sunday, Public Holiday and the day immediately following a Public Holiday		9 Cleaners

Note 1:

The Contractor shall continue providing the same number of Cleaners in the Contract Area to carry out Services during the extended working hours from 4:30 p.m. to 7:00 p.m. (2.5 hours) on the special days specified below with the Hourly Rate quoted in Item 3 of Table 1 of **Contract Schedule 1**:

Special Day	Date	No. of Cleaners Required (including a cleansing supervisor)
Mid-Autumn Festival	6 October 2025 (Monday)	9
	25 September 2026 (Friday)	3
	15 September 2027 (Wednesday)	3
Christmas Eve	24 December 2025 (Wednesday)	8
	24 December 2026 (Thursday)	8
	24 December 2027 (Friday)	8
Christmas Day	25 December 2025 (Thursday)	9
	25 December 2026 (Friday)	9
	25 December 2027 (Saturday)	9
New Year Eve	31 December 2025 (Wednesday)	8
	31 December 2026 (Thursday)	8
	31 December 2027 (Friday)	8
New Year	1 January 2026 (Thursday)	9
	1 January 2027 (Friday)	9
	1 January 2028 (Saturday)	9

Remark: The above dates are subject to changes as determined by Government Representative.

Note 2:

Five (5) additional Cleaners working from 7:30 a.m. to 4:30 p.m. are required to carry out the Services on the Day after Mid-Autumn Festival on 26 September 2026 (Saturday) and 16 September 2027 (Thursday). A total of 10 man-days will be paid with the Daily Rate quoted in Item 4 of Table 1 of **Contract Schedule 1**.

- (b) Upon request by AFCD, the Contractor shall provide additional Cleaner(s) to carry out the Services with the Daily Rate quoted in Item 4 of Table 1 of **Contract Schedule 1** or the Unit Rate quoted in Table 2 of **Contract Schedule 1**.

4. Provision of Mobile Phone Contact of Contract Manager and Cleansing Supervisor

The Contractor shall provide the Cleansing Supervisor and the Contract Manager with mobile phones, and shall provide the Government with the numbers of such mobile phones immediately on the commencement of the Contract Period to ensure that the Government can effectively contact the Cleansing Supervisor and Contract Manager at all times during the Contract Period.

5. Supply of Transport, Cleansing Equipment, Materials and Tools for the Services

- (a) The Contractor shall during the entire Contract Period provide at its own cost and expense the necessary transport, sufficient uniforms for replacement, cleansing equipment, materials and tools to Cleaners for proper and efficient performance of the Services. All transport, cleansing equipment, materials and tools shall be of a type approved by the Inspecting Officer. The Contractor shall provide the following cleansing items:
- (i) **black plastic litter bags** of not less than 0.05 mm (thickness) x 1,070 mm (height) x 1,150 mm (width) with drain holes at lower part of bags which could be fitted onto the existing litter bins/stockades found in the Contract Area;
 - (ii) **transparent plastic litter bags** of not less than 0.05 mm (thickness) x 800 mm (height) x 900 mm (width) with drain holes at lower part of bags for collection of recyclables;
 - (iii) the materials of the plastic litter bags stated in 5(a)(i) and (ii) above should be made of at least fifty percent (50%) of recycled materials and be in good condition;
 - (iv) all cleansing equipment, cleansing materials, tools, cotton gloves, rattan baskets,

plastic bags, etc. necessary in the execution of the Contract from time to time;

- (v) all toilet cleansing materials and tools, such as detergent, towel, mop, brush, cleansing powder, pails, ladders, goggles, gloves, face mask, bleach etc. necessary for the proper performance and cleanliness of the toilets to the satisfaction of Government Representative;

- (vi) Heavy-duty cleansing equipment and tools listed in the following table:

Description of cleansing equipment	Minimum No. required
(1) Ladder with light-duty working platform [#] , at least one (1)-metre height	One (1)
(2) Electric leaf blower	One (1)

[#] The ladder shall conform to the safety standard and Occupational Safety and Health Ordinance.

- (vii) other heavy-duty equipment and tools (i.e. working station trolley cart, vacuum cleaner and water ejector pipe, etc.), if required.

