Appendix 3

CONDITIONS OF TENDER

1. Definitions and Interpretation

(a) In these conditions of tender, unless the context otherwise requires, the following words and expressions have the following meanings:

"Conditions" mean these Conditions of tender and all the Appendices forming part and parcel of these Conditions.

"Contract" means the contract for the supply of the services on the terms and conditions set out in the Conditions and where applicable, in the form submitted by the Contractor as part of its bid and accepted by the Environmental Campaign Committee (the ECC) Representative.

"Hong Kong" means the Hong Kong Special Administrative Region, the People's Republic of China.

"Government" means the Government of the Hong Kong Special Administrative Region, the People's Republic of China.

"ECC Representative" means the Chairman, members of the ECC and its working groups and sub-committees or any officer authorised to act on his behalf.

(b) Unless the context otherwise requires, words importing the singular includes the plural and vice versa and words importing a gender include any gender.

(c) The headings to the Clauses of these Conditions are for ease of reference only and shall not limit or extend the interpretation of these Conditions.

2. Total Services and Variation

(a) The Services to be performed under the Contract shall be as laid down in the **Specifications of Services** and **Special Conditions of Contract** and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the ECC will not be responsible for Services performed on oral instructions issued by any person whomsoever.

(b) The Contractor shall not extend the Services beyond the requirements specified in the **Specifications of Services** except as directed in writing by the ECC Representative; but the ECC Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend,

omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the **Specifications of Services**. Provided that no such variation shall, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract price of more than twenty per cent or the Contract period of more than six months, unless otherwise mutually agreed by the Contractor and the ECC Representative.

(c) Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the rates specified in the **Price Proposal** so far as the same may be applicable and where rates are not contained in the said **Price Proposal**, or are not applicable, such amount shall be such sum as is reasonable in the circumstances. Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

(d) The ECC's liability shall be limited to the money payable in accordance with the schedule of rates for the amount of work completed to the standard acceptable to the ECC Representative. The Contractor shall refund the excessive payment to the ECC resulting from any deletion of the Services.

3. Assignment

The Contractor shall not, without the written consent of the ECC Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to him.

4. Quality of Services

(a) The ECC Representative will oversee the progress and implementation of Services and is the contact point for day-to-day liaison with the Contractor.

(b) The Contractor shall be supervised by the ECC Representative. In the course of service execution, the Contractor shall fully cooperate with the ECC and/or ECC Representative and shall comply with all instructions and amendments of the ECC and/or ECC Representative in relation to the Services. The Contractor shall provide the Services as required in a timely and effective manner in accordance with the Conditions or upon receiving instructions from the ECC Representative.

(c) The Contractor's performance will be closely monitored and may be taken into consideration in future when the Contractor's tenders or service proposals are evaluated by the ECC or the Government.

(d) The Services shall be as specified in the **Specifications of Services** and shall fulfil all

the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.

(e) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the ECC free of charge but shall be returned on completion of the Contract.

5. Subcontracting

(a) On the ECC's written consent, subcontracting of all or part of the Services to a third company/organisation after award of contract may be permitted on the condition that the ECC Representative is reasonably satisfied that the Contractor would have a good and effective control of the sub-contractor(s) with respect to work quality and timeliness of service. The sub-contractor(s) shall be financially and technically capable of completing the part of work assigned to the sub-contractor(s). While the sub-contractor(s) are expected to be financially and technically capable of completing the part of work subcontracted to them, the Contractor shall be held solely accountable and is fully responsible for the work done by its sub-contractor(s).

(b) The proposal from the Bidder shall be deemed to be invalid if the ECC Representative is not reasonably satisfied with the competency of the sub-contractor(s) in carrying out all or a fraction of the work subcontracted.

6. Inspection and Acceptance

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:

(a) The ECC Representative shall so certify; or

(b) The Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

7. Rejections

(a) Without prejudice to any statutory rights, the Inspecting Officer or the ECC Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of **Sub-clause (d) of Clause 4** hereof.

