

TENDER FORM

THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT

TENDER FOR
THE GRANT OF LICENCE TO OPERATE
THE CATERING OUTLETS
AT THE LOW BLOCK OF HONG KONG CITY HALL

(Tender Ref. : LC/CS/T/GR/PVM/HKCH/2022/01)

LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope

marked “Tender for the Grant of Licence to Operate the Catering Outlets at the Low Block of Hong Kong City Hall”

and addressed to the Chairman, Central Tender Board,

must be deposited in the Government Secretariat Tender Box situated at Lobby of the Public Entrance on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

before 12:00 noon (Hong Kong Time) on 23 September 2022. Late tenders will not be accepted.

Dated this 26 August 2022

Ms. Karen LAW
Government Representative

Part I — Tender Documents

These documents under the tender reference LC/CS/T/GR/PVM/HKCH/2022/01 consist of one (1) complete set of :

- (a) Tender Form (Part I to II);
- (b) Tender Labels
- (c) Interpretation (Sheets 1 to 9);
- (d) Terms of Tender (Sheets 10 to 35);
- (e) Conditions of Contract (Sheets 36 to 91);
- (f) Contract Schedules 1 to 16 (Sheets 92 to 134);
- (g) Form of Security Deposit Election (Sheet 135);
- (h) Form of Bank Guarantee for The Performance of A Contract (Sheets 136 to 140);
- (i) Non-collusive Tendering Certificate (Sheets 141 to 143);
- (j) Memorandum of Contract (Sheets 144 to 146); and
- (k) Annexes (Sheets 147 to 156)

Part II — Offer to be Bound

- 1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.
- 2. I/We, the Tenderer mentioned below, do agree to carry out all and any of the Business mentioned in the **Conditions of Contract** and pay the Monthly Licence Fee quoted by me/us in the **Contract Schedule 11**, subject to and in accordance with the terms and conditions stipulated in the Tender Documents.
- 3. I/We, the Tenderer mentioned below, have read **Paragraph 3 Tender Preparation** and **Paragraph 5 Two Envelopes System in Submission of Tender** of the **Terms of Tender** and certify that the particulars given by me/us in completing the Tender are true and correct.
- 4. I/We have read **Paragraph 38 Warranty against Collusion** of the **Terms of Tender**. I/We agree to be bound by the terms and conditions as stipulated therein.
- 5. In case the Tenderer is a company/firm, the Tenderer is required to complete 5(a) to (c). In case the Tenderer is not a company/firm, the Tenderer is required to strike out 5(a) to (c).

(a) I am/We are duly authorised to bind the said company hereafter mentioned by my/our signature(s).

– or –

I am a partner/We are partners in the firm hereafter mentioned and duly authorised to bind the said firm and the partners therein for the time being.

(b) The name of the company/firm is

A letter certifying the person who signs this tender is an authorised person to sign contracts/agreements on behalf of the said company/firm is required to be attached to this Tender Form. In case the said company is a body corporate, a certified true copy of the company’s Board Minutes to show that the signatory is duly authorised by the Board of Directors is required to be attached to this Tender Form.

(c) The registered office of the company is situated at

.....

– or –

The names and residential addresses of partners of the firm are as follows:-

.....
.....
.....

Name of Tenderer: _____
(Name in block letters)

Name and title of the authorised signatory
(where applicable) _____
(Name in block letters)

Signed by the Tenderer/Signed by an authorised
signatory for an on behalf of the Tenderer _____
(Signature) (with firm/company chop, if applicable)

Address(es) of person(s) signing: _____

Date: _____

- NOTE :**
- (i) All the particulars required above must be provided.
 - (ii) Strike out clearly alternatives which are not applicable.

