

PART 2 CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 Subject to the provisions for sooner termination or extension of the Contract, the Contractor shall provide the Services to the Government for a period of 36 months commencing 1 September 2025, or a date to be specified in the Memorandum of Acceptance, whichever is the later (“**Contract Period**”).
- 1.2 The Government reserves the right to extend the Contract Period for six (6) months or such shorter period as the Government deems fit on the same terms and conditions by giving no less than one (1) month’s notice to the Contractor before the expiry of the Contract Period. The Government may extend the Contract Period more than once and the length of the extension shall be stated in the notice. The total duration of one or more extensions shall not exceed six (6) months. The extended Contract Period shall commence immediately upon the expiry of the original Contract Period.
- 1.3 The Contractor shall agree to the extension of the Contract made under Clause 1.2 hereof when the Government exercises its right to extend the Contract.

2. Assignment

The Contractor shall not, without the prior written consent of the Government, assign, transfer 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.

3. Sub-contracting

The Contractor shall **not** be allowed to enter into sub-contract with any Person for the performance of any or all parts of the Contract without prior written consent of the Government Representative. Any unauthorised sub-contracting arrangement shall entitle the Government to terminate the Contract forthwith.

4. Contractor's Acknowledgement

The Contractor acknowledges that-

- (a) it is thoroughly conversant with all aspects of the Contract including but not limited to the nature and quality of the Services, the equipment, materials, tools, any necessary storage, transportation, the persons to be deployed for the Services which will be required under the Contract. If the Contractor fails to observe its contractual obligations, it would adversely affect its future standing as Government contractor;
- (b) it has been supplied with sufficient information to enable it to provide to the Government the Services in accordance with the provisions of the Contract;
- (c) it shall not be entitled to any additional payment nor be excused from performing any requirements as imposed under the Contract on the ground of any misinterpretation by the Contractor of any matters relating to the Contract;

- (d) it shall make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to the satisfaction of the Government; and
- (e) it shall perform its obligations under the contract in compliance with all applicable laws of Hong Kong.

5. Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Government that -

- (a) the Contractor, the Contractor's Employee and/or the Contractor's agent have the necessary skill, experience, qualifications and expertise to provide the Services on the terms and conditions as set out in the Contract;
- (b) the Contractor shall carry out and provide the Services with all due and reasonable diligence and in a proper, skilful and workmanlike manner and shall perform the Services to the satisfaction of the Government;
- (c) all Building Attendants deployed by the Contractor to perform the Services shall at all times during the Contract Period hold valid Category B Security Personnel Permit to do the relevant type of security work as required under this Contract;
- (d) the Contractor shall provide the Building Attendants on the designated arrangement for building attendant posts requiring round-the-clock building attendant services;
- (e) all Building Attendants engaged under this Contract shall have signed a written Standard Employment Contract in the format as Attachment B to these Conditions of Contract and the Contractor shall comply with all terms of the Standard Employment Contract;
- (f) the provision of any of the Services or material by the Contractor in performing the Contract, the use or possession by the Government and its authorised users of any material supplied under the Contract does not and will not infringe any Intellectual Property Rights of any party. This warranties shall be expressly stipulated to survive the completion or early termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination;
- (g) the Contractor shall comply with all laws, regulations, by-laws and code of practice which are from time to time applicable to the provision of the Services, including obtaining and maintaining all necessary licences or permits;
- (h) the Contractor shall comply with all reasonable instructions and directions on all matters relating to the Contract as the Government Representatives may from time to time issue to the Contractor;
- (i) the Contractor shall take all necessary measures, including the provision of proper protective gear and proper training to ensure the safety of all Contractor's Employees and all other persons at, in or near the Venue in the provision of the Services. In the event of any Contractor's Employees or agents suffering from any personal injury or death in the course of provision of Services and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative;

- (j) in respect of any materials supplied or used by the Contractor in the performance of the Contract and in respect of which any Intellectual Property Rights are vested in a third party, the Contractor shall have obtained the grant of all necessary clearances for itself and for the Government and its authorised users authorising the use of such materials for any of the purposes contemplated by the Contract. This warranties shall be expressly stipulated to survive the completion or early termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination; and
- (k) 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.

6. Government Provided Information

- 6.1 The Government does not guarantee the accuracy of any information supplied to the Contractor by or on behalf of the Government or otherwise.
- 6.2 No negligence or failure on the part of the Contractor to obtain information about or to obtain independent verification of the foregoing or any other matters affecting the execution of the Services shall relieve the Contractor from any liabilities undertaken by the Contractor herein.

7. Use of Government's Premises and Facilities

- 7.1 The Government may at its discretion provide to the Contractor storage space free of charge in the Venue for storage of materials provided by the Contractor if such space is available.
- 7.2 The storage space is provided to the Contractor, the Contractor's Employee or the Contractor's agent solely for the purpose of facilitating the Contractor's performance of this Contract during the Contract Period. Such permission shall cease at the expiry 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.
- 7.3 The Contractor should not use any space provided to it for conducting any fee charging activities, without the prior written consent of the Government Representative. The Government Representative reserves his right to terminate the Contract if any fee charging activities are conducted by the Contractor without prior consent of the Government Representative and the Contractor is not entitled to claim any compensation.
- 7.4 Nothing in this Contract shall create a tenancy or licence of whatsoever nature in favour of the Contractor, the Contractor's Employee or the Contractor's agent and that no such tenancy or licence has or shall come into being and the Government may enter and use the storage space at any time without the need to obtain the consent of the Contractor.
- 7.5 The Contractor shall keep the storage space clean, tidy, in reasonably good state of repairs and properly secured, as appropriate. The Contractor shall not erect or install any fixtures or fittings at the storage space without the Government's prior written approval.

- 7.6 The Contractor undertakes at the expiry or sooner termination of the Contract to remove at its own expense within such time as specified by the Government Representative all fixtures or fittings erected at the Venue by the Contractor and to make good any damage to the Government or the Government's properties which are caused by such removal. If the Contractor fails to do so, the Government shall be entitled to remove and dispose of any properties, chattels, fixtures or fittings left in the Venue in any manner deemed appropriate by the Government (including sale and abandonment) without incurring any liability by the Government towards the Contractor (including the payment of any compensation to the Contractor). All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the breach of this Clause shall be recoverable as a debt due from the Contractor.
- 7.7 The Contractor shall ensure that all persons engaged by it in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 7.8 The safety of any vehicle used by the Contractor and brought alongside or onto Government premises, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises.
8. Electricity Supply
- 8.1 The Contractor, if so permitted by the Government Representative, may consume electricity for lighting, power and testing installations from supply points which may be available at the Venue to perform the Services provided that the Government shall be entitled to charge the Contractor for any electricity consumed by the Contractor from such available supply points at the rate to be determined solely by the Government. If electricity supply points are not available, or permission to use available supply points is not granted, the Contractor shall at its own expense provide its own source of supply of all electricity needed and pay all fees and charges in connection therewith. The Contractor shall not install any wiring and lighting fittings, or other electrical works (be they permanent or temporary) without the prior written approval of the Government Representative. All approved installations (be it permanent or temporary) shall be carried out by qualified person registered under the Electricity (Registration) Regulations (Cap. 406D). The Contractor shall be responsible for maintaining, repairing and removing such installation at its own expense, should the Government Representative so direct. The ownership of any such installations shall be vested in the Government if it deems necessary upon the termination of the Contract free of any costs or charges.
- 8.2 The Contractor shall ensure that all its employees and agents exercise their utmost care in the use of electricity supplies to avoid wastage and damage to Government property.
- 8.3 Permission to use the said electricity supplies shall cease at the end or sooner termination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.
- 8.4 Wrongful use of electricity supplied by the Government shall entitle the Government Representative to revoke the permission granted under Clause 8.1 above. Where such permission is revoked under this Clause, the Contractor shall at its own expense procure power source for the Services.

9. Water Supply

- 9.1 The Contractor, if so permitted by the Government Representative, may use water supplies which may be available at the Venue to perform the Services provided that the Government shall be entitled to charge the Contractor for water consumed by the Contractor from such available supplies at the rate to be determined solely by the Government. If water supplies are not available at the Venue or permission to use available supplies is not granted, the Contractor shall at its own expense obtain water supplies for performing the Services and pay all fees and charges in connection therewith. The Contractor shall not install any piping or water supplies fittings, or carry out any other waterworks (be they permanent or temporary) without the prior written approval of the Government Representative. If approved by the Government Representative, the installations (be it permanent or temporary) shall be carried out by qualified person registered under the Waterworks Ordinance (Cap. 102). The Contractor shall be responsible for maintaining, repairing and removing such installation at its own expense should the Government Representative so direct. The ownership of any such installations shall be vested in the Government if it deems necessary upon the termination of the Contract free of any costs or charges.
- 9.2 The Contractor shall ensure that all its employees and agents exercise their utmost care in the use of water supplies to avoid wastage and damage to Government property.
- 9.3 Permission to use the said water supplies shall cease at the end or sooner termination of the Contract as may be specified by the Government Representative by notice in writing to the Contractor.
- 9.4 Wrongful use of water supplied by the Government shall entitle the Government Representative to revoke the permission granted under Clause 9.1 above. Where such permission is revoked under this Clause, the Contractor shall at its own expense procure water source for the Services.