- (b) All Cleaners working at the Contract Area shall be provided with clean and tidy uniforms with company name of the Contractor.
- (c) The Contractor shall ensure that all mosquito/rodent/other pest control and cleansing equipment are kept in clean and sanitary condition. Tools and equipment shall be washed thoroughly after use.
- (d) The Contractor shall pay all costs, charges and expenses to the provision, management, operation, garaging, maintenance and replacement of all such other mosquito/rodent/other pest control and cleansing equipment.
- (e) The Contractor shall promptly replace at its own cost and expense any of these equipment, materials and tools in use as and when required by the Government Representative. The Contractor shall be liable for any loss or damage howsoever caused to such equipment, materials, tools or transport belonging to the Contractor and used for or in connection with the performance of the Services.
- (f) The Contractor shall manage the uses of these cleansing equipment, materials and tools in the following manner:
- (i) all cleansing equipment, materials and tools shall be clean, safe, of good condition,

free of excessive noise, odour or emission, and properly maintained;

- (ii) all cleansing equipment, materials and tools should be properly stored after use at the locations assigned by the Government Representative so as not to be unsightly or cause any obstructions; and
- (iii) all cleansing chemicals must be environmentally friendly. No cleansing chemical of corrosive nature which may cause any personal injury or property damage to the country parks, the Cleaners or any person in or near the Contract Area should be used. The Contractor should ensure that all its Cleaners exercise their utmost care to avoid contamination to the natural environment in Contract Area with detergents, cleansing agent or any liquid during performance of the Services. The Contractor shall adopt the Green Guidelines developed by Environmental Protection Department and Government Logistics Department stipulated at **Contract Schedule 6** in the performance of the Services.

6. Supply of Hand Soap, Toilet Paper and Signage in Public Toilet

- (a) The Contractor shall ensure, at its own cost and expense, continuous supply of:
 - (i) toilet paper in white colour soft double-ply tissue. The Contractor shall provide, when required, hygiene certificate from recognized laboratory to certify that the toilet paper used in the Services meets microbiological standards as stipulated in GB 20810-2018 or later standard; and
 - (ii) hand soap to soap dispensers fitted in and/or outside the flushing toilets.
- (b) The hand soap used in the Services shall be neutral and harmless in nature complying the requirements as stipulated in **Contract Schedule 6** and other relevant legislative provisions in public health.
- (c) The Contractor shall provide and display at its own cost and expense notice signs as appropriate, including but not limited to those bearing the words “Cleansing Works in Progress (清潔進行中)”, “Beware of Wet Floor (小心地滑)”, “Caution! Deep Cleansing Work in Progress (小心!徹底清潔進行中!請勿內進)” in connection with the performance of the Services in all public toilets found in the Contract Area.

7. Employment of Staff and Manner of Superintendence

- (a) All Cleaners shall be provided with proper protective clothing and equipment, and the

Contractor shall also provide appropriate insurance for the Cleaners.

- (b) The Contractor shall be responsible for the good conduct of its Employees while they are performing the Services under the Contract and shall ensure that they behave accordingly. The Contractor shall ensure that its Employees engaged in the provision of the Services are fit for their tasks. The Contractor shall be liable for any contractual default in particular on salary payment and working hours.
- (c) The Government reserves the right to request the Contractor at its own cost and expense to replace any Cleaners who is found:
 - (i) not performing his/her duties to the satisfaction of the Government Representative;
or
 - (ii) on account of his/her misconduct or ill health; or
 - (iii) his/her short-term absence during the working time without any approval from the Government Representative,by giving a three (3)-days' prior notice either verbally or in writing.

8. Performance and Measurement Standard of Services**(a) Cleansing Tasks**

The Contractor shall provide the Services in accordance with the requirements and performance standards set out below.

Job description	Frequency	Job and performance requirements
I. Cleansing of public toilets		
(i) clean the public toilets and floors at least 4 times daily; and	4 times daily during: 8:00 a.m. – 8:45 a.m. 11:00 a.m. – 11:45 a.m. 1:30 p.m. – 2:15 p.m. 3:45 p.m. – 4:30 p.m.	Floor surfaces are dry and free from surface dirt, litter, filth, slippery substance, and grease. No hosing of the toilet is permitted when it is open for use. Walls, ceilings, fixed installations and furniture are clear of surface dirt, stains, fingerprints, marks and grease.
(ii) mop dry and keep the toilets clean and tidy at all times.	and as and whenever required by Government Representative	The rim and outer surface of hand wash basins, including bottle traps are dry, free from litter, dirt, dust, marks and stains. W.C. pans and outer surface, seats, covers and other fittings are dry, clear of dirt, dust, faeces, urine and stains. Urinals and fittings including gullies, grids, cisterns, flush pipes, bottle traps are free from litter, dirt, dust, marks, stains, urea and lime scale deposits. Light fittings, switches, extraction fans, fans and ducting, hand dryers, or pipe works are free from dirt, dust, cobwebs, marks and stains.
II. Cleansing of outdoor areas, Facilities and other particulars as specified in Section 3 – Facilities within Contract Area	Once daily and as and whenever required by Government	Outdoor areas within Contract Area, including areas beyond one (1) metre from the boundary fence as delineated in Section 2 – Location Plan are clear of litter, waste materials, grease and stains. All Facilities such as barbecue pits, tables and benches, shelters, sign boards, information boards and fencing within the Contract Area should be clean and free from dirt, grease, marks and stains.