TENDER LABEL (L1)
Price Submission
Chinese Restaurant,
International (non-Chinese)
Restaurant and Foyer Bar

THE CHAIRMAN,

CENTRAL TENDER BOARD

Government Secretariat Tender Box,

Lobby of the Public Entrance on the Ground Floor,

East Wing, Central Government Offices,

2 Tim Mei Avenue, Tamar, Hong Kong

**Tender for the Grant of Licence to Operate
the Catering Outlets at the Low Block of
Hong Kong City Hall**

Tender Reference : LC/CS/T/GR/PVM/HKCH/2022/01

Tender Closing 23 September 2022

Date : (12 noon Hong Kong Time)

Please remember to complete and submit the following document in **triplicate** for “Price Submission” :-

- Contract Schedule 11 only

TENDER LABEL (L2)
Technical Submission
Chinese Restaurant, International
(non-Chinese) Restaurant and Foyer Bar
(without any indication on Monthly Licence Fee)

THE CHAIRMAN,

CENTRAL TENDER BOARD

Government Secretariat Tender Box,

Lobby of the Public Entrance on the Ground Floor,

East Wing, Central Government Offices,

2 Tim Mei Avenue, Tamar, Hong Kong

Tender for the Grant of Licence to Operate
the Catering Outlets at the Low Block of
Hong Kong City Hall

Tender Reference : LC/CS/T/GR/PVM/HKCH/2022/01

Tender Closing 23 September 2022

Date : (12 noon Hong Kong Time)

Please remember to complete and submit the following documents in **triplicate** for “Technical Submission”:-

- | | |
|--|--|
| <input type="checkbox"/> Tender Form | |
| <input type="checkbox"/> Contract Schedule 2 | <input type="checkbox"/> Contract Schedule 3 |
| <input type="checkbox"/> Contract Schedule 4 | <input type="checkbox"/> Contract Schedule 5 |
| <input type="checkbox"/> Contract Schedule 6 | <input type="checkbox"/> Contract Schedule 7 |
| <input type="checkbox"/> Contract Schedule 8 | <input type="checkbox"/> Contract Schedule 9 |
| <input type="checkbox"/> Contract Schedule 10 | <input type="checkbox"/> Contract Schedule 12 |
| <input type="checkbox"/> Form of Security Deposit Election | <input type="checkbox"/> Non-collusive Tendering Certificate |

(without any indication on Monthly Licence Fee)

TENDER LABEL (L3)
Complete Tender Submission

**THE CHAIRMAN,
CENTRAL TENDER BOARD**

**Government Secretariat Tender Box,
Lobby of the Public Entrance on the Ground Floor,
East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong**

**Tender for the Grant of Licence to Operate
the Catering Outlets at the Low Block of
Hong Kong City Hall**

Tender Reference : LC/CS/T/GR/PVM/HKCH/2022/01

Tender Closing 23 September 2022
Date : (12 noon Hong Kong Time)

Note: “The Price Submission” and “The Technical Submission” for operations of Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar should be enclosed in sealed and separate envelopes attached with labels provided outside the envelopes and inserted into an envelope with this label outside. Please remember to complete and submit the following document in triplicate:

- Documents for Price Submission in sealed envelope with **TENDER LABEL (L1)**
- Documents for Technical Submission in sealed envelope with **TENDER LABEL (L2)**

INTERPRETATION

1. In these Tender Documents, the following shall have the meanings hereby assigned to them except when the context otherwise requires:

Ad Hoc Catering Services	means Ad Hoc Catering Services (1) and Ad Hoc Catering Services (2).
Ad Hoc Catering Services (1)	means the services to be provided by the Contractor upon request by the Government from time to time pursuant to Clause 3.1 of the Conditions of Contract .
Ad Hoc Catering Services (2)	means the services to be provided by the Contractor upon request by the Government from time to time pursuant to Clause 3.2 of the Conditions of Contract .
Back Office	means the Licensed Area identified in the floor plan in Annex F designated by use by the Contractor as storage area, staff changing room and administrative office.
Business	has the meaning given to it in Clause 3 of the Conditions of Contract .
Catering Business	means a retail business of supplying on premises food and beverage, which shall be cooked and/or prepared and/or reprocessed at a kitchen located in the same premises, to customers for immediate consumption on premises but excluding canteen in any school or work place or a factory or club or any agricultural premises or supply through an automatic vending machine.
Catering Outlets	means the Chinese Restaurant, International (non-Chinese) Restaurant and the Foyer Bar.
Chinese Restaurant	means the Chinese restaurant to be operated in the Licence Area identified in the floor plan in Annex C .
Companies Ordinance (Cap. 622)	means Cap. 622 of the Laws of Hong Kong and includes the predecessor Companies Ordinance which has the meaning assigned to it in Section 2 of the Companies Ordinance (Cap. 622).

