

LICENCE AGREEMENT
for Hong Kong Flower Show 2017

This LICENCE AGREEMENT made this 7th day of December, 2016 (“this Agreement or the Agreement”) BETWEEN the Director of Leisure and Cultural Services whose principal office is situated at the Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, Hong Kong (“**Director**”) for and on behalf of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“**Government**”) of the one part AND _____ (English Name, with Chinese Name _____ (where applicable)) HKI/C No. _____ who operates his business at _____ (address)/ *resides at _____ (address) (“the Licensee”) of the other part. The Licensee has successfully bid for such part of the **Victoria Park** (“**Venue**”) as detailed in this Agreement to operate the Business (as defined in Clause 1 of this Agreement) in an event entitled “**Hong Kong Flower Show 2017**” (“**Event**”).

(* 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 Licence Fee as referred to in Clause 4 hereof, but subject always to all rights and powers of the Director under this Agreement and at law, the Director hereby grants to the Licensee the non-exclusive, non-transferable, non-assignment right to enter, occupy and use commercial stall No. _____ as delineated and coloured red in the Third Schedule hereto (“**Licence Area**”) commencing from _____ # **a.m. / p.m.** from the # **10th / 11th day of March 2017** (“**Commencement Date**”) to the **19th day of March 2017**, both dates inclusive (“**Licence Period**”) as the same may be earlier terminated pursuant to the provisions of this Agreement to operate/carry out the business of selling # goods/fast food/dry food/books (“**Business**”) in accordance with and subject to the terms and conditions of this Agreement.

(#Delete wherever appropriate)

Decoration of Licence Area

2. Depending on the type of Business the Licensee is operating/carrying out, the Licence Area, shall, subject to the Director's receipt of a copy of the public liability insurance policy taken out pursuant to Clause 28 of the First Schedule of this Agreement, be opened to the Licensee for decoration at such dates and times as stipulated in paragraph 2 &3 of the Public Notice dated 23rd November 2016 or at such other dates and times as may be directed by the Director. The Licensee shall not conduct any Business during such decoration time.

Director's rights

3. (a) The Government as the owner of the Licence Area whether acting through the Director or otherwise reserves all rights and powers to enter into the Licence Area or Venue for any purpose whatsoever without any notice or reference or consent from the Licensee.
- (b) In case that there is any unforeseeable event happening on or before the Commencement Date, the Director shall have a right to defer the Commencement Date and reduce the duration of the Licence Period. If the duration of the Licence Period is reduced by more than five (5) days, the Director shall have a right to cancel this Agreement.
- (c) Where the duration of the Licence Period is reduced, the Licensee shall be entitled to a partial refund of the Licence Fee without interest on a pro-rata basis, or a full refund should this Agreement be cancelled. The Director shall not be liable for any loss or damage suffered or incurred by the Licensee arising out of or in relation to the reduction of the Licence Period or cancellation of this Agreement.
- (d) The Director may from time to time during the Licence Period at its sole discretion close or restrict the use of or access to whole or any part of the Venue including but not limited to the Licence Area or any part thereof for the purpose of crowd control and/or carry out maintenance thereto as it may deem necessary. The Director shall not be liable for any loss or damage suffered or incurred by the Licensee arising out of or in relation to the closure or restriction of use or access to such part of the Venue.
- (e) 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 the future upon discovering that –
 - (i) the Licensee has provided any false information on his business name or

address, as stated in this Agreement; or

- (ii) the Licensee has caused mutilation, destruction, damaging or abandoning of any unsold commodities, in particular plants or flowers at his Licence Area on or near the last day of the Licence Period.

Licence Fee

4. The fee payable by the Licensee to the Director under this Agreement shall be HK\$_____ (Hong Kong Dollars _____) (“Licence Fee”) and shall be paid on the day of signing this Agreement.

Damage to Property, Cost of Repairs, etc.

