

LICENCE AGREEMENT
for Hong Kong Flower Show 2015

This LICENCE AGREEMENT made this third (3rd) day of December, 2014 BETWEEN the Government of the Hong Kong Special Administrative Region (“the Government”) acting through the Director of Leisure and Cultural Services and his authorized representative whose principal office is situated at the Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, Hong Kong (“the Director”) of the one part AND _____
 _____(English Name, with Chinese Name _____ (where applicable)) HKI/C No. _____ who operates his business at _____
 _____(address)/ *resides at _____
 _____(address) (hereafter called “the Licensee”) of the other part.

(* If the Licensee does not have a business address, he should fill in his residential address.)

WHEREBY IT IS AGREED AS FOLLOWS -

1. In consideration of payment of the fee referred to in Clause 3 hereof, the Director shall grant to the Licensee a right to operate the business of selling # goods/fast food/dry food/books (hereinafter called “the Business”) where the commodity items are specified in the Second Schedule of SCHEDULES at the Commercial Stall No. _____ (as delineated at the location plan at the Appendix) (hereinafter called “the Licence Area”) in the Showground of Hong Kong Flower Show 2015 at Victoria Park (hereinafter called “the Venue”) in accordance with and subject to the terms and conditions of this Licence Agreement and the SCHEDULES attached to this Licence Agreement for the period from the # **twentieth (20th) / twenty-first (21st) day to the twenty-ninth (29th) day of March 2015**, both dates inclusive (hereinafter called “the Licence Period”).

(#Delete wherever appropriate)

2. (a) Subject to sub-clause (b) in respect of the Book Stall below, the eighteenth (18th) day and the nineteenth(19th) day of March 2015 shall be set aside for decoration of the Licence Area by the Licensee, during and before which, no Business shall be conducted at the stall.
- (b) For the Licensee of the Book Stall, he shall decorate the Book Stall from 1:15pm to 2:00pm on the twenty-first (21st) day of March 2015, during and before which, no Business shall be conducted at the stall.

- (c) In case that there is any unforeseeable event happening on or before the commencement day of the Licence Period, the Director shall have a right to defer the commencement day and thereby the duration of the Licence Period will be reduced correspondingly. If the duration of the reduction period as caused by the unforeseeable event covers more than half of the Licence Period, the Director shall have a right to cancel this Licence Agreement.
- (d) The fee referred to in Clause 3 hereof will be refunded without interest on pro-rata basis for the reduction period, which may include the whole Licence Period. The Government shall not be liable for any loss sustained by the Licensee as a result of the reduction of the Licence Period or cancellation of this Agreement.
3. Notwithstanding that the Director may from time to time during the Licence Period close the whole or any part of the Venue for the purpose of crowd control and/or carrying out maintenance and repair thereto, the Licensee shall pay to the Government a fee (i.e. the bid price offered by the Licensee) of HK\$_____ (Hong Kong Dollars _____) (hereinafter called “the Fee”) on the day of signing this Agreement.
4. The Licensee shall have no right to exclusive possession of the Licence Area at all times and the Government shall retain unrestricted rights of access to the Licence Area. The Licensee must not in any way impede the Government and its employees, agents or authorized officers in the exercise of its access rights of possession and control of the Licence Area and every part thereof.
5. The Licensee shall perform and observe the stipulations and provisions contained in the First Schedule of SCHEDULES hereto.
6. (a) The Government and its employees, agents or authorized officers shall not be under any liability whatsoever for or in respect of -
- (i) Any loss of or damage to any of the Licensee’s property or that of his employees or agents howsoever caused (whether by any negligence of the Government or any of its employees, agents or authorized officers or otherwise); and
 - (ii) Any injury to or death of any of the Licensee and his employees or agents save and except any such injury or death caused by the negligence of the Government or any of its employees, agents or authorized officers.