10. Government Property

If any Government property shall be issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property upon termination or expiry of the Contract or upon notification by the Government Representative at any time during the Contract Period. If any such property shall be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or the Contractor's Employee or the Contractor's agent, the Contractor shall pay for the same a sum which equals to the total replacement cost plus relevant reasonable cost that may be incurred by the Government arising therefrom. 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 all such assistance as is necessary for this purpose.

11. Notice to be Written in both English and Chinese

All notices displayed or circulated by the Contractor requiring the Contractor's Employee or the Contractor's agent or the public to comply with the rules and regulations of the Government Representative, the Government or other competent authority shall be written in both English and Chinese.

12. Information Used Not to be Divulged

- 12.1 None of the information in the documents furnished by the Government to the Contractor shall be used by the Contractor for any purpose other than for the purpose of the Contract and the Contractor shall not divulge or use except for the purpose of the Contract any information contained in the documents.
- 12.2 The Government shall have the right, without seeking prior consent from the Contractor, to disclose the following whenever it considers appropriate or when such disclosure is for the purpose of performing the Government's contractual obligation –
- (a) contractual information and commitment contained in the tender as submitted by the Contractor in relation to the Building Attendants' wages and maximum working hours and the number of the Contractor's Employees engaged for the performance of the Contract; and
 - (b) information in relation to the Demerit Points given to the Contractor for breaches of the specific contractual obligations under the Contract.

13. Monies or Valuables Found by the Contractor's Employee

All monies or other items of value found by the Contractor, the Contractor's Employee or the Contractor's agent in performing the Services at the Venue shall be handed to the Government Representative as soon as possible and the Contractor shall obtain from the Government Representative a written receipt therefor.

14. Contractor's Employee or Agent

- 14.1 The Contractor shall be responsible for the good conduct of the Contractor's Employees or the Contractor's agents while they are performing the Services under the Contract and shall ensure that they behave accordingly.
- 14.2 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 Employee or the Contractor's agent engaged or deployed for the purpose of the Contract.
- 14.3 Any of the Contractor's Employee or the Contractor's agent so removed shall be replaced as soon as possible by a competent substitute. The Contractor shall not deploy the removed person to perform the Services at any other venues of the CAS.
- 14.4 The Government shall in no circumstances be liable to Contractor, the Contractor's Employee and the Contractor's agent in respect of any liability, loss or damage occasioned by such removal and the Contractor hereby agrees to fully indemnify the Government against any aforesaid claim made by such employees or agent.
- 14.5 The Contractor shall ensure that all the Contractor's Employee and the Contractor's agent wear tidy and clean clothes and such special or protective clothing and footwear (e.g. raincoat, rain boots, etc.) 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.

- 14.6 The Contractor must not restrain any Contractor's Employees from the employment by the Government or any other company to provide services for the Government upon the completion or termination of the contracts between the Contractor's Employees and the Contractor. If the Government Representative has reason to believe that the Contractor is in breach of this Clause, the Government Representative may at its absolute discretion demand the Contractor to remove such restraint within seven (7) working days.

15. Contractor's Personnel

- 15.1 The Contractor shall not employ any persons who are forbidden under the laws of Hong Kong or not entitled for whatever reasons to undertake any employment in the Hong Kong for the purposes of this Contract or any other Government contracts. If there is any breach of this Clause by the Contractor, the Government may, by notice in writing to the Contractor, terminate this Contract forthwith and the Contractor is not entitled to make any claim for compensation against the Government. The Contractor shall be responsible for all expenses and losses that the Government may incur or suffer due to the breach of this Clause.
- 15.2 The Contractor shall not employ any person who is not lawfully employable or to aid and abet another person to breach his condition of stay in the execution of this Contract. Should the Contractor be found to have employed any person who is not lawfully employable or to have aided and abetted another person to breach his condition of stay, the Government may, by notice in writing to the Contractor, terminate this Contract forthwith and the Contractor is not entitled to make any claim for compensation against the Government.
- 15.3 The Government may refuse to admit to the Venue or any part thereof for the purposes of the Contract any person employed or engaged by the Contractor, or by an assignee of the Contractor, whose admission is, in the reasonable opinion of the Government Representative, undesirable. The Contractor shall continue to perform the Services despite admission of such person to the Venue or any part thereof is refused under this Clause.
- 15.4 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 and Contractor's agents (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.
- 15.5 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.
- 15.6 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.
- 15.7 In the event that the Contractor fails to comply with the requirements as set out in this Clause 15 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith pursuant to Clause 59 hereof.

16. Passes

- 16.1 The Government Representative may require the Contractor, the Contractor's Employee or the Contractor's agent to apply for and to hold valid passes issued by the Government Representative for admission to the Venue or any part thereof. The Government Representative may refuse to admit to the Venue or any part thereof any person who fails to show his pass on demand by the Government Representative. The Contractor shall continue to perform the Services despite admission of such person to the Venue or any part thereof is refused under this sub-clause.
- 16.2 The Contractor shall submit a list of the names and identity card numbers of all the Contractor's Employee or the Contractor's agent applying for passes together with two (2) photographs of each person and shall prove to the satisfaction of the Government Representative their bona fide identities.
- 16.3 Any pass so issued shall be returned immediately to the Government Representative on demand by the Government Representative, upon termination or expiry of the Contract, or upon the cessation of the bearer's employment with the Contractor or the Contractor's agent, whichever is earlier. If there is any situation requiring the re-issue of the pass, the Contractor shall pay to the Government a sum which is equal to the total replacement cost of the pass.

17. Inconvenience or Annoyance Caused

The Contractor shall ensure that the Contractor's Employee and the Contractor's agent perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Contractor shall also use its best endeavour to avoid causing nuisance to the patrons of the Venue whilst performing the Services. The Government Representative may, without prejudice to any rights that the Government has under the Contract and without releasing or discharging the Contractor of its obligations hereunder, require the Contractor to suspend provision of the Services or part thereof to prevent any nuisance that is or may be caused to the public.

18. Compliance with Employment Ordinance

The Contractor shall comply with the Employment Ordinance (Cap. 57). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith on giving notice to the Contractor if the Contractor is convicted of any offence under the Employment Ordinance (Cap. 57) without entitling the Contractor to any compensation whatsoever.

19. Compliance with Employees' Compensation Ordinance

The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith on giving notice to the Contractor if the Contractor is convicted of any offence under the Employees' Compensation Ordinance (Cap. 282) without entitling the Contractor to any compensation whatsoever.

20. Compliance with Immigration Ordinance

The Contractor shall comply with the Immigration Ordinance (Cap. 115). If the Contractor is convicted of an offence under the Immigration Ordinance (Cap. 115) for employing a person who is not lawfully employable to perform the Contract, or is convicted of an offence for aiding and abetting another person to breach his conditions of stay, such conviction shall constitute a material breach of the Contract and without prejudice to any other rights or remedies which the Government has or may have, the Government may terminate the Contract forthwith on giving notice to the Contractor without entitling the Contractor to any compensation whatsoever.

21. Compliance with Occupational Safety and Health Ordinance and Factories and Industrial Undertakings Ordinance

The Contractor shall comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertakings Ordinance (Cap. 59) and any other legislation pertaining to the health and safety of its own staff, Government staff and others who may be affected by its performance of Services. Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith on giving notice to the Contractor if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance (Cap. 509) and Factories and Industrial Undertakings Ordinance (Cap. 59) without entitling the Contractor to any compensation whatsoever.

22. Compliance with Mandatory Provident Fund Schemes Ordinance

The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith on giving notice to the Contractor if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) without entitling the Contractor to any compensation whatsoever.

23. Compliance with Minimum Wage Ordinance

The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith on giving notice to the Contractor if the Contractor is convicted of any offence under the Minimum Wage Ordinance (Cap. 608) without entitling the Contractor to any compensation whatsoever.

24. Compliance with Public Health and Municipal Services Ordinance

The Contract is subject to, and the Contractor shall comply with the Public Health and Municipal Services Ordinance (Cap. 132), and of all regulations made thereunder, which may be applicable to the Venue.