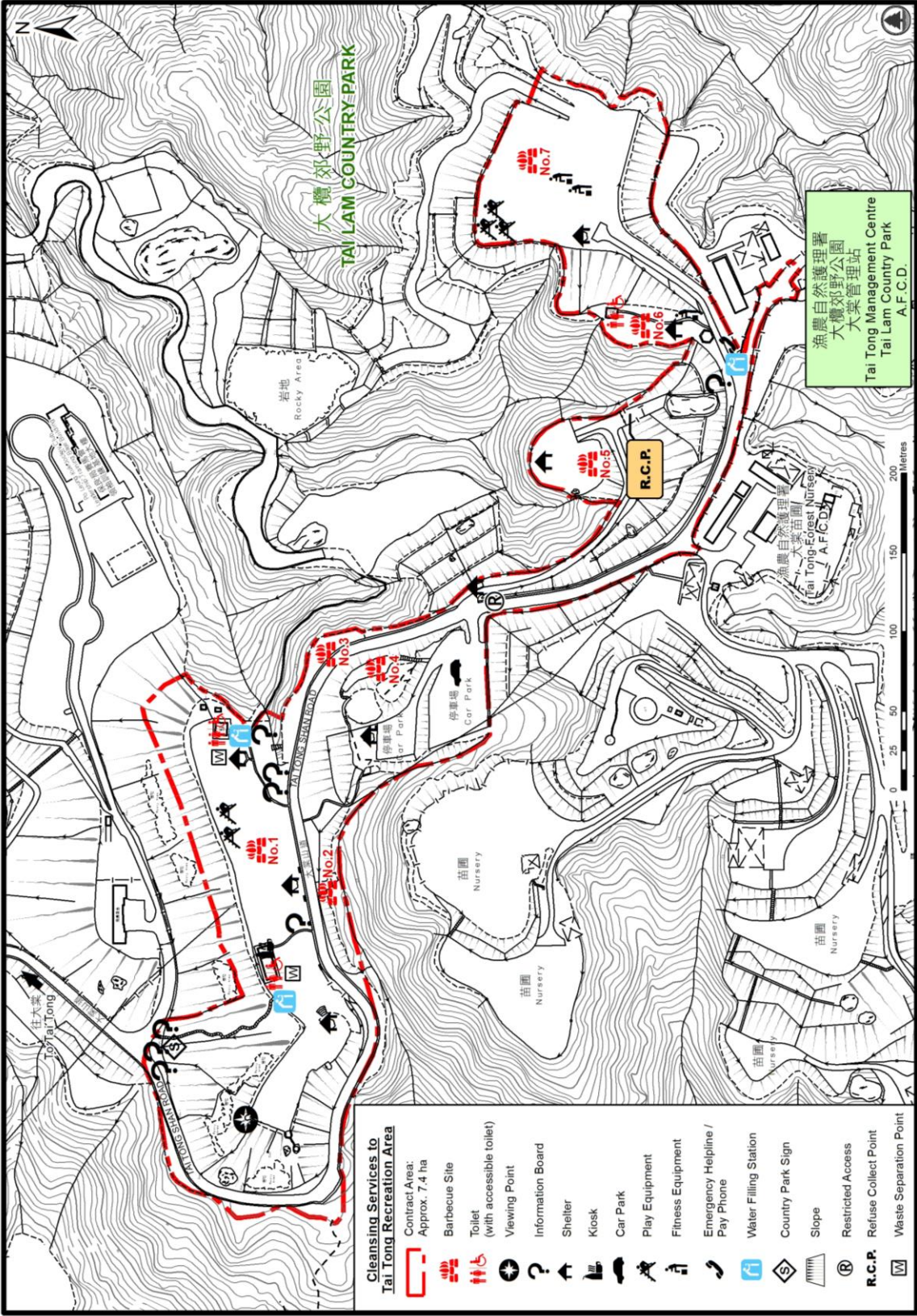
Job description	Frequency	Job and performance requirements
	Representative	<p>All waste separation bins, litter bins/stockades and waste separation points within the Contract Area are cleaned periodically such that they are free from dirt, marks and stains and will not emit unpleasant smell.</p> <p>All surface drainages within the Contract Area are free from litter and unblocked.</p>
<p>III. Refuse and recyclables collection and cleansing</p> <p>(i) Clear and empty all waste separation bins, litter bins/stockades and waste separation points; and replace black plastic litter bags in the Contract Area;</p> <p>(ii) Collect and remove all refuse and recyclables from the Contract Area</p>	<p>Once daily</p> <p>and</p> <p>as and whenever required by Government Representative</p> <p>All the time</p>	<p>All waste separation bins and litter bins/stockades should be less than seventy-five percent (75%) full at all times; all waste separation bins, litter bins/stockades and waste separation points should be provided with black plastic litter bags with the requirements stated in Clause 5(a)(i) above.</p> <p>All refuse shall be collected and temporarily stored in environmental friendly storage areas as agreed by the Government Representative. Such storage areas should be kept in a reasonable state of tidiness.</p> <p>Burning, burying or dumping of refuse is strictly prohibited.</p>
IV. Conveyance of collected refuse and recyclables	Once daily and	The Contractor is required to provide its own transport to dispose all refuse collected to RCP within the Contract Area as specified in Section 2 – Location Plan. The Contractor shall be responsible to obtain necessary road restriction