- 5
- (a) In addition to the Licence Area, equipment, apparatuses, fittings, facilities or other property as listed in the **Location Plan as attached in the Third Schedule** will be made available for use by the Licensee for the Event during the Licence Period at the Licence Area (“**Facilities**”). The Licensee shall take good care of the Facilities and shall keep and maintain the same in good, clean and serviceable condition (fair wear and tear excepted). The Licensee shall be responsible for the due and immediate return of all such Facilities immediately after the end of the Licence Period to the Director. All costs arising from the collection and return of the Facilities shall be borne by the Licensee.
 - (b) The Licensee shall not make any alteration or addition to the Facilities without the prior permission in writing by the Director and shall not carry out repairs to the same without obtaining the prior approval of the Director. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Director and to a standard acceptable to the Director.
 - (c) The Director shall hand over the Licence Area to the Licensee on the day the Licensee shall decorate the Licence Area as specified in Clause 2 above on an as is basis. All the Facilities referred to in this Clause 5 shall also be provided to the Licensee on an as is basis.
 - (d) The Licensee shall accept the Licence Area and Facilities in the state and condition as they are made available to the Licensee. Any damage or deterioration thereafter to the Licence Area or any moveable or immovable properties thereat or the Facilities shall be the responsibility of the Licensee.
 - (e) The Licensee shall at its own cost reinstate the Licence Area to the reasonable satisfaction of the Director on or before 1:00 p.m., 20th March 2017. The Licensee which operates/carries out the business of selling books shall at its own cost reinstate the Licence Area to the reasonable satisfaction of the Director on or before 9:30 p.m., 19th March 2017.
 - (f) In the event that it is discovered that any loss or damage to the Licence Area or any moveable or immovable property thereat or any Facilities which occur after commencement of the Licence Period (fair wear and tear excepted) (in each case “lost or damaged property”), the Licensee shall repay to the Director within 7 days

after the date of demand: (a) the full cost of reinstating or repairing or replacing the relevant lost or damaged property and (b) all administrative costs incurred by the Director for arranging and supervising such work to be done, provided that the Licensee shall not be liable under this Clause due to any loss or damage arising from any act of God or force majeure or neglect or default or act of the Director's staff.

- (g) A joint inspection of the Licence Area shall be carried out by the parties to this Agreement both before the commencement of the decoration of the Licence Area specified in Clause 2 above and as soon as practicable after the Licence Area has been cleared upon the conclusion of the Event for the purpose of identifying any damage to or destruction of the Licence Area and/or any of the Director's property therein and the Facilities. The Government's decision on the outcome of the inspection shall be final and binding on the Licensee (in the absence of manifest error).

Advertisements

- 6 (a) The Licensee shall submit to the Director for approval details of all advertising materials that will be displayed within the Licence Area, including details of the specifications, dimensions, wording and design of any advertisement to be displayed.
- (b) Advertising from air-borne objects i.e. balloons, shall not be permitted except with prior written permission of the Director.
- (c) Advertising is permitted within the Licence Area only. No advertisements and the display of any advertisement outside the Licence Area shall be permitted. Advertisements, which in the reasonable opinion of the Director are of a controversial, political or objectionable nature, shall not be permitted.
- (d) All forms of advertising material shall only be displayed within the Licence Area and removed immediately after the completion of the Event.
- (e) Display of directional signs and public notices in bilingual form is permitted in the vicinity of the Venue entrances for the convenience of the public.
- (f) Tobacco or tobacco related product advertisement shall not be permitted at the Licence Area during the Licence Period.

Liability for Damages or Compensation

- 7. (a) Neither the Government nor the Director shall 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 or Patrons or visitors howsoever caused, save and except any such loss or damage is wholly caused by the gross negligence or wilful misconduct of the Director or any of its employees or agents for whose acts the Director should be vicariously liable but not otherwise ; or
 - (ii) any injury to or death of any of the Licensee, his employees or agents, save and

except any such injury or death caused by the Negligence of the Director or any of its employees or agents for whose acts the Director should be vicariously liable but not otherwise.