25. Licence, Permit and Certificate (excluding IPR Related Licence)

- 25.1 The Contractor shall apply to the relevant authorities to obtain or renew, as the case may be, for all licences (including the Security Company Licence) as specified in Paragraph 8.1 of the Terms of Tender), permits and/or certificates required by law for the performance of the Services and shall produce the same to the Government Representative for inspection if so required.
- 25.2 The Contractor shall make no claim of any kind whatsoever against the Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits or certificates. It will be unlawful for the Contractor to perform the Services without the licenses, permits and/or certificates as required by law, notwithstanding the commencement of the Contract Period.
- 25.3 The Contractor shall observe and comply with the conditions of any licence, permit or certificate issued to it in relation to the performance of the Contract.
- 25.4 The Contractor shall from time to time maintain the validity (or obtain renewals (if necessary)) of all certificates such as ISO throughout the Contract Period (or such extension, if applicable) if scores have been obtained in the tender evaluation.

26. Public Liability Insurance

- 26.1 The Contractor shall effect and keep in force during the Contract Period 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 in the sum of not less than Ten Million Hong Kong dollars (HK\$10,000,000) for each accident with unlimited claim for each year with an insurance company and on such terms and conditions as shall be approved by the Government Representative. 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 or the Government or their respective employees or agent.
- 26.2 The Contractor shall with all due diligence conform to all conditions of the insurance policies effected under the Contract and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and the Contractor shall bear the consequences of any failure to do so. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.
- 26.3 The Contractor shall submit to the Government Representative two (2) copies of the said policy of insurance together with the receipt for payment of the current premium. Thereafter, the Contractor shall provide the Government with copies of the premium receipts of the subsequent renewal of the policy of insurance within thirty (30) days after the due date for payment of premium.
- 26.4 The Contractor is responsible for lodging all claims with the said insurance company and shall deal with the said company upon the Government Representative's request and upon receipt from the Government Representative a report on any injury, death, loss or damage.

- 26.5 The Contractor shall cause all sums received by virtue of the insurance taken out by the Contractor under the Contract to be paid to the Government, who shall apply the same towards the discharge of any liability, settlement of any action or claims, reinstatement of any property damaged and/or any sums owed to any third party by the Contractor and/or the Government under the coverage of the insurance policy. The Contractor shall make up any deficiency in the amount required for discharging such liability, settlement of such action or claims, reinstatement of property damaged and/or such sums owed, if any, save and except in the event where the Court has ordered that such liability, settlement of action or claims, reinstatement of property damaged and/or such sums owed, if any, is entirely caused by the act, negligence or default of the Government or its employees or agent. In the event where the Court has given an order detailing the apportionment of liability to be borne by the Government (or its employees or agent) and the Contractor (or its employees or agent) respectively, the Contractor shall make up any deficiency as per such apportionment in its fair share amount required for discharging such liability, settlement of action or claims, reinstatement of property damaged and/or such sums owed, if any.
- 26.6 If the Contractor fails to effect and keep in force the insurance referred to or any other insurance which it may be required to be effected under the terms of the Contract then and in any such cases the Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and may from time to time deduct the amount so paid by the Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 26.7 Notwithstanding any other provisions in this Contract, if the Contractor fails to comply with Clause 26.1, the Government may terminate the Contract immediately.
27. Accident to the Contractor's Employee
- 27.1 The Government and its employees and agent shall not be under any liability whatsoever for or in respect of any injury to or death of any of the Contractor's Employee or the Contractor's agent save and except such injury or death is caused by the Negligence of the Government or its employees or agent. The Contractor shall indemnify the Government and its employees and agent against all actions, proceedings, claims and demands, costs and expenses whatsoever in respect of any such injury or death for which the Government, its employees or agent are not liable. For the purpose of this Clause, "Negligence" shall have the same meaning assigned to it under the Control of Exemption Clauses Ordinance (Cap. 71).
- 27.2 The Contractor shall effect and keep in force a policy of insurance at its own expense against all liability to pay damages or compensation as aforesaid in respect of all persons, including but not limited to employees who may be employed on any work done in pursuance of the Contract, whether employed by the Contractor or the Contractor's agent, with an insurance company approved by the Government Representative (which approval shall not be unreasonably withheld) and shall keep such policy of insurance in force during the Contract Period. The Contractor, shall when required, deposit with the Government Representative for safe keeping during the Contract Period such policy of insurance together with the receipt of payment of the current premium, provided always that in respect of any persons employed by any agent of the Contractor, the Contractor's obligations to effect a policy of insurance as aforesaid under this Clause shall be satisfied if the agent has effected such policy of insurance in respect of such persons but the Contractor shall require the agent to deposit with the Government Representative when required such policy of insurance together with the receipt of payment of the current premium.

27.3 If the Contractor shall fail to effect or keep in force the policy of insurance referred to in this Clause or Clause 26 or any other insurance which it may be required to effect under the terms of the Contract then and in any such cases the Government may effect and keep in force any such policy of insurance and pay such premium or premiums as may be necessary for that purposes and from time to time deduct the amount so paid by the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

27.4 In the event of any employees or agent or other person employed on any work done or in pursuance to the Contract, whether employed by the Contractor or the Contractor's agent, suffering from any personal injury or death, and whether there be a claim for compensation or not, the Contractor shall within seven (7) days after the occurrence of the injury or death give notice in writing of such injury or death to the Government Representative.

28. Liability and Indemnity

28.1 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government may sustain or incur or which may be brought or established against it by any person and which in any case arises out of or in relation to or by reason of, but not limited to, the following -

- (a) the negligence, recklessness or wilful misconduct of the Contractor, the Contractor's Employee or the Contractor's agent;
- (b) the breach or the non-performance or non-observance of any of the provisions, warranties and undertakings, obligations or conditions of the Contract by the Contractor or the Contractor's Employee or the Contractor's agent under this Contract;
- (c) any unauthorised act or omission of the Contractor or the Contractor's Employee or the Contractor's agent;
- (d) the non-compliance with any applicable laws and any requirement or regulation of any Hong Kong authority or agency in connection with the performance of the obligations under the Contract by the Contractor or the Contractor's Employee or the Contractor's agent; or
- (e) any loss or damage sustained by or any injury to or death of any third party in consequence of any negligence, omission, default of the Contractor or the Contractor's Employee or the Contractor's agent under statute and under common law as long as such loss or damage sustained by or any injury to or death of such third party is attributable to the Contractor or the Contractor's Employee or the Contractor's agent in the manner as described in (a) to (d) above.

28.2 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be defected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract, or any failure or omission of the Government in investigating or dealing with any claims in consequence of its negligence or omission or default, or in supervising or controlling the Contractor's operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Contractor or the Contractor's Employee or the Contractor's agent.

- 28.3 The Contractor shall indemnify and keep indemnified the Government against all claims, damages, costs, losses or expenses in respect of personal injury, death, losses or damages arising out of or resulting from the performance or attempted performance of the Contract to the extent that the same are or have been caused by any act, omission, neglect, recklessness, wilful misconduct, defamation, breach of statutory duty or breach of the Contract by the Contractor, the Contractor's Employee or the Contractor's agents or Contractor's representatives. Any damage to building, site or other areas of work in relation to the Contract shall be indemnified by the Contractor to the satisfaction of the Government.
- 28.4 The Contractor shall indemnify and keep the Government and its contractor's employee and authorised persons fully and effectively indemnified against all costs, claims, demands expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of disclosure of information subject to the Personal Data (Privacy) Ordinance (Cap. 486) which action and/or claim would not have arisen but for the negligence or omission of the Contractor, any of the Contractor's Employee or the Contractor's agents or Contractor's representatives or any one acting on its/their behalf in connection with the provision or receipt of the work of any Services provided under this Contract, as well as any liability or claim in respect of any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).
- 28.5 Without prejudice to any rights or remedies the Government may have, the Government shall be entitled to offset or deduct any monies referred to in this Clause from any monies which the Government may owe to the Contractor and claim for any outstanding balance from the Contractor.
- 28.6 The provision of this Clause 28 shall survive the completion or early termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination.

29. Services to be Provided

- 29.1 Without prejudice to any other provisions of this Contract, the Contractor shall during the Contract Period –
- (a) provide, maintain and employ, at the sole expense of the Contractor and to the satisfaction of the Government Representative, the Building Attendants and related equipment in the Venue as specified in the Service Specifications;
 - (b) provide additional Building Attendants upon request by the Government Representative; and
 - (c) ensure that the Building Attendants diligently and properly perform all duties as set out in the Service Specifications.
- 29.2 The Contractor shall upon and subject to the terms and conditions of the Contract herein carry out and complete the Services in accordance with the Contract in every respect in accordance with the directions and to the reasonable satisfaction of the Government Representative, who may in his absolute discretion and from time to time issue further details, and/or written explanations in regard to the Services.
- 29.3 The Contractor shall forthwith comply with and duly complete the Services comprised in such further details or written explanations.

30. Contract Briefing

Before contract commencement, the Contractor shall meet with the Government Representative concerned to discuss on the transition arrangement. Furthermore, the Contractor shall observe all salient points raised in the Tender and as advised by the Government Representative. If the Contractor fails to observe its contractual obligations, it would adversely affect its future standing as Government contractor.