Job description	Frequency	Job and performance requirements
	as and whenever required by Government Representative	permits, if required, by relevant Government's departments on the use of road with restricted access as indicated in Section 2 – Location Plan. The recyclables shall be sorted properly and stored in transparent plastic litter bags with the requirements set out in 5(a)(ii) above. All recyclables shall be delivered to AFCD Tai Tong Management Centre as specified in Section 2 – Location Plan at Contractor's own cost and expense.
V. Supply of hand soap and toilet paper	All the time	No soap dispensers is 90% empty. The dispensers are free from dirt, dust, marks and stains. Toilet paper rolls shall be always available in each toilet paper holder in the flushing toilet.

(b) Supervision and Administration

Job Description	Performance standards
Response time to rectify if contractor's performance is below the abovementioned performance requirements	At any time when the level of cleanliness of the Contract Area falls below the acceptable standards stated above, remedial action should be taken timely so that acceptable standard can be re-established within one (1) day.
Overall supervision and number of Cleaners provided	The Contractor should properly supervise the work of the Contractor's Employees and provide the exact number of Cleaners stipulated in Clause 3 above.
Response time to ad-hoc or emergency services	Ad-hoc or emergency requests for provision of additional Cleaners are attended to within seven (7) days from the date of the written notice from the Government Representative.

PART 3A – SERVICE SPECIFICATIONS
Section 2 – Location Plan



PART 3A – SERVICE SPECIFICATIONS**Section 3 – Facilities within Contract Area**

No.	Particulars of Facilities	Quantity
1.	Contract Area is delineated in Plan M_CM_2024_006c (Section 2 – Location Plan)	Approximately 7.4 ha.
2.	Refuse collection point (R.C.P.):	1 no.
3.	Waste separation points	2 nos.
4.	Waste separation bins and litter stockades	65 nos. waste separation bins & 7 litter stockades
5.	Toilet blocks with male, female and handicapped toilet for each block	3 blocks
6.	Barbecue pits cum benches	173 sets
7.	Table and benches units	174 nos.
8.	Benches	39 nos.
9.	Shelters	8 nos.
10.	Sign boards	29 nos.
11.	Information boards	8 nos.
12.	Waymarks	3 nos.
13.	View compass	1 no.
14.	Park sign	1 no.
15.	Fitness equipment	7 nos.
16.	Play equipment	5 nos.
17.	Animated features	2 nos.
18.	Water filling stations	3 nos.

Remark: Number of facilities may vary due to addition/deletion as required. The Contractor shall be prepared to accept as a part of the Contract an increase or a decrease of the above stated quantity.

PART 3B
CONTRACT SCHEDULES

	<u>Content</u>	<u>Sheet</u>
Contract Schedule 1	Price Proposal	175
Contract Schedule 2	Wages Proposal and Working Conditions for Cleaners	178
Contract Schedule 3	Heat Stroke Prevention Work Plan	180
Contract Schedule 4	Execution Plan	182
Contract Schedule 5	Innovative Suggestions Schedule	184
Contract Schedule 6	Green Guidelines for the Services	185
Contract Schedule 7	Code of Conduct for the Contractor's Employees	189

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

Table 1 – Tendered Total Amount for provision of Services

(If there is addition of Cleaner(s), the amount to be added to the Monthly Fee shall be calculated according to the rate quoted in Table 2 pursuant to the formula set out in Clause 18 of Conditions of Contract.)