Conditional Acceptance of Tender has the meaning given to it in **Paragraph 13.2** of the **Terms of Tender**.

Contract means the Contract entered into between the Government and the Contractor comprising the following parts of the Tender Documents and other items as specified below:

- (a) the “Memorandum of Contract”;
- (b) the “Tender Form”;
- (c) the “Terms of Tender”;
- (d) the “Interpretation”;
- (e) the “Conditions of Contract” containing a merged set of general and special conditions of contract;
- (f) the “Contract Schedules” (or “Schedules”) in the form as appearing in the Tender Documents and those which were submitted by the Contractor as part of its Tender, and accepted by the Government Representative;
- (g) “Form of Security Deposit Election”;
- (h) “Non-collusive Tendering Certificate”;
- (i) the “Annexes” A to G;
- (j) all other schedules, plans, drawings and other documents which form part of the Contractor’s Tender or are incorporated by reference herein or in any of the above documents,

in each case subject to such further changes as the Government Representative may stipulate in exercise of its powers under the **Terms of Tender**, and/or otherwise subject to such further changes as the Government Representative and the Contractor may agree.

Each of the above documents shall be referred to throughout the Tender Documents and the Contract by their respective titles as appearing in quotation marks above.

Contract Period	means the period specified in Clause 2.1 of the Conditions of Contract as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.
Contract Year	means each successive twelve (12) months within the Contract Period except that the first Contract Year shall commence from the first day of the Contract Period and ending on the first financial year of the Contractor which falls within the Contract Period; and the last Contract Year shall end on the last day of the Contract Period.
Contractor	means the Tenderer whose tender to operate the Business at the Licence Area is accepted by the Government Representative.
Contractor Responsible Group	has the meaning given to the term in Clause 36 of the Conditions of Contract .
Director	means the Director of LCSD.
Electricity Deposit	means the deposit as specified in Paragraph 23 of the Terms of Tender which the successful Tenderer shall deposit with the Government in accordance with Paragraph 13.2 of the Terms of Tender .
Estimated Contract Value	means the estimated value of the Contract to be arrived at by multiplying the Monthly Guaranteed Amount quoted by a Tenderer in its Contract Schedule 11 by eighty-one (81) being the number of months in the Contract Period less three (3) months.
Food and Beverages	means (a) the list of proposed signature dishes/beverages for sale at such Catering Outlet as listed in Contract Schedule 4 ; and (b) other items of food and beverages approved by the Government Representative in writing in advance for such Catering Outlet.
Foyer Bar	means the foyer bar to be operated in the Licence Area more particularly identified in the floor plan in Annex E .
Free Decoration Period	means the maximum three-month fitting out period commencing from the first day of the Contract Period.

Government	means the Government of Hong Kong.
Government Provisions	all items belonging to the Government specified in Contract Schedules 14 and 15 and such other Government property (moveable or immovable) which are from time to time made available to the Contractor for use in the Business or the Licence Area.
Government Representative	means the Director or any public officer of LCSD authorised to act on his or her behalf.
Hong Kong	means the Hong Kong Special Administrative Region of the People's Republic of China.
Inspection Officer	means the officer appointed by the Government Representative for the purpose of inspecting the Business carried out by the Contractor under the Contract.
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 whether now known or created in future (of whatever nature and wherever arising), and in each case whether registered or unregistered and including applications for the grant of any such rights.
International (non-Chinese Restaurant	means the International (non-Chinese) restaurant to be operated within the Licence Area identified in the floor plan in Annex D .
Invitation to Tender	means the invitation issued by the Government Representative to invite tenders for the Contract on the terms set out in the Tender Documents.
Kitchen	means the Licensed Area identified in the floor plan in Annex C designated by use by the Contractor kitchen for all of the Catering Outlets.
LCSD	The Leisure and Cultural Services Department.
Licence	means the right to operate the Business.
Licence Area	means the total areas as more particularly described in specified in Paragraphs 1 and 2 of Contract

Schedule 13 and as delineated and shown shaped red in **Annexes C, D, E, and F**.