(b) Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

8. Meetings

The Contractor shall attend meetings with the ECC Representative as and when required to review the progress of the Services.

9. Title to Data and Intellectual Property Rights

(a) All the deliverables including but not limited to all draft and finished products and their designs under these Conditions, that are produced and/or supplied by or on behalf of the Contractor in the performance of any of the Services under these Conditions ("Deliverables") and all the intellectual property rights, including but not limited to copyright therein, shall be and shall remain the exclusive property of the ECC and the Government and shall vest in the ECC and the Government at the time when the Deliverables are created.

(b) The Contractor warrants and undertakes that:

(i) the Deliverables shall be or shall consist of original works created, developed or made by or on behalf of the Contractor; and

(ii) the use and/or possession of any of the Deliverables shall not infringe any intellectual property rights of any third party.

(c) The Contractor hereby waives and undertakes to procure all the authors of the Deliverables to waive all the moral rights in the Deliverables, such waiver(s) to take effect upon the vesting of the intellectual property rights in the Deliverable in the ECC and the Government pursuant to **Clause 9(a)** above or any other provisions of these Conditions.

(d) The Contractor shall at its own costs and expense do and execute any further thing(s) and document(s), or procure the same to be done or executed, as may be required by the Government/ECC to give full effect to the above **Clauses 9(a) to 9(c)** and shall provide all such documents and materials to the Government/ECC within seven days upon the Government/ECC's written request or within such longer period as may be agreed by the Government/ECC in writing.

(e) Upon request by the Government/ECC and/or in the event of the expiration or termination of the Contract, the Contractor shall at its own costs and expense promptly deliver to the Government/ECC all the Deliverables, whether in completed form or not, then in the Contractor's custody, control or possession.

(f) The Contractor shall indemnify the Government/ECC and keep the Government/ECC fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursement of lawyers, agents and expert witnesses), claims, demands, damages, expenses and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved

in writing by or on behalf of the Contractor) and liabilities of whatsoever nature arising out of or in connection with any breach of the obligations, warranties and undertaking on the part of the Contractor under any provisions of this clause.

(g) The provision of this clause shall survive the termination (however occasioned) of the Contract and shall continue in full force and effect notwithstanding such termination.

10. Confidentiality

(a) All materials and data in connection with these Conditions (including any materials furnished by or on behalf of the Government/ECC in connection herewith, or any materials collected, generated or produced by or on behalf of the Contractor under the Contract including without limitation any personal particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap 486) and materials of any nature (in or on whatever media)) shall be treated as confidential information. The Contractor shall not, during the continuance of the Contract or at any time thereafter, disclose to any person the terms and conditions of the Contract, or any confidential information, provided that the restrictions on disclosure contained in this clause shall not apply:

(i) to the disclosure of any information to any person in circumstances where such disclosure is reasonably necessary for the performance of the Contractor's duties and obligations under the Contract; and

(ii) to the disclosure of any information with the prior written consent of the Government/ECC.

(b) Any disclosure permitted under **Clause 10(a)** shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in **Clause 10(a)** and the Contractor shall use its best endeavours to ensure the confidentiality of any such disclosure.

(c) The Contractor shall not make use of or reproduce any information, reports, charts, documents, plans, software, data or other particulars or information whatsoever relating to the Contract furnished by or on behalf of the Government/ECC other than in the performance of its duties and obligations under the Contract and shall not make use of the reports or any documents or computer models produced or created solely and exclusively in relation to the performance of its duties and obligations under the Contract other than in the performance of its duties and obligations under the Contract or with the prior written consent of the Government/ECC.

(d) The Contractor shall inform every person to whom any confidential information, reports, charts, documents, plans, software, data or other particulars or information relating to the Contract is disclosed pursuant to this clause of the restrictions on reproduction and disclosure attaching to such information and the Contractor shall require such a person

to notify the same restrictions to any other person to whom it makes any such disclosure.