Provision of Cleansing Services to Tai Tong Recreation Area in Tai Lam Country Park				
Item	Working period	No. of Months/Hours /Man-days	Monthly /Hourly / Daily Rate (HK\$)	Subtotal amount (HK\$)
		(a)	(b)	(a) x (b)
1	Non-Peak Season (March to September)	21 months	/ month	
2	Peak Season (October to February)	15 months	/ month	
3	The additional working hours specified in Note 1 of Clause 3 of Service Specification	292.5 hours	/ hour	
4	Additional Cleaners, specified in Note 2 of Clause 3 of Service Specification	10 man-days	/ man-day	
	Total Amount for Item 1 to 4 (HK\$)			
	[This Total Amount will be taken into account in the assessment of price information.]			

Remarks:

1. Tenderers shall note that its Tender will be considered on an **OVERALL** basis. A Tender with only partial offer will result in the Tender **not** being considered further.
2. In accordance to Clause 18 of Conditions of Contract, the Contractor shall be responsible for all costs and expenses required for rendering the Services under the Contract, including but not limited to the transport, equipment, materials and tools required to be provided under the Contract.
3. The prices quoted shall be inclusive of the staff cost, MPF Contribution, administration fee, supervisory charge, and any other costs incurred throughout the contract period.
4. Tenderers shall ensure that all prices quoted above are accurate and complete before submitting

Name of Tenderer: _____

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

its Tender.

5. The quoted Hourly Rate in Item 3 is only applicable to additional Cleaner(s) working on extended working hours, as stipulated in Note 1 in Clause 3 of Service Specifications. There should be no minimum order of additional working hours per request.
6. The quoted Daily Rate in Item 4 is **not** only applicable to additional Cleaner(s) working on the days stipulated in Note 2 of Clause 3 of Service Specifications. In accordance to Clauses 2.4 to 2.6 of Conditions of Contract, the Daily Rate quoted will be used for calculation of addition of Cleaner on an “as and when required” basis during the Contract Period. There should be no minimum order of additional man-days per request.

Name of Tenderer: _____

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

Table 2 – Tendered rates for provision of additional Cleaner

(Prices quoted in Table 2 is optional. If a Tenderer fails to complete Table 2, its Tender will still be considered. The prices quoted in Table 2 will not affect the evaluation of Tender.)

Description	Unit Rate per month (HK\$)
Addition of Cleaner	/ Cleaner / month

Remarks:

1. In accordance to Clauses 2.4 to 2.6 of Conditions of Contract, the “Unit Rate per month” quoted shall be used for calculation of addition of Cleaner on an “as and when required” basis during the Contract Period. There should be no minimum order of additional months per request.
2. In accordance to Clause 18 of Conditions of Contract, the quoted prices shall be inclusive of the staff cost, MPF Contribution, administration fee, supervisory charge, and any other cost incurred throughout the Contract Period.
3. Tenderer shall ensure that all prices quoted above are accurate and complete before submitting its Tender.

Name of Tenderer: _____

[BLANK PAGE]

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

For the purpose of assessing the marks to be awarded in connection with Assessment Criteria (C)(5) and (C)(6), Tenderers shall complete the information below, please refer to Note 5 and Note 6 to the Marking Scheme for the details of assessment.

1. Wages Proposal

Tenderers must propose in the given spaces below a monthly wage rate for a Cleaner and the basis on which such wage rate is calculated. The monthly wage rate proposed must comply with the requirements set out in Clause 6.1(a) of the Terms of Tender. Tenderers are advised to read Clauses 9, 11 to 14 and 16 of the Conditions of Contract carefully for the consequences of non-compliance of the wage requirements. Failure to provide the information for (1)(b) and/or (2) below before the Tender Closing Time, the Tender will be evaluated but the respective wages proposed will be deemed to be the Statutory Minimum Wage for the purpose of tender evaluation.