- (b) The Licensee shall indemnify the Government and its employees, agents or authorized officers against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees, agents or authorized officers 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 or any of its employees, agents or authorized officers); and
 - (ii) Any loss or damage sustained by or any injury to or death of any third party in consequence of any negligence of the Licensee or any of his employees or agents.
 - (c) The Licensee shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees, agents or authorized officers or any injury to or death of any employees, agents or authorized officers of the Government arising out of the negligence of the Licensee or any of his employees or agents.
 - (d) In the event of any of the Licensee's employees or agents suffering any injury or death in the course of or arising out of this Licence Agreement and whether there will be a claim for compensation or not, the Licensee shall as soon as possible and in any event, within three (3) clear working days give notice in writing of such injury or death to the Government.
 - (e) For the purpose of this Clause, "negligence" shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance, Cap. 71.
 - (f) The Licensee shall effect and keep in force during the period of this Licence Agreement at his own expense a Public Liability Policy of Insurance exclusively for the Licence Agreement for any accident and claims in respect of the Licence Agreement with an insurance company authorized under the Insurance Companies Ordinance, Cap. 41 in accordance with Clause 34 in the First Schedule.
7. The Government makes no guarantee as to the level of utilization of the Venue. The Government may at any time and from time to time at its sole discretion close or restrict the use of or the access of the public to the whole or any part of the Venue including but not limited to the Licence Area or any part thereof or forbid the entry of any person to the same for any period or periods as it may deem necessary. The Licensee shall not be entitled to claim for any compensation or loss of Business for such reasons.

8. The Director may at its sole discretion prohibit and disqualify the Licensee from applying or bidding for any Commercial Stall in any or all flower shows that the Director may organize in future upon discovering that –
 - (a) the Licensee has provided any false information on his business name or address, as stated in this Licence Agreement; or
 - (b) the Licensee has caused mutilation, destruction, damaging or abandoning of the unsold commodities, in particular plants or flowers at his Licence Area at or near the conclusion of the Hong Kong Flower Show 2015.
9. If the Licensee shall be in breach of any of the terms of this Licence Agreement, the Director may by notice in writing to the Licensee terminate this Licence Agreement and upon service of such notice and without prejudice to any liability of the Licensee to the Government under this Licence Agreement, the Licensee shall immediately vacate the Licence Area. No prior warning by the Government is necessary before taken any termination action if the breach committed by the Licensee is serious.
10.
 - (a) The Government shall have a right to early terminate the Licence Agreement at any time before or during the Licence Period. The Government can repossess the whole or part of the Licence Area during the Licence Period for use by the Government for whatever reasons as the Government finds fit to do so.
 - (b) On happening of the aforesaid event, the Fee paid shall be refunded on a pro-rata basis without interest to the Licensee for the unused period of the Licence Agreement and the Government shall not be liable for any loss on the part of Licensee as a result of such termination. The amount to be refunded shall be equivalent to a sum being the unused Fee for the remaining Licence Period.
 - (c) Save as above, the Licensee has no right to request refund of any payment made to the Government upon the termination of the Licence Agreement.
11. Upon expiry of this Agreement or its termination due to any reasons as specified in this Agreement, the Licensee shall forthwith deliver up vacant possession of the Licence Area to the Director in good repair condition and if the Licensee shall fail or refuse to do so the Director may enter the Licence Area and remove any person or property therein and thereafter may dispose of any property so removed in such manner as the Director at his absolute discretion may see fit without any liability whatsoever whether towards the Licensee or otherwise and the Licensee shall pay to the Government on demand the removal and related cost incurred by the Government.