Month (in upper or lower case)	means for the purposes of the Contract, (a) each calendar month within the Contract Period from 1 st day of that month to the last day; and (b) (if applicable) each of those periods as mentioned in Clause 6.7(i) to (iv) of the Conditions of Contract .
Monthly Licence Fee	means the Monthly Guaranteed Amount plus the Monthly Percentage Fee.
Monthly Licence Fee attributable to a Catering Outlet	means the portion of the Monthly Licence Fee payable in respect of a Catering Outlet comprising (a) such portion of the Monthly Guaranteed Amount based on the breakdown specified in Contract Schedule 11 ; and (b) the Monthly Percentage Fee to be calculated based on the Gross Monthly Receipts in respect of that Catering Outlet only.
Monthly Gross Receipts	has the meaning given to the term in Clause 6.17(b) of the Conditions of Contract .
Monthly Guaranteed Amount (in upper or lower case)	means the fixed amount payable by the Contractor on a monthly basis for the operation of the Business as specified in Contract Schedule 11 .
Monthly Percentage Fee	means the fee to be calculated under Clause 6.2 of the Conditions of Contract .
Original Tender Closing Date	means the date specified in the Tender Form as the date for submission of tender notwithstanding any extension.
Parties (in upper or lower case)	means the Government and the Contractor.
Percentage of Monthly Gross Receipts	means the percentage as specified in Contract Schedule 11 to be adopted for calculation of the Monthly Percentage Fee.
related person	has the meaning given to the term in Paragraph 17.7 or 17.8 of the Terms of Tender (whichever is applicable).
Requisite Permits	has the meaning given to it in Clause 10.1 of the

Conditions of Contract.

Security Deposit	means the deposit which the successful Tenderer shall deposit with the Government in accordance in Paragraph 23 of the Terms of Tender and as referred to Clause 8 of the Conditions of Contract .
Tender (upper or lower case)	means a tender submitted in response to this Invitation to Tender.
Tender Closing Date	means the date specified in the Tender Form as the latest date by which tenders must be lodged as the same may be extended.
Tender Documents	means the documents as specified in Paragraph 1 of the Terms of Tender .
Tender Validity Period	means the period of time as described in Paragraph 9 of Terms of Tender during which the tender is to remain open.
Tenderer	means the person or firm or company submitting this tender.
Venue	means the Hong Kong City Hall, located at 5 Edinburgh Place, Central, Hong Kong as indicated in Annexes A and B .
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 or “extreme conditions after super typhoons” announced by the Government is in force for any duration during normal business hours in Hong Kong..

2. In the Contract, unless the content otherwise requires, the following rules of interpretation shall apply –

2.1 The following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person

shall include any individual, firm, body corporate or unincorporated (wherever established or incorporated); references to company include corporation;

- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such documents; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
- (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” and “Government Representative” 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;
- (g) references to a “Paragraph” in the Terms of Tender are to a paragraph in the Terms of Tender; reference to a “Clause” in the Conditions of Contract are to a clause of the Conditions of Contract; references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- (h) references to “law” and “regulation” 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;
- (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month mean a calendar month;

- (n) any negative obligation imposed on any party shall be construed as if it was 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 was also an obligation to procure that the act or thing in question be done;
- (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
- (p) words importing the whole shall be treated as including a reference to any part of the whole;
- (q) the expressions “include” and “including” shall be construed without limitation to the words following;
- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- (s) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
- (t) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
- (u) the expressions “public body” and “public officer” have the meanings given to them in the General Clauses and Interpretation Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622). A reference to a public officer shall include a reference of any person for the time being lawfully discharging the functions of that office, or any part of such functions, and any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being.