- (a) By way of illustration, the monthly wage payable to a Cleaner shall not be less than the monthly wage rate derived from the Statutory Minimum Wage under the Minimum Wage Ordinance plus paid rest days, i.e. HK\$9,920, calculated on the basis of :
- (i) thirty-one (31) days per month (i.e. twenty-seven (27) working days plus four (4) paid rest days) ^{Note 1};
 - (ii) six (6) normal working days per week; eight (8) normal hours of work per day ^{Note 2}; and
 - (iii) current minimum hourly wage rate of HK\$40.0.
- (b) The Contractor shall pay each Cleaner no less than the wage as specified below :

Type of staff	Proposed monthly wage ^{Note 1-4}
Cleaner	HK\$ _____

Note 1: The proposed monthly wage shall be calculated on the basis of thirty-one (31) days per month, one (1) paid rest day for every period of seven (7) days, six (6) normal working days per week, eight (8) normal hours of work a day.

Note 2: Tenderers must allow one (1) paid rest day for every period of seven (7) days.

Note 3: The number of hours means working hours plus meal break, if paid.

Note 4: The monthly wage payable to each Cleaner during the Contract Period must not be less than (i) the monthly wage committed by the Tenderer in this wages proposal; or (ii) the “SMW plus rest day pay rate” as the same may be adjusted as a result of future revision of the SMW, whichever is the higher.

Name of Tenderer: _____

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

2. Working Conditions

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

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

Type of staff	Maximum allowable net working hours per day for each Cleaner engaged exclusively under the Contract (excluding meal break)
Cleaner	

Name of Tenderer: _____

Contract Schedule 3
Heat Stroke Prevention Work Plan
(To be inserted into the Technical Envelope)

1. Since this Contract involves Non-skilled Workers performing duties outdoor and/or in indoor environment without air-conditioning, Tenderer shall submit as part of its Tender the Heat Stroke Prevention Work Plan, requirements and details of which are specified below, before the Tender Closing Time. **Otherwise the Tender will not be considered further.**
2. Such measures shall complement the Country Park environment and shall not obstruct, disturb or interrupt visitors to the Country Park.
3. The Heat Stroke Prevention Plan shall cover at least the following proposals:
 - (a) making suitable work arrangement such as rescheduling work to cooler periods and cooler places;
 - (b) carrying out other measures by making reference to the latest Labour Department's "Guidance Notes on Prevention of Heat Stroke at Work" published on 15 May 2023 at https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf (as may be updated from time to time), covering at least the following:
 - (i) to conduct heat stress risk assessments of heat stress for the specific work taking account of the environmental (such as airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatisation of Non-skilled Workers);
 - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers/shelters; providing ventilation equipment, providing sheltered/ventilated resting places etc.) based on the risk assessment results. Such measures shall complement the environment of the Country Park and shall not obstruct, disturb or interrupt visitors to the Country Park; and
 - (iii) to arrange hourly rest breaks as appropriate for Non-skilled Workers working outdoors, in indoor environment without air-conditioning, and/or in the vicinity of heat sources, based on the recommendations and criteria provided in the "Guidance Notes on Prevention of Heat Stroke at Work", when the Heat Stress at Work Warning issued by the Labour Department is

Name of Tenderer: _____

Contract Schedule 3
Heat Stroke Prevention Work Plan
(To be inserted into the Technical Envelope)

in force;

- (c) providing potable water at all times during work;
 - (d) providing uniforms with dry-fit properties;
 - (e) providing wide-brimmed hats, arm sleeves and portable fans, and/or umbrellas.
4. The Heat Stroke Prevention Work Plan as specified in Clause 3 above shall be certified by a registered safety officer who has a valid registration as at the Tender Closing Date with the Labour Department under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z) using the form set out in **Appendix C** to these Terms of Tender (“Safety Officer Certification”). Details of registered safety officers are available on the Labour Department’s homepage at https://www.labour.gov.hk/eng/faq/oshq8_whole.html. **A Tenderer which has failed to submit the Safety Officer Certification signed by a safety officer as aforesaid before the Tender Closing Time will be disqualified and its Tender will not be considered further.**

(use separate sheet as required)

Name of Tenderer: _____

Contract Schedule 4
Execution Plan
(To be inserted into the Technical Envelope)

For the purpose of assessing the marks to be awarded in connection with Assessment Criteria (A)(1) and (A)(2), Tenderers shall submit an Execution Plan before the Tender Closing Time. **Otherwise the Tender will not be considered further.**

A: Management Plan

(use separate sheet as required)

The Management Plan shall cover all the items below:

