

INTERPRETATION

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

“Accepted Innovative Suggestion”	means an Innovative Suggestion and its specifications, subject to negotiations if any, accepted by the Government;
“Property Attendant”	means a person who is deployed by the Contractor to perform the duties set out in the Service Specifications at the Venue;
“Civil Aid Service” or “CAS”	means the Civil Aid Service of the Government;
“Commencement Date”	means the date specified in Clause 1.1 of the Conditions of Contract for the commencement of the Contract Period;
“conditional acceptance of tender”	has the meaning given to it in Paragraph 14 of the Terms of Tender;
“Contract”	means the contract between the Government and the Contractor for the provision of the Services comprising the Tender Documents, the documents submitted by the Contractor as part of its Tender and to the extent accepted by the Government, the conditional acceptance of tender, the Memorandum of Acceptance issued by the Government to that Contractor and the attachments to any of the above, subject to such further changes as the Government may stipulated in exercise of its power under the Tender Documents, and/or otherwise subject to such further changes as the Government and the Contractor may agree.
	References to “the Contract” or “this Contract” shall mean the same Contract as defined above;
“Contract Deposit”	means the deposit as more particularly described in Paragraph 15 of the Terms of Tender and Clause 57 of the Conditions of Contract;
“Contract Period”	means the period specified in Clause 1.1 of the Conditions of Contract, subject to any adjustment made pursuant to Clause 1.2 of the Conditions of Contract;
“Contract Schedules” or “Schedules”	means the schedules for the Contract hereto attached to the Tender Documents;

“Contractor”	means the Tenderer whose Tender is accepted by the Government;
“Contractor’s Employee(s)”	means any one or more employee or employees of the Contractor who is/are deployed by the Contractor to perform the Services under the Contract;
“Contractor’s Representative”	has the meaning given to it in Clause 36.5 of the Conditions of Contract;
“Debarment Period”	means the period during which a Tenderer is debarred from tendering for any Non-skilled Worker Contract due to: (a) conviction of any of the Relevant Offences, as provided under Paragraph 8.3.1 of the Terms of Tender; or (b) accumulation of three (3) Demerit Points over a rolling period of thirty-six (36) months, as provided under Paragraph 8.4 of the Terms of Tender;
“Default Notice”	has the meaning given to it in Clause 48.5 of the Conditions of Contract;
“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 the Non-skilled Workers having been employed under a continuous contract for not less than one month; (c) wages at a rate of at least 150% for the Non-skilled Workers who are required to work when the Tropical Cyclone Warning Signal No. 8 or above is hoisted; (d) daily maximum working hours; (e) signing of Standard Employment Contracts with Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days; (f) payment of wages by means of autopay to Non-skilled Workers employed for the performance of a Non-skilled Worker Contract if the employment period exceeds seven (7) days (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);

- (g) gratuity payable to Non-skilled Workers as provided under Clause 46.1 of the Conditions of Contract (where applicable);
- (h) gratuity payable to Non-skilled Workers as provided under Clause 46.2 of the Conditions of Contract (where applicable);
- (i) gratuity payable to Supervisory Staff as provided under Clause 46.5 or Clause 46.6 of the Conditions of Contract (where applicable); and
- (j) 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 (Cap. 553);
“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;
“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;
“essential requirement”	means a requirement specified in the Tender Documents which is identified as an essential requirement or a requirement in relation to which it is stated in the Tender Documents that the non-compliance by a Tenderer or a Tenderer as at the Tender Closing Time will lead to that Tender or Tenderer not being considered further (or the Tender or Tenderer being disqualified);
“Estimated Contract Value”	means the total estimated contract amount for the provision of the Services as quoted for Items 1 and 2 in Part A of Price Schedule by the Contractor and accepted by the Government Representative;

“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;
“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 Paragraph 22.7 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 a Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149);
“Good Industry Practice”	means the standards, practices, methods and procedures conforming to 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 Hong Kong;
“Government Logistics Department” or “GLD”	means the Government Logistics Department of the Government;

“Government Representative”

means:

- (a) the Chief Staff Officer, CAS acting for and on behalf of the Government;
- (b) any public officer of the Government authorised by (a) to act on his behalf for the purposes of this Contract; and
- (c) any other public officer authorised by the public officer referred to in (b) 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 Paragraph 8.2 of the Terms of Tender;

“Hong Kong”

means the Hong Kong Special Administrative Region of the People’s Republic of China;