31. Checklist for Supervision of Performance of Contractor's Employee

Upon being awarded the Contract, the Contractor shall submit for the approval of the Government Representative a checklist for the supervision of work or the Services performed by its employees and agent engaged or to be engaged for the purpose of this Contract. The Government Representative may countercheck the performance of the Contractor or the Contractor's Employee or the Contractor's agent against the approved checklist.

32. Order of Executing the Services

The Contractor shall, if directed by the Government Representative, execute any part of the Services in such order and at such times and commencing from such points as may be required by the Government Representative. In the absence of such directions, the Contractor shall execute the Services in such order and commencing at such point as the Contractor reasonably considers to be the most effective and efficient for the purposes of providing the Services, and without unnecessary disruption to public's use of the Venue.

33. Particulars to be Furnished

The Contractor shall, if directed by the Government Representative, furnish particulars in writing of its arrangements for carrying out the Services or any part thereof and any additional Services which the Contractor intends to supply, use or perform as the case may be. The submission to and approval by the Government Representative of such particulars shall not relieve the Contractor of any of its duties or responsibilities under the Contract.

34. Service of Notice

All notices which are required to be given herein shall be in writing and shall be sent to the address of the recipient set out in the Contract or such other address as the recipient may designate by prior notice given in accordance with the provisions of this Clause. 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; and (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.

35. Provision of Management and Supervision Plan

- 35.1 Within four (4) weeks after the Commencement Date, and at any time thereafter, the Government Representative may review the proposed management and supervision plan and the Innovative Suggestion(s) set out in Contract Schedule 3 (Execution Plan). Where the Government Representative finds on reasonable grounds that the management and supervision plan should be revised, the Contractor shall, upon request by the Government Representative, provide at no cost to the Government a revised management and supervision plan with such modifications to ensure provision of the Services to the satisfaction of the Government Representative. In such event, the Contractor shall submit the proposed plan to the Government Representative for approval. The Contractor shall not implement the revised management and supervision plan unless and until it has obtained the Government Representative's approval to do so. Where the Government Representative has given approval for the revised management and supervision plan, the Contractor shall implement the revised management and supervision plan forthwith or on such date specified by the Government Representative. The Government Representative shall be entitled to vary the order, priority and time for carrying out the Services as the Government Representative may consider expedient so to do.
- 35.2 Without prejudice to other terms and conditions of the Contract, at all times during the Contract Period, the Contractor shall carry out the Services in accordance with -
- (a) the Service Specifications or as the Government Representative may direct from time to time if he considers expedient so to do; and
 - (b) the management and supervision plan, or the revised management and supervision plan approved by the Government Representative. The Contractor shall not vary or amend the management and supervision plan which is currently in force without the prior written approval of the Government Representative.
- 35.4 The Government Representative shall have the discretion to decide whether or not the Services provided by the Contractor have achieved a particular standard.

36. Employment of Staff and Manner of Supervising

- 36.1 The Contractor shall ensure that the Building Attendants are adequately supervised and perform their duties properly.
- 36.2 The Contractor shall provide and deploy the Building Attendants in the numbers and grades as specified in the Service Specifications for the provision of Services.
- 36.3 The Contractor shall forthwith notify the Government Representative if –
- (a) any Building Attendants proposes to resign;
 - (b) the Contractor intends to dismiss any Building Attendants; or
 - (c) any Building Attendants are absent from duty.

In such event, the Contractor shall immediately supply and deploy a competent substitute to perform the Services.

- 36.4 The Contractor shall, prior to the Commencement Date, provide the Government Representative with details of all its employees or agent (including the names of such persons, their positions, sex, ages, dates of birth, Hong Kong Identity Card numbers, their posts and photos). In case there is a change of any of the Contractor's Employee or the Contractor's agent, the Contractor shall submit revised details of all its employees or agent to the Government Representative at least three (3) days prior to the effective date of such change.
- 36.5 The Contractor shall nominate for Government Representative's approval (which approval may at any time be withdrawn) a full time representative. Such representative shall be the representative of the Contractor who has the full authority to make all necessary decisions on behalf of the Contractor regarding the provision of the Services (the "Contractor's Representative"). The Contractor's Representative shall be the sole contact point in all communications and exchanges with the Government and shall be responsible for receiving instructions from the Government Representative. The Contractor's Representative shall be contactable and available to receive the Government's instructions at all times during the Contract Period irrespective of any suspension of the Services in accordance with Clause 53 hereof. The Contractor's Representative shall at the expense of the Contractor be equipped with portable radio pagers or mobile phones communication system, and the Contractor's Representative shall respond to all communication made by the Government Representative through such communication systems within twenty (20) minutes. If the Contractor's Representative resigns or for whatever reasons that he could no longer execute his duties, the Contractor should promptly assign a replacement and inform the Government Representative immediately.
- 36.6 The Contractor shall make its own arrangements in regard to the provision of employees as may be required for providing the Services, and shall use all diligence in arranging for a sufficient and suitable supply of the Building Attendants.
- 36.7 The Contractor shall ensure that all Building Attendants deployed at the Venue shall not smoke or drink alcoholic beverage while performing their duties.
- 36.8 The Contractor shall ensure that all Building Attendants deployed at the Venue are in proper uniforms provided free of charge by the Contractor to their employees.
- 36.9 The Contractor shall ensure that no Building Attendants deployed at the Venue are allowed to use electricity, gas or kerosene for cooking or heating of food or boiling of water.

37. Meeting

The Contractor's Representative shall attend at all meetings convened by the Government Representative to which he may be summoned, and shall advise and assist the Government on all matters relating to the provisions of the Services under this Contract at no extra cost. If the Contractor's Representative is unavailable, the Contractor shall provide justification and assign another staff who has the full authority to make all necessary decision on behalf of the Contractor regarding the provision of the Services.

38. Site Records

The Contractor shall keep a detailed record of all activities and events that occur at the Venue in the form of a log book which should be readily made available for inspection by the Government Representative.

39. Contractor's Equipment and Tools

The Contractor shall provide sufficient number of torches, raincoat, gumboot, helmet and other necessary equipment for use by the Building Attendants for effective communication with the Government Representative in the Venue and for the effective and efficient discharge of their duties specified under the Contract.

40. Contractor's Other Obligations

The Contractor hereby covenants and agrees with the Government Representative that -

- (a) all Building Attendants deployed under this Contract, whether working at the Venue or elsewhere, do not work each day for more than eleven (11) hours or the daily maximum allowable net working hours as offered in the Contract Schedule 2, whichever is the shorter;
- (b) notwithstanding anything contained in the Contract, the Government Representative may at any time and from time to time during the Contract Period require the Contractor to redeploy any Building Attendants in such manner as the Government Representative may direct, or require the Contractor to provide and deploy additional Building Attendants at the Venue. The Contractor shall immediately comply with any such requirement;
- (c) all Building Attendants deployed at the Venue shall be provided, maintained and replaced as necessary by the Contractor at its own expense with uniforms (including special or personal protective equipment (e.g. face mask, face shield, rubber gloves) and relevant supplies, clothing and footwear (e.g. raincoat, rain boots, etc.) as the Government Representative may consider necessary and appropriate) of such design and material as have been approved by the Government Representative and such uniform shall bear in a conspicuous position the name of the Contractor's firm as appropriate. Such uniforms shall at all times be worn by all Building Attendants while on duty at the Venue and kept clean, tidy and well-fitting to the satisfaction of the Government Representative provided that the Government Representative may require any Building Attendants to be attired in plain clothes. All night-shift Building Attendants that are deployed at the Venue shall wear reflective vests, in addition to their approved uniforms for easy identification while performing night duties;
- (d) any of the Building Attendants deployed at the Venue failing to wear the approved uniform may, subject to the discretion of the Government Representative, be refused entry or evicted from the premises prescribed in the Contract and all such Building Attendants so refused entry or evicted shall be immediately replaced by the Contractor. The Contractor shall continue to perform the Services despite admission of any of its Building Attendants is refused under this Clause;
- (e) the Contractor shall be responsible for the overall supervision of the performance of the Building Attendants and shall from time to time make surprise inspection on the Building Attendants while they are performing their duties for the purpose of this Contract. The surprise inspection on the Building Attendants deployed at the Venue shall be carried out between 2300 hours of a day and 0730 hours of the following day, and at any other time during a day;