- (b) The Licensee shall indemnify each of the Government, the Director and employees or agents of the Government (each an “Indemnified Person”) against (a) all and any claims, actions, investigations, demands, proceedings, or arbitration, threatened, brought or instituted by any person against an Indemnified Person (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part and whether alone or jointly with another) (“Third Party Claim”); (b) all and any losses, damages, injury, death and all and any costs, charges and expenses (including without limitation those liabilities and indebtedness, losses, damages, injury or death arising from any Third Party Claim, and liabilities to pay damages and compensation, and all legal and expert fees on a full indemnity basis whether incurred in any Third Party Claim or incurred in any claim or proceedings or arbitration brought by an Indemnified Person) which an Indemnified Person may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to -
- (i) any loss, damage, injury or death referred to in sub-clause (a)(i) and (ii) which neither the Government nor the Director shall be liable;
 - (ii) any Negligence of the Licensee or any of his employees or agents;
 - (iii) any breach of any provision of this Agreement;
 - (iv) any warranty or representation made by the Licensee in this Agreement or prior to the signing of this Agreement or in the course of this Agreement is incorrect or untrue;
 - (v) any non-compliance with any applicable law or regulation in the use of the Licence Area or in a carry out the Event or any other activity within the Licence Area by the Licensee or any Patron or any visitor;
 - (vi) the act performed or procured to be performed by the Licensee or any Patron or any visitor within the Licence Area during the Licence Period which constitutes as an infringement of Intellectual Property Rights of any person; or
 - (vii) the exercise by the Director of any right or power under this Agreement or otherwise under any applicable law and regulation.

- (c) 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 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 Director.
- (d) For the purpose of this Clause 7, "Negligence" (in upper case only) shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance, Cap. 71.

General Covenant

- 8. The Licensee 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 Hong Kong in the execution of this Agreement. If there is any breach of this Clause by the Licensee, the Director may, by notice in writing, terminate this Agreement under Clause 19. The Licensee shall ensure the performance and observance of this Agreement, the Pleasure Grounds Regulation (Cap. 132BC) and any law or regulation applicable to the use of the facilities within the Licence Area by himself, his Patrons, visitors and his respective employees and agents.

Noise Nuisance

- 9. The Licensee shall ensure that the noise level of the Event is kept at a reasonably low level so as not to cause any unnecessary disturbance to residents in the neighbourhood. The Licensee shall ensure the noise mitigation measures suggested by the Environmental Protection Department.

Assignment

- 10. Save and except with prior permission of the Director, the Licensee shall not part with or assign any of the benefits or obligations under this Agreement to any person, other than by way of (a) allowing members of the public admission to the Venue and Licence Area whilst the Event is being held ("Patrons"); and (b) for granting advertising rights within the designated areas as shown in the Layout Plan in Fourth Schedule hereof. All other persons visiting the Licence Area during the Licence Period who do not fall within any of the afore-mentioned categories are referred to as "visitors". References to "permitted assigns" of the Licensee shall mean the assignees of the Licensee with the prior permission of the Director under this Clause 10 but excluding any Patron or visitor.

Non-liability for Loss

11. The Director and its employees or agents shall not be liable for any loss due to any breakdown of machinery, failure of supply of electricity, leakage of water, fire, typhoons, rain storm, Government restriction, civil riot, war, riot, civil commotion within the vicinity of the Licence Area or other acts of God which may cause any facilities within the Licence Area to be temporarily closed or the Event to be interrupted or cancelled (whether temporarily or permanently).

Removal of Properties

12. (a) Save and except with prior permission of the Director, all properties brought in the Licence Area by the Licensee must be removed therefrom immediately after the expiry of the Licence Period or the sooner termination of this Agreement.
- (b) The Director may at its sole discretion remove, dispose of or sell or auction and use or cause to be used in whatever manner any property that is found in the Licence Area upon the expiry or early termination of the Licence Period without being liable to the Licensee, or any other person including those persons to whom such property may belong for any compensation or payment.
- (c) The Director shall be entitled to recover from the Licensee all expenses, costs, losses and damages in relation to the breach of this Clause 12 and of the removal and disposition referred to in Clause 12(b).
- (d) The Director may order the Licensee to remove from the Licence Area anything brought by the Licensee or any Patron or visitor or any of their respective employees or agents which in the reasonable opinion of the Director is dangerous or liable to cause nuisance or trespass or obstruction or interference with any right of way or light or air. The Licensee shall thereupon immediately remove or cause the removal of such thing.

Alterations, Decorations, Electrical Fitting, Temporary Structures

13. (a) Any alterations, decorations, additional electrical fitting, and erection of temporary structures shall be subject to the prior written approval of the Director. The Licensee shall pay all expenses connected with the installation, alteration, dismantling and restoration of such facilities. Plans in respect of such works shall be submitted to the Director and other relevant Government departments for approval before the commencement of the works.