(e) The provisions of this clause shall survive the expiration or early termination howsoever occasioned of the Contract and shall continue in full force and effect notwithstanding such termination.

(f) The Contractor shall, upon the request of the Government/ECC, procure every person to whom the confidential information is to be disclosed pursuant to **Clause 10** to sign a separate confidentiality Condition with the Government/ECC in such form as may be prescribed by the Government/ECC.

(g) The Contractor shall promptly notify the Government/ECC of any breach of confidence by any person(s) to whom the confidential information is disclosed and give the Government/ECC all reasonable assistance in connection with any proceedings which the Government/ECC may institute against such person(s).

(h) The Contractor shall indemnify the Government/ECC and keep the Government/ECC fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of the lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities of whatsoever nature which the Government/ECC may suffer, incur or sustain as a result of any breach of confidence (whether under the Contract or general law) by the Contractor or any person to whom the confidential information is disclosed by the Contractor or by any breach of any of the provisions of Clause 10 on the part of the Contractor.

11. Government/ECC Property

When Government/ECC property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Government/ECC Representative and the Contractor shall render such assistance as is necessary for this purpose.

12. Government/ECC Premises and Contractor's Premises

(a) The Contractor shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of Government/ECC premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

(b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government/ECC Representative or Inspecting Officer at all reasonable times.

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

13. Payment for Services

Payment for Services will be made in accordance with **Clause 3** of the **Special Conditions of Contract**.

14. Illegal Workers

(a) The Contractor undertakes not to employ illegal workers in the execution of any ECC contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the ECC Representative may, on behalf of the ECC, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.

(b) The Contractor shall be liable for all expenses necessarily incurred by the ECC as a result of the termination of the Contract.

15. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with **Clause 2(b)** hereof, the ECC may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by the ECC for breach of Contract including but not limited to its right of ECC to assign the balance of the uncompleted Services to another Contractor or Contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

16. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other ECC contracts.

17. Liability for Damages or Compensation

(a) Government/ECC and its employees or agents shall not be under any liability whatsoever for or in respect of:

(i) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government/ECC or any of its employees or agents or otherwise).

(ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government/ECC or any of its employees or agents.

(b) The Contractor shall indemnify the Government/ECC and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government/ECC or any of its employees or agents in respect of :

(i) any loss, damage, injury or death referred to in sub-clause(a) of this clause (save and except injury or death caused by the Negligence of the Government/ECC or any of its employees or agents).

(ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.

(c) The Contractor shall indemnify the Government/ECC against any loss of or damage to any property of the Government/ECC or of any of its employees or agents or any injury to any employee or agent of the Government/ECC arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.

(d) For the purposes of this clause 'Negligence' shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance.

18. Policy of Insurance and Compensation

(a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by ECC (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the ECC Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.

(b) If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases ECC may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by ECC 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.

(c) In the event of any of the Contractor's employees or agents suffering any injury or death

in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within 7 clear working days give notice in writing of such injury or death to the ECC Representative.

19. Bankruptcy

The ECC Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

(a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or

(b) if the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitled the court or debenture holders to appoint a receiver or manager.

Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the ECC.

20. Corrupt Gifts

(a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other ECC contracts, the ECC Representative may, on behalf of the ECC, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.

(b) The Contractor shall be liable for all expenses necessarily incurred by the ECC as the result of the termination of the Contract.

21. Consent to Disclosure

The ECC shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the awarded contract, without any further reference to the successful tenderer, the name and address of the successful tenderer, description of services and the contract amount.

22. Publicity

The Contractor shall submit to the Government/ECC Representative all advertising or other publicity materials relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government/ECC's name is mentioned or language used from which a connection with the Government/ECC can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government/ECC Representative.