“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;

“Innovative Suggestion”

means a Pro-innovation Proposal or an ESG Proposal;

“Intellectual Property Rights” or “IPR”

means patents, trade marks, service marks, trade names, design rights, copyrights, domain names, database rights, rights in know-how, new inventions, designs or 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;

“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;

“Items”

means the items specified in the Price Schedule, which consist of Item 1 (Provision of Property Attendant Services to Civil Aid Service Tai Tan Camp and Wong Shek Water Sports Training Centre Store) and Item 2 (Provision of Additional Property Attendants on an “as-and-when-required” Basis), and shall be inclusive of all related services and subject matters specified in the

Contract;

“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;
“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 51 of the Conditions of Contract subject to and after any deductions in respect of that month;
“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 Paragraph 26 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 Property Attendants;
“Non-skilled Worker Contract”	means a non-works service contract of the Government that rely heavily on the deployment of the Non-skilled Workers, and for the purpose of this Invitation of Tender, include this Contract;
“Original Tender Closing Date”	means the date specified in the “Lodging of Tender” section of the Tender Form as the latest date before which Tenders must be deposited with the Government, regardless of whether the date has been extended subsequently;
“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;
“Person”	means any individual, corporation, partnership or firm;

“Price Schedule”	means Contract Schedule 1 attached to the Tender Documents for completion of the price quotation of the Services offered;
“Pro-innovation Proposal”	means a proposal that adopts any one or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the service outcome;
“Relevant Offences”	means the offences as defined in Paragraph 8.3.1 of the 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;
“Security Company Licence”	means a valid Type I Security Company Licence issued by the Security and Guarding Services Industry Authority under section 21 or renewed under section 23 of the Security and Guarding Services Ordinance (Cap. 460) for provision of security guard services;
“Services”	means all the work, services and things specified in the Service Specifications and includes the supplementary and related services to be performed, executed, supplied or done by the Contractor under the Contract;
“Service Order”	has the meaning given to it in Clause 52.1 of the Conditions of Contract;
“Service Specifications”	means the specifications which set out the service requirements of the Government, a copy of which is attached to the Tender Documents, and which include any update and revision agreed with the Contractor 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” or “SEC”	means the written employment contracts to be entered into between the Contractor and its Non-skilled Workers; a copy of such contract and its guidance notes are annexed to the Tender Documents as Attachment B of the Conditions of Contract ;
“Statement of Convictions”	means the Statement of Convictions in respect of the Relevant Offences in the form of Clause 4 of Annex B to the Terms of Tender ;
“Statutory Minimum Wage” or “SMW”	means the “minimum wage” as defined in the Minimum Wage Ordinance (Cap. 608);
“Supervisory Staff”	means all supervisory staff members employed or to be employed by the Contractor who directly monitor the delivery of services by Non-Skilled Workers under the Contract; references to “a Supervisory Staff” shall mean any one member of the Supervisory Staff;
“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 and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government in accordance with Paragraph 4.6 of the Terms of Tender ;
“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 in accordance with Paragraph 4.6 of the Terms of Tender;
“Tender Documents”	means the documents as specified in Paragraph 1 of the Terms of Tender;
“Tender Form”	means: (a) the Tender Form issued for the Invitation to Tender; (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”	has the meaning given to it in Paragraph 12.1 of the Terms

of Tender;

“Tenderer”	means a legal person other than any form of joint venture which or who has the 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;
“Unit Price”	means the “Monthly Rate per Property Attendant” for Item 1 and “Unit Rate” for Item 2, as required in Part A of the Price Schedule;
“Venue”	means the venues and sites in the Civil Aid Service Tai Tan Camp and Wong Shek Water Sports Training Centre Store located at Pak Tam Road, Tai Tan, Sai Kung, New Territories and its lecture rooms, office, accommodation and space for bulk stores & equipment and car parking area. It also has some amenities, such as camping area, BBQ ground and swimming pool, etc. as detailed in Schedule A (Service Requirements) of Part 3 (Service Specifications) and any other locations as designated from time to time by the Government Representative for the purposes of the Contract;
“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 ; and
“working day”	means Monday to Friday, other than a public holiday, or a day on which 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 time during the normal business hours.

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 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, agent or sub-contractor 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., 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;
 - (v) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622); and
 - (w) the expression “Cap.” means a Chapter of the Laws of Hong Kong.
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.