1. an organisation chart showing
 - i. the line of command and division of labour of the proposed workforce;
 - ii. with details of the professional qualifications; and
 - iii. experience of the key personnel including Contract Manager, supervisory staff etc. proposed for the Contract;
2. detailed quality assurance plan for
 - i. checking staff attendance to ensure that the number of Cleaners as specified in the Service Specifications is maintained at all time for carrying out the Services;
 - ii. ensuring delivery of quality Services, dealing with unsatisfactory standard of performance/conduct/discipline of the Cleaners and preventing recurrence of sub-standard Services;
3. details of staff briefings and training programmes for on-site supervisory and operational staff for the performance of the Services, including
 - i. code of conduct,
 - ii. induction course,
 - iii. refresher course; and
 - iv. focused courses (e.g. corrective training for Contractor's staff with unsatisfactory standard of performance or discipline)
4. a detailed plan for maintaining close communication with the Government Representative when there are emergency situations.

Contract Schedule 4
Execution Plan
(To be inserted into the Technical Envelope)

B: Work Plan

(use separate sheet as required)

The Work Plan shall cover all the items below:

1. a detailed staff deployment plan setting out the distribution and responsibilities of all Cleaners of the proposed workforce in meeting the performance requirements of the Contract;
2. details of the leave relief arrangement to cover staff on leave, including the number of Cleaners that could be mobilized within a specified timeframe, availability of additional resources and commitment to mobilize additional manpower within short notice etc.
3. detailed
 - i. list of transport, materials, tools, consumables etc. including but not limited to the quantities and types available to meet the performance requirements of the Contract;
 - ii. practical and effective contingency plan in case of breakdown or shortage of cleaning equipment and/or consumables.
4. a detailed arrangement for the allocation of manpower, resources, transport support, and safety measures to convey the collected refuse from recreation area to the AFCD's RCP, ensuring the safety of Cleaners and the public, in compliance with the on-site environment and the service requirements stipulated in the Service Specifications.

Contract Schedule 5
Pro-innovation Proposals and ESG Proposals
(To be inserted into the Technical Envelope)

- For the purpose of assessing the marks to be awarded in connection with Assessment Criterion (A)(3), Tenderers shall submit Innovative Suggestions by completing or indicating of using separate sheet(s) in the tables below before the Tender Closing Time. Otherwise, **mark will not be given** for Assessment Criterion (A)(3). Please refer to Note 3 of the Marking Scheme for details.
- The Innovative Suggestions with the components of Pro-innovation Proposals and ESG Proposals shall be highlighted and explained clearly and shall show what benefits/positive values the proposals can bring about in the tables provided below.
- If there is not enough space, please use supplementary sheets if necessary.

Pro-innovation Proposals – directly relevant to the Services

Proposed Pro-innovation Proposals	Brief description on improvements/benefits/positive values that can bring about	How to implement	Supporting documents (if any)

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

Proposed ESG Proposals	Brief description on improvements/benefits/positive values that can bring about	How to implement	Supporting documents (if any)

Name of Tenderer: _____

Contract Schedule 6

Green Guidelines for the Services

1. Cleansing Products and Supplies

The Contractor shall use cleansing products that comply with the mandatory requirements of green specifications developed by the EPD and GLD; and should, as far as possible, use cleansing products that comply with the desirable requirements of the green specifications developed by the EPD and GLD which will be updated from time to time. A list of cleansing products with recommended green specifications as promulgated by the EPD (as at the date of these Tender Documents) is attached for reference.

Product items	Recommended green specifications
All purpose cleaners	<p>Mandatory requirements</p> <ul style="list-style-type: none"> ● The pH of aqueous solution of the detergent shall not be higher than 10.5. ● The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and ethylenediaminetetraacetic acid (EDTA). ● The product shall not contain halogenated substances or solvents, including reactive chlorine compounds. ● The product shall not be formulated or manufactured with phosphate or phosphonates. ● The product shall not be formulated with ammonia or ammonium compounds. ● The product shall be at least 90% biodegradable. ● The product shall not contain any heavy metals or their compounds as listed below: (i) arsenic; (ii) cadmium; (iii) cobalt; (iv) hexavalent chromium; (v) lead; (vi) mercury; and (vii) selenium.
	<p>Desirable requirement</p> <ul style="list-style-type: none"> ● The product should not contain more than 3% by weight of volatile organic compounds (VOCs).
Sanitary detergent	<p>Mandatory requirement</p> <ul style="list-style-type: none"> ● The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and ethylenediaminetetraacetic acid (EDTA). ● The product shall not contain halogenated substances or solvents, including reactive chlorine compounds. ● The product shall not contain more than 5% by weight of volatile organic compounds (VOCs). ● The product shall not be formulated or manufactured with phosphate or phosphonates. ● The product shall not be formulated with any chemicals that are included in the International Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens.