- (b) The Licensee shall not erect temporary structures or install temporary electrical fitting at the License Area or Flower Show Area that will affect the safety of fixed structure provided by the Government before prior written approval from the Director has been sought.

Rules and Regulations

- 14. (a) The Licensee shall comply with the laws and regulations as required by other Government departments such as the Hong Kong Police Force (“Police”), Food and Environmental Hygiene Department, Transport Department, Environmental Protection Department (“EPD”), Buildings Department, Fire Services Department, Water Supplies Department, and Agricultural, Fisheries and Conservation Department in relation to the conduct of the Event.
- (b) The Licensee shall comply specifically with EPD’s requirement on noise and air if mobile generators are used.
- (c) The Licensee shall comply with the Noise Control Ordinance (Cap. 400). In the event of continued non-compliance after written warning by the Director of EPD, the Director may terminate this Agreement under Clause 19.
- (d) The Licensee shall comply with the Water Pollution Control Ordinance (Cap. 358) and obtain any relevant licence.
- (e) The Licensee shall, and shall ensure that all of his employees and agents -
 - (i) shall take all necessary precautions to ensure the adequacy, stability and safety of all works, equipment and operations in the Licence Area and methods of construction; and
 - (ii) shall have full regard for the safety of all persons on or in the Licence Area, comply with all applicable laws and regulations and keep the ground and works in an orderly state appropriate to the avoidance of injury to all persons.

Intellectual Property Rights

- 15. (a) The Licensee shall not, and shall ensure his employees or agents will not, do any act which constitutes as an infringement of any Intellectual Property Rights or Other Right of any person. Without prejudice to the generality of the foregoing, the Licensee shall not, and shall ensure his employees or agents will not make any performance, show, broadcast or playback within the Licence Area which infringes the Intellectual Property Rights or Other Right of any person.

- (b) The Licensee shall not use the Licence Area for displaying or selling any goods or services or advertising materials which infringe the Intellectual Property Rights of any persons.
- (c) The Licensee shall be responsible for obtaining all licences and clearances at its or their own costs and expenses for musical works, literary works, dramatic works, sound recordings and any other copyright works to be performed, shown, playbacted in public or broadcast in the Licence Area, including but not limited to paying the licence fee to the Composers and Authors Society of Hong Kong Limited, the Phonographic Performance (South East Asia) Limited, the Hong Kong Recording Industry Alliance Limited, the other licensing bodies and copyright owners.
- (d) The Licensee shall procure all authors, performers and/or the relevant licensing bodies to waive, all moral rights (whether past present or future) in respect of any works, performances or sound recordings to be used, exhibited, performed, shown and/or playbacted in the Licence Area by the Licensee. Such waiver shall operate in favour of the Director, its authorised users, assigns and successors-in-title and be procured prior to any performance, use, exhibit, performance, showing or playback of any such works or sound recordings in the Licence Area.
- (e) Throughout this Agreement,
 - (i) "Intellectual Property Rights" means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, in each case whether now known or created in future, whatever nature and wherever arising, whether registered or unregistered, and including applications for the grant of any such rights, and regardless of the applicable jurisdiction in which any such right is registered or enforceable).
 - (ii) "Other Rights" means moral rights, performers' rights, performers' moral rights as respectively provided for under the Copyright Ordinance (Cap. 528).
- (f) For the avoidance of doubt, the Licensee shall have the obligations under this Clause 15 notwithstanding that any acts which constitutes as infringement of Intellectual Property Right or Other Right may have been carried out by the Licensee or Patron or visitor, or his employees, agents, promoters, sponsors, of or of of these persons.

Inspection

16. The Licence Area shall be subject to inspection by the Director at any time during the Licence Period.

Cleansing

17. The Licensee shall be responsible for cleaning of all areas within the Licence Area. The Licensee shall be responsible for removal and disposal of the litter and rubbish on a regular basis as directed by the Director during the Licence Period and to increase the frequency of disposal as the Director deems necessary. The Licensee shall be responsible for cleansing of the Licence Area and removal of all litter and rubbish left behind by the Licensee upon the end of the Licence Period as may be directed by the Director.