23. Governing Law

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

24. 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) Specification of Services in the Contract

(b) Special Conditions of Contract

(c) Conditions of Tender

25. Termination

(a) The ECC may at any time or times prior to the completion of the Services at its option suspend or terminate the Contract by giving the Contractor 14 days' written notice of such suspension or termination. The ECC's liability will be limited to the money payable in accordance with the rates specified in the Contract for the amount of work completed to satisfaction of the ECC. The ECC may also at any time or times prior to the completion of the Services at its discretion to terminate whole or part of this Contract by notice in writing, and the ECC shall reserve the right to assign the balance of the uncompleted services to another Contractor.

(b) If the Contractor shall fail to satisfactorily carry out all or any of the Services, without prejudice to other remedy, all additional expenditure incurred by the ECC in having such work carried out shall be recoverable by the ECC from the Contractor.

(c) The ECC may immediately terminate the Contract upon the occurrence of any of the

following events:

(i) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;

(ii) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or

(iii) the ECC reasonably believes that any of the events mentioned above is about to occur.

26. Deduction of Fees

Where the actual scope of services delivered is less than expected set out in the Specifications of Services in the Contract, the ECC shall deduct from the price stated in the Contract the amount in accordance with that shortfall for the tasks outlined in the Contract on the basis of unit cost specified therein.

27. Use of Government/ECC's Name

The Contractor agrees not to use the Government/ECC's name in any document, publication, advertisements or publicity materials without the prior written consent of the Government/ECC except pursuant to the Contractor's performance of the Services and to the extent that the relationship between the Government/ECC and the Contractor in relation to the Services is public knowledge.

28. Disclosure of Contractor's Name and Fees by ECC

(a) The Contractor shall irrevocably authorise, consent and agree that the ECC or the ECC Representative may, whenever it/he considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the ECC or the ECC Representative deems fit:

(i) the name of the Contractor whose proposal is accepted by the ECC in the selection exercise on the provision of Services; and

(ii) the fee payable to the Contractor pursuant to the Contract.

(b) The Contractor shall waive and forego its rights, if any, to make any claims against the ECC and/or the ECC Representative for any actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses that may arise out of or in consequence of the above disclosure made by the ECC or the ECC Representative.

29. Green Management Requirements

In preparing any submissions, the Contractor shall adopt the green measures below:

(a) The Contractor is required to follow "A Waste Reduction Guidebook for Large Event Organisers" published by the Environmental Protection Department to minimise waste generation during the entire process of organisation of event(s)/activities. The Guidebook is retrievable at: https://www.wastereduction.gov.hk/sites/default/files/GreenEvent_Guidebook_Eng_201801.pdf

(b) In preparing any submissions, the Contractor shall adopt the green measures below:-

(i) All submissions are to be printed on both sides and preferably on recycled and unbleached paper. Paper exceeding 80gsm is not recommended as a general rule.

(ii) Unnecessary or excessive use of plastic laminates, glossy covers or double covers should be avoided. If a cover for the submission is necessary, the use of recyclable non-glossy art board paper is encouraged.

(iii) Excessive white space around the borders and in between the paragraphs of all documents prepared by the Bidder or the Contractor should be avoided. A margin of 2 cm should be sufficient. Excessive use of blank paper for presentation purposes should be avoided as well.

(iv) The number of pages in a submission can be reduced by reducing the size of typeface (font). For example, "Times New Roman" or "C.G. Times" font size not larger than point 12 or 10 characters per inch should be used in balancing legibility and clarity against the waste reduction objective. The appearance and readability of the document can be improved by using two columns where the font size used is point 12.

30. Admission of Contractor Personnel to Government Premises

30.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (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.

30.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.

30.3 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.

30.4 In the event that the Contractor fails to comply with this **Clause 30** and it is determined that such failure is prejudicial to the interests of the Government or the ECC, the ECC Representative may thereupon terminate the Contract forthwith pursuant to **Clause 25** of the **Conditions of Tender** or partially terminate the Contract pursuant to **Clause 25** of the **Conditions of Tender**.