Contract Schedule 6

Green Guidelines for the Services

	<ul style="list-style-type: none"> ● The surfactant used in the product shall be at least 90% biodegradable. ● The product shall not contain any heavy metals or their compounds as listed below: (i) arsenic; (ii) cadmium; (iii) cobalt; (iv) hexavalent chromium; (v) lead; (vi) mercury; and (vii) selenium.
Soap toilet liquid	<p>Desirable requirement</p> <ul style="list-style-type: none"> ● The pH value of product, before dilution, should not be higher than 11.5 or less than 2.
	<p>Mandatory requirements</p> <ul style="list-style-type: none"> ● Bioaccumulative preservatives shall not be used. ● The pH value of 5% solution shall range from 6-10. ● The product shall be at least 60% biodegradable. <p>Desirable requirements</p> <ul style="list-style-type: none"> ● The product should not be formulated or manufactured with alkylphenol ethoxylates (APEOs), ethylenediaminetetraacetic acid (EDTA) or nitrilotriacetate (NTA). ● The product should not be formulated or manufactured with phosphate or phosphonates. ● The product should not be formulated or manufactured with optical brighteners. ● Fragrance used in the product should comply with international guidelines, e.g. the Code of Practice of the International Fragrance Association (IFRA). The product shall declare any fragrances on the product label in the ingredient line. ● The product should not be formulated with any chemicals that are included in the International Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens. ● The final products (as sold) should not contain more than 6% (by weight) of volatile organic compounds (VOCs) with a boiling point lower than 150°C.
Cleaning rags and cotton waste	<p>Desirable requirement</p> <ul style="list-style-type: none"> ● Cleaning rags <ol style="list-style-type: none"> i. Addition of optical brighteners should not be permitted. ii. The content of detectable formaldehyde in the final product should not exceed 0.15mg/kg. iii. The content of pentachlorophenol (PCP) in the final product should not exceed 0.15mg/kg. ● Cotton waste Adsorbable organic halides (AOX) emissions in the bleaching effluent should be less than 100 mg Cl/kg. ● For product containing fibres, these fibres should contain recycled content and should take up to at least 70% by weight of the product.

Contract Schedule 6
Green Guidelines for the Services

Disinfectant	<p>Mandatory requirements</p> <ul style="list-style-type: none"> ● The product shall not be formulated or manufactured with builders belonging to phosphates. ● The product shall not be formulated with any chemicals that are included in the International Agency for Research on Cancer (IARC) lists for proven (Group 1), probable (Group 2A), or possible (Group 2B) carcinogens. ● The product shall not be formulated or manufactured with aromatic compounds. ● The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs) and their alkylphenol derivatives (APDs), and ethylenediaminetetraacetic acid (EDTA).
	<p>Desirable requirements</p> <ul style="list-style-type: none"> ● The disinfectant should not be formulated or manufactured with fragrances and dyes, or only contain food grade dyes that comprise no more than 0.1% by weight of the total, undiluted formulation. ● The product should not be formulated or manufactured with surfactants belonging to nitrilotriacetate (NTA), diethylenetriaminepentaacetic acid (DTPA) or any of its salts, or reactive chlorine compounds such as sodium hypochlorite or organic chlorinated compounds of chlorine, quaternary ammonium salts that are not readily biodegradable.
Hand soaps	<p>Mandatory requirements</p> <ul style="list-style-type: none"> ● The pH value of product shall not be higher than 11 or less than 2. ● The product shall not contain nitromusk and polycyclic musk fragrances. ● The product shall not be formulated or manufactured with alkylphenol ethoxylates (APEOs), ethylenediaminetetraacetic acid (EDTA), nitrilotriacetate (NTA), halogenated organic solvents. ● The product shall not be formulated or manufactured with phosphate or phosphonates. ● The product shall not be formulated or manufactured with optical brighteners.
	<p>Desirable requirements</p> <ul style="list-style-type: none"> ● The product should be at least 90% biodegradable and not bioaccumulative. ● The product should not contain more than 1% by weight of volatile organic compounds (VOCs).

Contract Schedule 6
Green Guidelines for the Services

2. Water Saving

The Contractor shall procure the Contractor's Employees to, among others,

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

3. Energy Saving

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

4. Staff Training

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

Contract Schedule 7
Code of Conduct for the Contractor's Employees

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