Notice

18. Any written notice, demand or request by the Director to the Licensee may be sent to the Licensee at the address stated on the front page of this Agreement or such other address as the Licensee may subsequently notify the Director in writing by no less than 5 days' prior notice and shall be deemed to be received by the Licensee when left the said address if delivered by hand during the normal office hours or on the next working day following the day of posting if sent by post.

Termination

19. Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Director, the Director may at any time by notice forthwith termination this Agreement if any of the following occur:
 - (a) if the Licensee fails or neglects to observe or perform any of the terms and conditions of the Agreement or fails to pay any of the sums payable by the Licensee under the Agreement or in the case of a breach capable of being remedied, will have failed within seven (7) days or such longer period as the Director may allow after the receipt of a notice in writing from the Director (such notice shall contain a warning of the Director's intention to terminate the Agreement) so to do, to remedy the breach; or
 - (b) if the Licensee 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 (Cap. 6) for the time being in force, or make any conveyance or assignment of his effects or

composition or arrangements for the benefit of his creditors or purports so to do, or a petition is filed for the bankruptcy or winding up of his Business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Director in writing; or

- (c) if the Licensee, being a company, shall pass a resolution, or the court shall make an order for its winding up or liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances which shall have arisen entitle the court or debenture holders to appoint a receiver or manager; or
- (d) if the Licensee assigns or transfers or purports to assign or transfer all or any part of the obligations or rights of the Agreement without the prior written consent of the Director which consent is required under any applicable provision of the Agreement; or
- (e) if the Licensee unilaterally abandon and/or rescind this Agreement at any time;
- (f) any event or circumstance occurs which enables the Director to terminate the Agreement under any provision of the Agreement including any of the following provisions:
 - (i) Clause 8 (General Covenant);
 - (ii) Clause 14 (Rules and Regulations);
 - (iii) Clause 27 (Anti-collusion);
 - (iv) Clause 30 (Corrupt Gifts);
 - (v) Clause 27 of the First Schedule (Taking up of the Licence Area); and
 - (vi) Clause 28(f) of the First Schedule (Public Liability Insurance).

Termination by force majeure

20. (a) If the Director shall at any time be prevented from performing this Agreement by force majeure, then the Director shall serve a notice on the Licensee to this effect whereupon the Agreement shall terminate immediately.
- (b) For the purpose of Clause 20(a), “force majeure” means acts of God, strikes, lockouts, acts of war, civil disorders, or other similar or different events or contingencies beyond the reasonable control of the Director. For these purposes an event shall not be deemed to be within the control of the Director on the ground that the Director could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.

Termination by notice

21. Notwithstanding anything herein to the contrary, the Director may without cause early terminate this Agreement by giving not less than thirty (30) day's written notice to the Licensee.

Termination Consequences

22. In the event of termination or expiry of the Agreement for whatever reason whether under any of the applicable provisions set out in Clause 19 or 20 or 21 or due to the expiry of the Licence Period or otherwise ("Termination"):

- (a) the Agreement shall be of no further force and effect but without prejudice to:
 - (i) the Director's and the Government's rights and claims under the Agreement or otherwise at law against the Licensee arising from antecedent breaches of the Agreement by the Licensee (including any breach(es) which entitle the Director to terminate the Agreement);
 - (ii) the rights and claims which have accrued to a party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned);
- (b) neither the Director nor the Government shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Licensee arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Director including the right to seek indemnity under Clause 7(b), in the event that this Agreement is terminated under Clause 19, the Licensee shall be liable for all losses, damages, costs and expenses incurred by the Director and the Government arising from the Termination including without limitation all administrative and legal costs incurred by the Director and the Government for earlier terminating the Agreement;
- (d) in the event that this Agreement is terminated under Clause 20 or 21 before commencement of the Licence Period, the Director shall refund the Licence Fee;

where termination takes place after commencement of the Licence Period, Licence Fee shall be refunded on a pro-rata basis without interest to the Licensee;

- (e) the Licensee shall immediately deliver up vacant possession of the Licence Area and all Facilities in good repair (fair wear and tear excepted) and in clean and hygienic condition by such time as stipulated in Clause 26 of the First Schedule. Where the Licensee has made any alterations or installed to the Licence Area or Facilities with or without the Director's consent, the Licensee shall reinstate or remove at the Licensee's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Director may require and to make good and repair in a proper and workmanlike manner any damage to the Facilities and to the fixtures and installations at the Licensee Area by such deadline date as specified by the Director (whether such date shall fall before or after the Termination);
- (f) the Licensee shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Director including any materials, machinery, equipment, plant and all other properties. The Licensee shall at his own expense make good any damage to the Licence Area arising from such removal;
- (g) all Licensees or his employees or agents, Patrons and visitors shall vacate the Licence Area;
- (h) If the Licensee shall fail to comply with Clause 22(e) or (f), the Director may perform the same. The Director reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Licensee or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Licensee upon Termination. All costs, losses, damages or expenses incurred by the Director for doing so shall be recoverable as a debt due from the Licensee.