- (f) observations made by the Contractor during the surprise inspections shall be recorded and documented at the Venue concerned for inspection by the Government Representative in a form/checklist which is approved by the Government Representative;
- (g) in respect of each Venue, the Contractor shall provide the sufficient number of walkie-talkies and electronic watchman patrol system;
- (h) in respect of each Venue, the Contractor shall at least provide the number of Building Attendants throughout the period and at the shift hours specified in Schedule B of the Service Specifications;
- (i) where in respect of a Venue, the Contractor is required to provide the Building Attendants for 24 hours a day (as determined in the Service Specifications), the Contractor shall ensure that the number of Building Attendants required for that Venue in the Service Specifications are stationed at the Venue in the specified shifts, and the length of each shift shall be approved by the Government Representative;
- (j) if more than one (1) Building Attendant is deployed at a venue, the Contractor shall appoint one of the Building Attendants to be the coordinator responsible for making all communication with the Government Representative;
- (k) all patrol/clocking time sheets shall be checked and kept at all times at the Venue, and the Contractor shall whenever so required by the Government Representative produce the time sheet and log books for inspection by the Government Representative;
- (l) for the Building Attendants who need to undertake outdoor security patrol work at the Venue, the Contractor shall provide the Building Attendants with umbrellas for protecting them against sunshine. In addition, the Contractor shall provide each of them, upon request, with a portable fan to increase air flow to the Building Attendants. The Contractor shall accordingly inform all such Building Attendants that portable fans are available for their use upon their request; and
- (m) The Contractor shall refer to the guidelines published by the Labour Department on the prevention of heat stroke at work in a hot environment. The Contractor shall provide workers with suitable work arrangement, such as rotating workers to work in hot and cool workplaces alternatively; and providing cool drinking water for workers during work. Related pamphlets and leaflets can be downloaded from the website of the Labour Department at https://www.labour.gov.hk/eng/public/content2_9b.htm.

41. Signing of Standard Employment Contract with Non-skilled Workers

- 41.1 The Contractor shall maintain 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 Employee, bank autopay return, receipt of wages and record of contribution to the statutory provident fund schemes. Such records shall also include the name, identity card number, photograph, grade, qualification and/or record of experience (of manager and supervisors only) and age of each of the Contractor's Employee.
- 41.2 The Contractor shall enter into written Standard Employment Contract (if the contractual period exceeds seven (7) days) with its Building Attendants as per sample at **Attachment B** to these Conditions of Contract.

- 41.3 The Contractor shall within two (2) weeks after the Commencement Date provide the Government Representative with a copy of the Standard Employment Contract entered into under Clause 41.2 hereof at its own costs. In the event that there is any subsequent change of the Building Attendant concerned and/or of the terms of the Standard Employment Contract as approved by the Government Representative, the Contractor shall provide the Government Representative 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 within three (3) days after such change.
- 41.4 The Contractor shall keep proper record of all amendments, variation or cancellation to the Standard Employment Contract and the payment to staff.
- 41.5 Any breach of the undertaking in Clause 41.2 in respect of written Standard Employment Contract with its Building Attendant shall be construed as a material breach of the Contract and the Government Representative without prejudice to Clause 59 shall have a right to seek other appropriate remedies which include the right to terminate the Contract.
- 41.6 The Contractor shall not vary the terms and conditions of the Standard Employment Contracts without the prior written approval of the Government Representative.
- 41.7 If requested by the Government Representative, the Contractor shall produce evidence to satisfy the Government Representative that the terms and conditions specified in the Standard Employment Contracts have been complied with. The Government Representative may at any time during the Contract Period approach the Contractor's Employee to verify the information provided by the Contractor. If requested by the Government Representative, the Contractor shall make arrangement for any or all of the Contractor's Employee to meet the Government Representative or the representative of the Labour Department.
- 41.8 The Contractor shall obtain consent from the Contractor's Employee with the approval given by the Government Representative under the Contract 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.
- 41.9 All records stated in this Clause shall be open for inspection by the Government Representative at any time.
42. Wages to Non-skilled Workers
- 42.1 The Contractor shall pay each Building Attendant, during the Contract Period, monthly wage in an amount not less than –
- (a) the monthly wages specified in Contract Schedule 2; or
 - (b) the adjusted wage level brought by the future revision of the Statutory Minimum Wage,
- whichever is the higher.
- 42.2 The Contractor shall pay wages to the Contractor's Employees in accordance with the Contract and all applicable laws and regulations. Failure to do so will entitle the Government to terminate the Contract.

43. Holiday Pay to Non-skilled Workers

The Contractor shall provide the holiday pay to a Non-skilled Worker provided that the Non-skilled Worker has been employed by the Contractor or under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for not less than one month immediately preceding a statutory holiday. The holiday pay shall be calculated according to the relevant provisions under the Employment Ordinance (Cap. 57). Detailed requirements on the holiday pay payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.

44. Extra Wages to Non-skilled Workers 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 Non-skilled Worker has worked, the Contractor shall pay the Non-skilled Worker for that day/shift at least 150% of the Non-skilled Worker's original pay for the hours worked in that day/shift. Detailed requirements on the extra wages payable for working under 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 Non-skilled Worker with whom the Contractor is not required to enter into the Standard Employment Contract.

45. Payment of Wages to Non-skilled Workers by means of Autopay

The Contractor shall use autopay for payment of wages to Building Attendants (payment by cheque is only allowed upon termination of employment contract and is made at the request of the Building Attendant concerned).

46. Gratuity

Gratuity to Non-skilled Workers

- 46.1 The Contractor shall pay a gratuity to each Non-skilled Worker upon the expiry or termination of the Standard Employment Contract for reason(s) other than in accordance with section 9 of the Employment Ordinance (Cap. 57), provided that the Non-skilled Worker has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for a period of service of not less than 12 months immediately before the expiry or termination of the Standard Employment Contract.

- 46.2 Notwithstanding Clause 46.1 above, for each Non-skilled Worker 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 12 months immediately before the termination of the Standard Employment Contract (and yet still satisfying the requirement of continuous contract under the Employment Ordinance (Cap. 57)), the Contractor shall still have to pay a gratuity to the Non-skilled Worker 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 46.2, where the termination of the Standard Employment Contract is due to reason(s) in accordance with section 9 of the Employment Ordinance (Cap. 57) or due to the Non-skilled Worker terminating the Standard Employment Contract, no gratuity shall be payable in respect of the period of service of less than 12 months. In addition, for Clause 46.2 to apply, this Contract shall originally be scheduled to have a contract duration of not less than 12 months had it not been the termination by the Government.

- 46.3 If a Non-skilled Worker is entitled to the gratuity in Clause 46.1 or Clause 46.2 above, the amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Non-skilled Worker during the period of service as mentioned therein.
- 46.4 The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance (Cap. 57) and may be offset against the severance payment or long service payment in accordance with the Standard Employment Contract. Detailed requirements on the gratuity payable are set out in the Standard Employment Contract and the Contractor shall comply with the relevant clauses and follow the examples of illustration therein.

Gratuity to Supervisory Staff

- 46.5 The Contractor shall pay a gratuity to each Supervisory Staff upon the expiry or termination of the contract of employment as defined in the Employment Ordinance (Cap. 57) entered into by the Contractor and the Supervisory Staff (referred to “the employment contract” hereafter for the purpose of Clauses 46.5 and 46.6), for reason(s) other than in accordance with section 9 of the Employment Ordinance (Cap. 57), provided that the Supervisory Staff has been employed by the Contractor under a continuous contract (as defined in the Employment Ordinance (Cap. 57)) in respect of this Contract for a period of service of not less than 12 months immediately before the expiry or termination of the employment contract.

- 46.6 Notwithstanding Clause 46.5 above, for each Supervisory Staff who has been employed by the Contractor under the employment contract in respect of this Contract for a period of service of less than 12 months immediately before the termination of the employment contract (and yet still satisfying the requirement of continuous contract under the Employment Ordinance (Cap. 57)), the Contractor shall still have to pay a gratuity to the Supervisory Staff 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 46.6, where the termination of the employment contract is due to reason(s) in accordance with section 9 of the Employment Ordinance (Cap. 57) or due to the Supervisory Staff terminating the employment contract, no gratuity shall be payable in respect of the period of service of less than 12 months. In addition, for Clause 46.6 to apply, this Contract shall originally be scheduled to have a contract duration of not less than 12 months had it not been the termination by the Government.

- 46.7 If a Supervisory Staff is entitled to the gratuity in Clause 46.5 or Clause 46.6 above, the amount of gratuity shall be a sum equivalent to 6% of the total wages earned by the Supervisory Staff during the period of service as mentioned therein.
- 46.8 The gratuity shall be paid prior to the payment of any severance payment or long service payment payable under the Employment Ordinance (Cap. 57) and may be offset against the severance payment or long service payment.

47. Committed Daily Maximum Working Hours for Non-skilled Workers

The Contractor shall not allow any Building Attendant to work each day for more than eleven (11) hours or the daily maximum allowable net working hours as offered in Contract Schedule 2, whichever is the shorter.