12. (a) If the Government shall at any time be prevented from performing this Agreement by force majeure then this Agreement shall terminate immediately but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of any of the covenants, restrictions, stipulations or conditions herein contained.
- (b) For the purpose of this clause, “force majeure” means acts of God, strikes, suspension of work, acts of war, civil disorders or other events not within the control of the Government and for these purposes an event shall not be deemed to be within the control of the Government on the ground that the Government could have prevented that event by acceding to any unreasonable demands of any authority, corporation, trade union, association or other person.
13. (a) The Licensee acknowledges that he has inspected the Pleasure Grounds Regulation (Cap. 132 subsidiary legislation) before signing this Agreement.
- (b) The Licensee shall observe the provisions in the Pleasure Grounds Regulation (Cap. 132 subsidiary legislation).
- (c) The Licensee agrees to give the warranties and indemnities contained herein.
14. Any written notice or other document which the Director may give to the Licensee under this Agreement shall be deemed to have been given to the Licensee if affixed to the Licence Area or handed to any employee of the Licensee at the Licence Area, or sent to him by registered post to his last known address.
15. Where the context so admits or requires, the expression “Licensee” shall mean the party entering into and signing/executing this Agreement and shall include his executors and administrators and words importing the masculine gender shall be deemed to include females and words in the singular shall be deemed to include the plural and vice versa in each case.
16. This Agreement is personal to the Licensee and is not assignable or transferable. The right to carry on the specified Business given in Clause 1 shall only be exercised by the Licensee and his employees.
17. (a) The Licensee represents and warrants that:
 - (i) prior to the auction, he has not communicated to any person the amount of the bid price offered by him;

- (ii) he has not fixed the amount of the bid price by arrangement with any person;
 - (iii) he has not made any arrangement with any person as to whether he/she or that other person will or will not make a bid; and
 - (iv) he has not otherwise colluded with any person in any manner whatsoever in the auction.
- (b) In the event that the Licensee is in breach of any of the representations and/or warranties in Clause 17(a) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government, terminate this Agreement.
- (c) The Licensee shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 17(a) above.
- (d) Any breach of any of the representations and/or warranties in Clause 17(a) above by the Licensee may result in the disqualification of the Licensee from any or all future auctions of Commercial Stalls in flower shows organized by the Government.
- (e) Clause 17(a) shall have no application to the Licensee's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the bid price, or with its professional advisers or consultants to solicit their assistance in preparation of his bid.
- (f) The rights of the Government under Clauses 17(b) to (d) above are in addition to and without prejudice to any other rights or remedies available to it against the Licensee.
18. The Government may delegate and appoint staff of the Leisure and Cultural Services Department or other government departments to execute and enforce this Agreement on its behalf and the Licensee shall comply with any instructions given by such officers as representatives of the Government.
19. This Agreement is governed by the Law of the Hong Kong Special Administrative Region.

20. (a) The parties hereto agree that any dispute or claim arising out of or in connection with this Agreement (“the Dispute”) shall first be referred to mediation. In default of agreement, the Dispute shall be referred to mediation at the Hong Kong International Arbitration Centre (“HKIAC”) in accordance with its Mediation Rules. In case the Dispute cannot be resolved by mediation, the Dispute shall be referred to, and finally settled by, arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609).
- (b) For the avoidance of doubt, the Licensee shall be obliged to carry on the Business in accordance with the Agreement irrespective of a notice of mediation having been served by either party or whether mediation or arbitration is in progress.
21. The SCHEDULES (First Schedule and Second Schedule) attached hereto shall form and be an integral part of this Agreement.
22. If there are discrepancies between English version and Chinese version of the Licence Agreement, the English version shall prevail. The Chinese version is for reference only.

As WITNESS whereof the parties hereto have set their hands the day and year first before written.

SIGNED by the Licensee

Name :
HKI/C No. :

SIGNED for and on behalf of
the Government of the Hong
Kong Special Administrative
Region

Name : Miss YEUNG Hoi-kei
Post : Executive Officer (Green Campaign)

WITNESSED by

Name : Ms. YAU Yun-wah, Susanna
Post : Assistant Leisure Manager I (Contracts)2

The personal data and information provided by the Licensee in this Agreement will be used for purposes of licensing of Commercial/Book Stall only. All personal data will be destroyed after completion of the Show or litigation, whichever is later.