Unfettered Powers

23. Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Director or the Government or any public officer.

Warranties

24. The Licensee hereby warrants and represents to the Director that:

- (a) he has the full capacity and authority and all necessary licences, permits and consents

- to enter into the Agreement and to perform or allow to be performed any activities therein take place;
- (b) the Agreement constitutes valid, binding and enforceable obligations of the Licensee enforceable in accordance with these terms and conditions;
 - (c) the entry into the Agreement and the performance by the Licensee of its obligations under it and the performance of any activities or conducting the Business at the Licence Area will not conflict or result in breach of:
 - (i) any contract or arrangement to which the Licensee is a party or by which the Licensee is bound; or
 - (ii) any order, judgment or decree of any court or government agency to which the Licensee is a party or by which the Licensee is bound; or
 - (iii) any applicable laws or regulations;
 - (d) all statements, representations and warranties in this Agreement or from time to time Licensee by the Licensee to the Director throughout the continuance of the Agreement are true, complete and accurate; and
 - (e) the Licensee will have at his own costs and expenses obtained all necessary consents, permits and licences as required by all applicable laws and regulations for conducting the Business and any activity at the Licence Area at least 7 days before the commencement of the Licence Period.

Interpretation

25. (a) **“Government”** means the government of the Hong Kong Special Administrative Region of the People’s Republic of China;
- (b) **“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China;
- (c) **“working day”** means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration during normal business hours in Hong Kong;
- (d) **“Flower Show Area”** means the flower show area as delineated and edged red in the Layout Plan attached in the Fourth Schedule;
- (e) **"Commercial Stalls"** means the stalls, including goods stalls, fast food stalls, dry food stalls and book stall allowed for sale of commodities as more particularly described in the Second Schedule.

- (f) **"Common Area"** means any area other than the Licence Area which is within the Flower Show Area without any designated purpose in the Fourth Schedule.

Principles of Interpretation

26. (a) Unless the context otherwise requires, references to "Licensee" shall include his executors and administrators, permitted assigns, successors, or any persons deriving title under them 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.
- (b) References to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes.
- (c) Headings are inserted for ease of reference only and shall not affect the construction of the Agreement.
- (d) References to a document shall:
- (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time validly amended or supplemented.
- (e) References to "Government" and "Director" shall include their respective assigns, successors-in-title, and persons deriving title under them, regardless of whether or not any of these persons are mentioned in the relevant provisions.
- (f) References to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document.
- (g) References to "laws" and/or "regulations" shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity.
- (h) A time of a day shall be construed as a reference to Hong Kong time.
- (i) References to a month mean a calendar month.

- (j) Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.
- (k) Any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Licensee, Patron and visitor, shall be deemed to be the act, default, neglect or omission of the Licensee.
- (l) Words importing the whole shall be treated as including a reference to any part of the whole.
- (m) The expressions “include” and “including” shall be construed without limitation to the words following.
- (n) Words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Agreement or by reference to any other definition.
- (o) Where a general obligation in the Agreement is followed by more specific obligations or vice versa, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
- (p) The expressions “public body” and “public officer” have the meanings given to them in the General Clauses and Interpretation Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- (q) Where there are discrepancies between English version and Chinese version of this Agreement, the English version shall prevail. The Chinese version is for reference only.

Anti-collusion

27. (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 27(a) above, the Director shall be entitled to, without compensation to any person or liability on the part of the Director or 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 27(a) above.
 - (d) Any breach of any of the representations and/or warranties in Clause 27(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 Director or the Government.
 - (e) Clause 27(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 Director under Clauses 27(b) to (d) above are in addition to and without prejudice to any other rights or remedies available to it against the Licensee.