48. Contractual Obligations under the Standard Employment of Contract

- 48.1 The Contractor shall enter into a written Standard Employment Contract with each of its Non-skilled Workers employed for the performance of this Contract if the employment period exceeds seven (7) days.
- 48.2 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.
- 48.3 Without prejudice to the generality of Clause 48.2 above, the Contractor shall, in accordance with the Contract and the Standard Employment Contract, comply with the following contractual obligations:

- (a) paying wages;
 - (b) paying holiday pay payable to the Non-skilled Workers having been employed under a continuous contract for not less than one month;
 - (c) paying 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; and
 - (d) paying wages by means of autopay to the Non-skilled Workers (payment by cheque is only allowed upon termination of employment contract and is made at the request of the worker concerned);
 - (e) paying the gratuity to the Non-skilled Workers as provided under Clause 46.1 of the Conditions of Contract (where applicable);
 - (f) paying the gratuity to the Non-skilled Workers as provided under Clause 46.2 of the Conditions of Contract (where applicable); and
 - (g) not allowing the Non-skilled Workers to work beyond the committed daily maximum working hours under the Contract.
- 48.4 Any breaches of the Clauses 41 to 47, 48.1 and 48.3 above may be construed as a material breach of the Contract and the Government Representative may have a right to seek appropriate remedies which include the right to terminate the Contract.
- 48.5 Without prejudice to other provisions of the Contract, if the Contractor is in breach of the commitment in respect of any of the obligations stipulated in Clauses 48.1 and 48.3 above, the Government Representative shall be entitled to record in writing a notice of default ("Default Notice") and serve the same upon the Contractor. Each Default Notice so issued under Government service contracts that rely heavily on the deployment of Non-skilled Workers attracts one (1) Demerit Point. The Demerit Points given to the Contractor from Government departments will be taken into account by the Government in tender/quotation evaluation of the Contractor's future bids for all Government service contracts that rely heavily on the deployment of Non-skilled Workers and may result in the Contractor failing the tender/quotation assessment.
- 48.6 The Contractor shall comply with the terms and conditions set out in the written Standard Employment Contract. If the Contractor is in breach of the terms and conditions in the Standard Employment Contract not in connection with the obligations stipulated in Clause 48.3 above and not in connection with Relevant Offences, the Government Representative shall be entitled to record in writing a Default Notice and serve the same upon the Contractor.
- 48.7 The Contractor shall note that if it receives, over a rolling period of thirty-six (36) months period, three (3) or more Demerit Points obtained from one (1) or more Government bureaux/departments, its Tender for Government service contracts that rely heavily on the deployment of Non-skilled Workers will not be considered for a period of five (5) years from the date of the third Demerit Point is obtained.

49. Debarment Mechanism and Demerit Point System

- 49.1 Under the Debarment Mechanism, if the Contractor or any sub-contractor engaged by the Contractor is convicted of any of the Relevant Offences (regardless of whether the conviction arises from this Contract), such conviction(s) will be taken into account in the assessment of the Contractor/sub-contractor's offer (as the case may be) in future tender or quotation exercises.
- 49.2 Under the Demerit Point System, if the Contractor is in breach of any of the following contractual obligations in one separate incident (or two separate incidents in the case of Clause 49.2(j) over any continuous period of 12 months within the Contract Period), the Government is entitled to issue one Demerit Point to the Contractor:
- (a) wages;
 - (b) holiday pay payable to Non-skilled Workers having been employed under a continuous contract for not less than one month;
 - (c) wages at a rate of at least 150% for 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 measures in the Heat Stroke Prevention Work Plan. For the avoidance of doubt, the Heat Stroke Prevention Work Plan is only applicable if the Contract involves Non-skilled Workers performing duties outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources.
- 49.3 For the purpose of each of Clauses 49.2(a) to (j) above, whether there is one separate incident of breach of the contractual obligations referred to therein shall be determined by the Government. For the purpose of each of Clauses 49.2(a) to (i) above, for every separate incident of non-compliance with the contractual obligations referred to therein, the Government is entitled to issue one Demerit Point to the Contractor. For the purpose of Clause 49.2(j), 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 separate incidents of non-compliance with the Heat Stroke Prevention Work Plan by the Contractor under this Contract over any continuous period of 12 months within the Contract Period, the Government is entitled to

issue one Demerit Point to the Contractor.

- 49.4 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.

50. Shift Hours

Notwithstanding any other provisions in this Contract, the shift hours set out in the Service Specifications may be varied at any time by the Government Representative to meet the actual operational requirement.

51. Payment for Services

- 51.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract to the satisfaction of the Government, the Government will pay the Contractor the Monthly Fee as calculated in the following manner:

$$\text{Monthly Fee} = A + B - C$$

Where

"A" represents the sum of the products of the monthly rates quoted for Item 1 in Part A of the Price Schedule and the number of Building Attendants required for each shift (A Shift, B Shift, C Shift and D Shift).

"B" represents the unit rate quoted for Item 2 in Part A of the Price Schedule multiplied by the actual number of man-hours required for the relevant month.

"C" represents such other sums which the Government is entitled to deduct from the Monthly Fee pursuant to other provisions of the Contract, including but not limited to any payment discount set out in the Price Schedule.

- 51.2 The Government shall not be responsible for any extra wages to Building Attendants for working under Tropical Cyclone Warning Signal No. 8 or above under Clause 44 above.
- 51.3 The Monthly Fee shall be reduced by any amounts that the Contractor has failed to pay the Building Attendants in full in accordance with its committed monthly wage in Contract Schedule 2 or the monthly wages adjusted due to future revision of the Statutory Minimum Wage, whichever is the higher. These deducted amounts will be reimbursed to the Contractor, without interest, when the Contractor has paid all wages in full in accordance with the committed monthly wage in Contract Schedule 2 or the adjusted monthly wages due to future revision of the Statutory Minimum Wage, whichever is the higher. The Contractor hereby irrevocably accepts that the Government Representative may inspect the records of wages of the Building Attendants as to whether the Contractor has failed to pay them in accordance with its committed monthly wage in Contract Schedule 2 or the monthly wages that may be adjusted as a result of future revision of the Statutory Minimum Wage, whichever is the higher. The Contractor hereby irrevocably accepts that the Government Representative may determine the amount of deduction from the Monthly Fee as an equivalent percentage of the wages being underpaid to the relevant Building Attendants, as revealed by the inspection of the wage records.

- 51.4 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. Unless otherwise provided, the Government shall pay the Contractor the Monthly Fee in arrears after the Government Representative's receipt of invoices and only on the certification of the Government Representative that the relevant Services have, in all respects, been performed in accordance with the terms and conditions of the Contract and to the reasonable satisfaction of the Government Representative. Unless otherwise agreed, the Monthly Fee will be directly paid by bank transfer to the Contractor's bank account specified in **Annex B** to the Terms of Tender.
- 51.5 Unless the Government Representative otherwise notifies in writing, all invoices and correspondence concerning the Monthly Fee shall be addressed to the General Office of Civil Aid Service. The Government Representative shall not be liable for any delay in the Monthly Fee if invoices and correspondence shall not be so addressed.

52. Provisional of Additional Building Attendants

- 52.1 During the Contract Period, the Government may, on giving not less than two-hour prior notice to the Contractor, require the Contractor to supply and deploy additional Building Attendants to perform additional Services at the Venue for such period of time as specified in the notice ("Service Order").
- 52.2 If the Government makes the Service Order, subject to the Contractor's performance of the Services to the satisfaction of the Government, the Government shall pay the Contractor for the additional Services in accordance with the applicable Unit Price as set out in Item 2 of Part A of Price Schedule.
- 52.3 If the Service Order is cancelled by the Government Representative not less than twenty-four (24) hours before the requested additional Services are rendered by the Contractor, the Government shall not be liable for any payment under Clause 52.2 above.

53. Suspension of Services

- 53.1 The Government may, on giving the Contractor fourteen (14) days' prior written notice, require the Contractor to suspend performance of all or part of the Services and/or to reduce the number of deployed Building Attendants for the Services for such time or times and in such manner and for such period or periods as the Government may specify in the notice.
- 53.2 In the event that the Services are suspended under Clause 53.1 above or Clause 75.3 below, the Monthly Fee payable to the Contractor by the Government Representative shall be adjusted according to the following formula –
- (a) if the provision of the Services is suspended for a consecutive period of one (1) or more whole month below, there shall be no Monthly Fee for those month(s) for that Venue;

- (b) if the provision of the Services is suspended for a consecutive period of less than one (1) month, the Monthly Fee for that Venue shall be reduced by the following amount –

$$A \quad X \quad \frac{B}{\text{Number of calendar days in that Month}}$$

Where

“A” has the meaning given to it in Clause 51.1 above.

“B” is the total number of calendar days which the Services have been suspended.