Consent to Disclosure

- 28. (a) The Director shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) the terms and conditions of this Agreement, the identity of the Licensee, the name of the Event, the Licence and the Licence Fee.
- (b) Nothing in this Clause shall be construed to impose any duty of confidentiality owing by the Director or the Government to the Licensee or any person.

- (c) Nothing in Clause 28(a) shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 28(a) above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (i) disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
 - (ii) the disclosure of any information already known to the recipient;
 - (iii) the disclosure of any information which is public knowledge; or
 - (iv) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction.

Set-off

29. Whenever under the Agreement any sum of money shall be recoverable from or payable by the Licensee, the same may be deducted from any amount which may be due by the Director to the Licensee under any other contract or agreement.

Corrupt Gifts

30. If the Licensee or any employee or officer of the Licensee shall be found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Director may terminate the Agreement under Clause 19(f).

Personal Data Provided

31. (a) The personal data provided by the Licensee in this Agreement will be used for the purpose of licencing the Licence Area to the Licensee only.
- (b) The Licensee acknowledges and consents that his personal data may be disclosed to the Director and all parties responsible for the Event including other Government bureaux, departments and non-Government organizations.
- (c) Licensees have the right of access and make correction with respect to his personal

data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 468). The right of access includes the right to obtain a copy of the personal data provided in this Agreement. Please refer to the web site of Privacy Commissioner for Personal Data : https://www.pcpd.org.hk/english/resources_centre/publications/guidance/section_77.html

- (d) Enquiries concerning the personal data collected by means of this Agreement, including the making of access and corrections, should be addressed to the personal data privacy officer of the Director.

Waiver

- 32. (a) Time shall be of essence of this Agreement but no forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party. Nor shall any waiver of its rights whether under this Agreement or under any law or regulation operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power, or remedy shall be cumulative.
- (b) Acceptance of any payment by the Director shall not be deemed to operate as a waiver by the Director of any right to proceed against the Licensee in respect of any breach, non-observance or non-performance by the Licensee of any of the terms and conditions of this Agreement on the Licensee's part to be observed and performed.
- (c) No condoning, excusing or overlooking by the Director of any default, breach, non-observance or non-performance by the Licensee of any of the obligations of the Licensee under this Agreement shall operate as a waiver of the Director's right under this Agreement or under any law or regulation in respect of any continuing or subsequent default, breach, non-observance or non-performance.

Severability

- 33. (a) In the event that any provisions of this Agreement or any part of any such provisions shall at any time be adjudged by a court of Hong Kong to be invalid, illegal or otherwise howsoever unenforceable, such provisions or such part of such provisions, as the case may be, shall be severed from this Agreement and rendered ineffective so far as possible without modifying the remaining provisions hereof.

- (b) If at any time any one or more provisions hereof shall be adjudged by a court of Hong Kong to be invalid or illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be thereby impaired or affected.

Entire Agreement

34. This Agreement embodies the entire understanding of the parties and supersedes all prior agreements, arrangements and undertaking between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

Variation

35. Unless where expressly specified which confers on the Director the unilateral power to make amendments, no amendment to any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by each of the Director and the Licensee.

Relationship of the Parties

36. The Licensee enters into this Agreement with the Director as a licensee only and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership, a relationship of landlord and tenant, or a joint venture between the Director and the Licensee. Unless otherwise expressly provided for in this Agreement, neither party is authorized to act in the name of, or on behalf of, or otherwise bind the other party.

Delegation

37. The Director may delegate any of its officers or staff or staff from 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 Director.

Performance Monitoring

38. The Licensee is advised that its observance of the terms and conditions of the Agreement will be monitored. Any breach of any provision of this Agreement may be taken into account when the Licensee bids for any commercial stalls in future auctions organised by the Director and the Director may at its absolute discretion disqualify a Licensee from bidding in any commercial stalls for future auctions organised by the Director.

Governing Law and Jurisdiction

39. This Agreement shall be governed by and construed according to the laws of Hong Kong and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Courts of Hong Kong.

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 Director of Leisure and
Cultural Services

Name : Ms SO Sin-hang, Susan

Post : EO(GC)

WITNESSED by

Name : Ms WONG Hau-chun, Clara

Post : ALMI(C)2