- 53.3 In the event that the number of Building Attendants deployed to perform the Services is reduced under Clauses 53.1 and 56.2 of the Conditions of Contract, the Monthly Fee payable to the Contractor by the Government Representative shall be reduced according to the following formula –

$$C \times D$$

Where

“C” is the number of hours by which the Building Attendant deployed to perform the Services is reduced in the month; and

“D” is the corresponding hourly rate set out in Item 2 of Part A of the Price Schedule.

In determining the amount of deduction under this Clause, a period of less than an hour during which the Building Attendants are absent will be regarded as one (1) hour.

54. Inspection and Rejection

- 54.1 The Services performed shall before payment be subject to inspection by the Government Representative. If the Contractor fails to observe or comply with any terms or provisions of the Contract including but not limited to failure to comply with the performance requirements set out in the Service Specifications, or to perform the Services to the satisfaction of the Government Representative, the Government Representative shall have the right to reject the Services or any part thereof that is performed by the Contractor and to withhold payment of the Monthly Fee until the defects have been rectified by the Contractor.
- 54.2 The Contractor shall take immediate and necessary action to rectify such rejected Services within twenty-four (24) hours from the date of the notification either verbally or in writing by the Government Representative in the rejection of any Services, unless otherwise justified by the Contractor within such twenty-four (24) hours and agreed by the Government Representative in writing, but in any event no later than seven (7) days from the date of the notification initially given by the Government Representative to the Contractor in the rejection of any Services.

54.3 If the Contractor shall fail to rectify such rejected Services in accordance with Clause 54.2 hereof, the Government 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 engaging other contractors. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith.

55. Rectification of Failures

55.1 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.

55.2 Where the Government Representative is satisfied that in any particular case that the Contractor has failed to provide the Services in accordance with any terms and conditions or any provisions of the Contract, the Government Representative may (without prejudice to any rights or remedy that the Government has or may have against the Contractor) require the Contractor by either verbal or written instructions to remedy or rectify the failure in order to comply fully therewith within twenty-four (24) hours from the date of such verbal or written instructions, unless otherwise justified by the Contractor within such twenty-four (24) hours, and agreed by the Government Representative in writing, but in any event no later than seven (7) days from the date of the verbal or written instructions initially given by the Government Representative to the Contractor to remedy or rectify the failure.

55.3 Without prejudice to any other rights and remedies or actions which the Government may take under the Contract, the Government Representative shall have the right to reject unsatisfactory performance of the Services until such defects have been rectified by the Contractor and to the satisfaction of the Government Representative within the time frame specified by the Government Representative. If the Contractor fails to comply with the instruction of the Government Representative issued under Clause 55.2 above and/or fulfil any of its contractual obligations, the Government Representative shall be entitled to record in writing a Default Notice and serve the same upon the Contractor.

55.4 The Government may keep a record of all Default Notices issued under this Contract (including those issued under Clauses 48, 49, 54 and 55 hereof). The Contractor agrees that the record so kept by the Government may be used by the Government in assessing any tenders submitted by the Contractor to the Government in future. For those Default Notices under appeal, they will still be taken into consideration in tender assessment until the Government Representative has revoked the decision made and removed the Default Notice from record.

56. Deduction in Monthly Fee

56.1 The Contractor shall ensure that the number of Building Attendants deployed to perform the Services at the Venue is not less than that stipulated in the Service Specifications for the Venue.

- 56.2 Without prejudice to any rights or remedies the Government may have, the Government may deduct from any Monthly Fees or any monies payable to the Contractor from any monies which the Contractor may owe to the Government whether under or in connection with this Contract or any other contract and in the case of deficiency, the Government must claim for any outstanding balance from the Contractor. In the event of resignation, dismissal or absence of any such Building Attendants as set out in Part A in Service Specifications, the Contractor must promptly provide adequate and competent replacements. Without prejudice to the rights under Clause 56.3 below, if the Contractor fails to comply with this clause, the Government will deduct a sum or sums calculated in accordance with the formula set out in Clause 53.3 from the Monthly Fees.
- 56.3 Without prejudice to the rights under Clause 56.2 above, the Government Representative is entitled at his sole discretion to issue a Default Notice to the Contractor if the Contractor repeatedly fails to observe Clause 56.1 above.
- 56.4 If the Contractor fails to provide any of the Services or fails to provide the Services to the satisfaction of the Government Representative, the Government Representative shall, without prejudice to any other rights and remedies available to the Government, be entitled to have such Services carried out by its own resources or by other contractors and to recover any loss, damages, claims or any liability, costs and expenses that may be incurred by the Government Representative and may deduct the same from any money due and becoming due to the Contractor under this or any other contracts with the Government or from the Contract Deposit.
57. Contract Deposit
- 57.1 The Contractor shall pay the Contract Deposit in accordance with Paragraph 15 of the Terms of Tender.
- 57.2 If the Contractor fails to comply with Clause 57.1 above, the Government shall have the right to terminate the Contract pursuant to Clause 59.1 below.
- 57.3 Without prejudice to Clause 57.3, if the Contractor fails to comply with Clause 57.1, 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.
- 57.4 If the Contractor fails to comply with any provisions of the Contract, without prejudice to any rights that the Government has or may have against the Contractor, the Government may deduct from the Contract Deposit (and in the event that the Contract Deposit is in the form of a banker's guarantee, to call on the banker's guarantee the amount) to recover the amount of costs, damages, losses or expenses incurred or suffered by the Government arising from or relating to such failure, and any sums that are due to the Government under the Contract whether or not demand has been made.
- 57.5 The Contract Deposit shall be wholly forfeited to the Government in the event of the Contract being terminated in accordance with Clauses 3, 7.3, 15.1, 15.2, 15.7, 18 to 23, 26.7, 41.5, 42.2, 57.2, 57.7, 58.3, 75.3 or 75.7 hereof.

- 57.6 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee during the Contract Period, the Contractor shall, within twenty-one (21) days on demand in writing by the Government Representative, deposit a further sum, or reinstate the level or extent of the banker's guarantee in a sum equal to the amount so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit, or procure the issuance of a fresh banker's guarantee.
- 57.7 If the Contractor fails to replenish the Contract Deposit in accordance with Clause 57.6 above, without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract forthwith by notice in writing to the Contractor.
58. Probity
- 58.1 The Contractor acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its employees, agents, or representatives are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200);
 - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted.
- 58.2 The Contractor shall inform its officers, employees (whether permanent or temporary), representatives and agents that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Cap. 201)) is not permitted. The Contractor shall also caution its officers, employees, representatives and agents against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of officers, employees and agent staff carrying out the Service within this Contract.
- 58.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, representatives or agents is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).
- 58.4 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 for agreement including, among other probity issues, a statement explicitly prohibiting its employees, representatives and agents (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 58.2 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.

59. Termination

59.1 In the event that:

- (a) the Contractor fails to perform any Services in accordance with 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), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Cap 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government;
- (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 of the Conditions of Contract:
 - (i) Clause 3 (Sub-contracting);
 - (ii) Clause 7.3 (Use of Government's Premises and Facilities);
 - (iii) Clauses 15.1, 15.2 and 15.7 (Contractor's Personnel);
 - (iv) Clause 18 (Compliance with Employment Ordinance);
 - (v) Clause 19 (Compliance with Employees' Compensation Ordinance);
 - (vi) Clause 20 (Compliance with Immigration Ordinance);
 - (vii) Clause 21 (Compliance with Occupational Safety and Health Ordinance and Factories and Industrial Undertakings Ordinance);
 - (viii) Clause 22 (Compliance with Mandatory Provident Fund Schemes Ordinance);
 - (ix) Clause 23 (Compliance with Minimum Wage Ordinance);
 - (x) Clause 26.7 (Public Liability Insurance);
 - (xi) Clause 41.5 (Signing of Standard Employment Contract with Non-skilled Workers);
 - (xii) Clause 42.2 (Wages to Non-skilled Workers);
 - (xiii) Clauses 57.2 and 57.7 (Contract Deposit);
 - (xiv) Clause 58.3 (Probity); or
 - (xv) Clauses 75.3 and 75.7 (Force Majeure).

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

59.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
- (c) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (i) the Government reasonably believes that any of the events mentioned above is about to occur.

59.3 Notwithstanding anything herein to the contrary, the Government may at any time and from time to time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract by giving the Contractor one month's written notice of such suspension or termination. In the case of suspension, the written notice shall specify the period of the suspension and the scope of the suspension (viz., the Item(s) of the Services to be suspended, which may be all or any of the Items of the Services covered by the Contract).

59.4 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 59.1 to 59.3 above and in each Sub-clause of Clauses 59.1 and 59.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

60. Effect of Termination

60.1 If the Contract is terminated, the Government shall -

- (a) cease to be under any obligation to pay any Monthly Fee to the Contractor until all costs, loss and/or damage resulting or arising out from the termination of the Contractor's engagement have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (b) not be responsible for any losses or expenses suffered or incurred by the Contractor due to the termination of the Contract;
- (c) be entitled to repossess any of the Government's materials, clothing, equipment or other goods loaned or hired to the Contractor and to have a lien on any of the materials, clothing, equipment or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Government;
- (d) have, without prejudice to any claims made or to be made by the Government for breach of the whole or any part of Contract, the right to assign the uncompleted Services to another contractor or other contractors whereupon the Contractor shall be liable for any amounts in excess of the Estimated Contract Value for the remaining term of the Contract Period;
- (e) be entitled to dispose all Contractor's materials, clothing, equipment or other goods if the Contractor fails to remove all such things from the Venue within fourteen (14) days upon termination of the Contract, failing which the Government may dispose the same at its discretion in which event all costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith; and
- (f) be entitled to remove any staff of the Contractor or its employees or agent from the Venue.

60.2 The above rights of the Government are in addition to and without prejudice to any other rights the Government may have whether against the Contractor directly or pursuant to any guarantee or indemnity.

60.3 Any termination of the Contract howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.

61. 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.

62. Giving of Notice and Payment of Fees

The Contractor shall give all notices and pay all fees required to be given or paid by any enactment or any regulation of any local or other duly constituted authority in relation to the execution of the Services and by the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the performance of the Services.

63. Dispute Resolution, Jurisdiction and Governing Law

- 63.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.
- 63.2 If the said dispute or difference is not settled by mediation according to Clause 63.1, a Party may institute litigation in respect of the said dispute or difference. The Parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.
- 63.3 The Contract shall be governed by and construed in accordance with the laws of Hong Kong.

64. Publicity

- 64.1 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.
- 64.2 Subject to Clause 64.1 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.
- 64.3 Notwithstanding any consent or approval given under Clause 64.1 or 64.2 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.

65. 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.

66. Not Used.

67. 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.

68. Waiver

- 68.1 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.
- 68.2 Without prejudice to the generality of Clause 68.1 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.

69. Entire Agreement

- 69.1 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.
- 69.2 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).

70. Contract (Right of Third Parties) Ordinance

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

71. Non-exclusive Contract

The Contractor shall acknowledge 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.

72. Conflict of Interest

72.1 The Contractor shall during the Contract Period and for three (3) months thereafter:

- (a) ensure that it (including each and every officer, employee and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents 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, 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 whatever 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.

72.2 The Contractor shall ensure that itself and 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.

72.3 In the Contract:

- (a) “associate” in relation to any person means:
 - (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- (b) “associated person” in relation to another 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 other 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;
- (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; and
- (f) “Restricted Group” has the meaning given to it in Clause 72.1 above”.

73. Confidentiality

- 73.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor’s knowledge or be accessible by the Contractor in the course of carrying out the Services and all advices, recommendations, documents, materials and data given by the Contractor to the Government under the Contract (“Confidential Information”). The Contractor’s obligations under this Clause 73 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 73.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the Government and its authorised users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, representatives, or agents;
 - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486), which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or representatives 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 (Cap. 593).
- 73.3 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 (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent.
- 73.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or representatives who need to know the same for the purposes of the Contract.
- 73.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- 73.6 The Contractor shall comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- 73.7 The Contractor shall ensure that each of its employees, agents, representatives, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 73 and the Official Secrets Ordinance (Cap. 521).
- 73.8 The Contractor undertakes, if so requested by the Government, to deliver to the Government on such date as specified by the Government, separate confidentiality agreements duly executed by the Contractor and/or each person to whom any Confidential Information is to be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this Clause unless each confidentiality agreement is executed on terms prescribed by the Government.
- 73.9 The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.
- 73.10 If the Contractor becomes aware of any breach of confidence by any of its employees, agents or representatives, it shall promptly notify the Government and give the Government all reasonable assistance in connection with any action or proceedings which the Government may take or institute against any such persons.
- 73.11 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 hard copies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

73.12 The provisions of this Clause 73 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

74. Heat Stroke Prevention Work Plan

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

- (a) making suitable work arrangement 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 employees);
 - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers/shelters; providing ventilation equipment, and providing sheltered/ventilated resting places) based on the risk assessment results; and
 - (iii) to arrange hourly rest breaks as appropriate for Non-Skilled Workers working outdoors, in indoor environment without air-conditioning and/or in the vicinity of heat sources, based on the recommendations and criteria provided in the “Guidance Notes on Prevention of Heat Stroke at Work”, when the Heat Stress at Work Warning issued by the Labour Department is in force;
- (c) providing potable water at all times during work;
- (d) providing uniforms with dry-fit properties; and
- (e) providing wide-brimmed hats, arm sleeves or umbrellas.

74.2 The Contractor is required to keep written records of (a) heat stress risk assessments for its Non-skilled Workers exposed to heat stress at work by using the Labour Department’s sample form as set out in “Guidance Notes on Prevention of Heat Stroke at Work” published on 15 May 2023 at https://www.labour.gov.hk/common/public/oh/Heat_Stress_GN_en.pdf (as may be updated from time to time) as provided in Paragraph 8.2.1 in the Terms of Tender; and (b) the performance of all of the requirements set out in Clause 74.1 above.

75. Force Majeure

- 75.1 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.
- 75.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event 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.
- 75.3 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.
- 75.4 Without prejudice to the generality of Clause 75.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event ("Affected Obligations") but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
 - (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
 - (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
 - (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
 - (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 75.5 Following the issue of a notice by the Contractor under Clause 75.1 above which has led to Suspension due to Force Majeure under Clause 75.3 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.

75.6 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.

75.7 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.

76. Failure to carry out Accepted Innovative Suggestions

- (a) The Contractor undertakes and warrants that it shall carry out all Accepted Innovative Suggestions. In the event that the Contractor fails to carry out in full any of the Accepted Innovative Suggestions in relation to, during a relevant billing period, the Services or any part thereof; or otherwise not relating to any Services, (in each case a “non-complied Accepted Innovative Suggestion”), the Contractor shall, subject to Sub-clauses (b) to (d), pay to the Government a sum of money calculated according to the applicable formula as liquidated damages for EACH of such non-complied Accepted Innovative Suggestions:

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

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

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

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

M(IS)= (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) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the marking scheme (regardless of whether marks are actually given during tender evaluation to the non-complied Accepted Innovative Suggestion)

M(TP)= the maximum technical marks for the technical proposal in the marking scheme

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

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

where C2 = the total amount of Monthly Fee payable under the whole of the Contract (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)

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

M(IS)= (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) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the marking scheme (regardless of whether marks are actually given during tender evaluation to the non-complied Accepted Innovative Suggestion)

M(TP)= the maximum technical marks for the technical proposal in the marking scheme

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

CP = Contract Period expressed in number of days

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

- (b) The number of Accepted Innovative Suggestions which are Pro-innovation Proposals that the Contractor fails to fully carry out and upon which liquidated damages are payable under the applicable formula in Sub-clause (a) shall not exceed the minimum number of Pro-innovation Proposals to which full marks could be awarded to a Tenderer in the Marking Scheme. The same for those Accepted Innovative Suggestions which are ESG Proposals. However, there is no limit on the number of billing periods in respect of which liquidated damages shall be payable under the first formula of Sub-clause (a).
- (c) The aggregate amount of liquidated damages payable pursuant to the first formula and the second formula in Sub-clause (a) may not exceed 7.5 (%) per cent of the Estimated Contract Value.
- (d) The liquidated damages payable pursuant to the first formula in Sub-clause (a) may be deducted from the Monthly Fee payable in respect of Services over the billing period to which the non-complied Accepted Innovative Suggestion relates. The Government reserves the right to demand the payment of the liquidated damages from time to time including the time when the invoice in respect of the relevant billing period is to be settled or in respect of any subsequent billing period or at the end of the Contract Period whether by setting off from any invoiced amount or from the Contract Deposit (if any). The liquidated damages payable pursuant to the second formula in Sub-clause (a) may likewise be deducted in the same manner from any Monthly Fee or from the Contract Deposit. Alternatively, any such amount shall be settled by the Contractor in cash as per the demand of the Government within seven (7) days.
- (e) For the avoidance of doubt, for any billing period during which the Services should be performed that an Accepted Innovative Suggestion is not complied with, liquidated damages shall be calculated separately under Sub-clause (a) for each billing period.

77. 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.

78. Submission of Statement

The Contractor shall submit the statements in the form set out in Attachment A within fourteen (14) working days upon request by the Government Representative to the following address or a place as directed by the Government -

Assistant Departmental Secretary (General)
4/F, Civil Aid Service Headquarters, 8 To Wah Road,
Yau Ma Tei, Kowloon, Hong Kong
Fax No.: (852) 2576 3021

79. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity –

- (a) Service Specifications;
- (b) Contract Schedules;
- (c) Conditions of Contract;
- (d) Terms of Tender;
- (e) Tender Form;
- (f) Interpretation; and
- (g) other Tender Documents which forms part of the Contract.