2.2 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or the Government Representative or any public officer including the Public Health and Municipal Services Ordinance (Cap 132 of the Laws of Hong Kong). In this connection, references to “Government Representative” can mean the Director exercising his power under the aforesaid Ordinance or as representative of the Government (where applicable).

- 2.3 Without prejudice to paragraph 2.2 above, all rights and powers of the Government under the Contract may be exercised by the Government Representative for the Government. All claims of the Government may be enforced by the Government Representative for the Government.
- 2.4 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.
- 2.5 References to **Contract Schedules 2 to 10 – Working Background and Status of Tenderer, Business Plan, Menus, Service Packages, Marketing and Customer Service Plan, Hygiene Maintenance Plan, Waste Management Plan, Innovative Suggestions that can Bring Positive Values/Benefits to the Society, Years of Experience in Operating Catering Outlet(s), Experience and Qualifications of the Senior Manager and Valid and Relevant ISO and OHSAS Certifications** or any plan or proposal contained therein shall mean such Contract Schedule or such plan or proposal in the version as attached to the **Memorandum of Contract** subject to any further changes under any applicable provision of the Contract.

PART 1
TERMS OF TENDER

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THE GOVERNMENT OF HONG KONG
SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT

PART 1
TERMS OF TENDER

ALL TENDERERS ARE ADVISED TO READ THE TENDER DOCUMENTS CAREFULLY PRIOR TO PREPARING THEIR SUBMISSION. ANY SUBMISSION WHICH DOES NOT FOLLOW THE INSTRUCTIONS CONTAINED WITHIN THE DOCUMENTS WILL BE CONSIDERED INCOMPLETE AND MAY BE DISQUALIFIED.

ALL RIGHTS AND POWERS OF THE GOVERNMENT UNDER THE TENDER DOCUMENTS ARE EXERCISABLE BY THE GOVERNMENT REPRESENTATIVE.

1. Tender Documents

1.1 The Tender Documents consist of a complete set of:

- (a) Tender Form (Parts I to II);
- (b) Tender Labels
- (c) Interpretation (Sheets 1 to 9);
- (d) Terms of Tender (Sheets 10 to 35);
- (e) Conditions of Contract (Sheets 36 to 91);
- (f) Contract Schedules 1 to 16 (Sheets 92 to 134);
- (g) Form of Security Deposit Election (Sheet 135);
- (h) Form of Bank Guarantee for The Performance of A Contract (Sheets 136 to 140);
- (i) Non-collusive Tendering Certificate (Sheets 141 to 143);
- (j) Memorandum of Contract (Sheet 144 to 146); and
- (k) Annexes A to G (Sheets 147 to 156).

2. Invitation to Tender

Tenders are invited for the operation of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar to sell and supply food and beverages at the Licence Area within the Hong Kong City Hall Low Block for the Contract Period, inclusive of the Free Decoration Period of not more than three (3) months, on such terms and conditions as set out in these **Terms of Tender, Conditions of Contract, Contract Schedules** and **Annexes**. General information of the Hong Kong City Hall and the Licence Area is at **Annexes A to F**. The Conditions of Contract contain a merged set of general and special conditions of contract. For the information of the Tenderers, the commencement of the Contract Period is tentatively **1 January 2023**.

3. Tender Preparation

3.1 All tenders must be completed and submitted in three (3) identical sets (one (1) original and two (2) photocopies) (as more particularly described in **Paragraph 5**) in the manner under **Lodging of Tender** of the **Tender Form**.

3.2 Tenders shall be written in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for tender evaluation.

3.3 Tenderers shall complete and submit the following parts of the Tender Documents together with any necessary supporting information and documents in its tender:-

- (a) **Tender Form** – Part II – “Offer to be Bound”
(in technical submission envelope);
- (b) **Contract Schedule 2** – Working Background and Status of Tenderer;
- (c) **Contract Schedule 3** – Business Plan;
- (d) **Contract Schedule 4** – Menus, Service Packages, Marketing and Customer Service Plan;
- (e) **Contract Schedule 5** – Hygiene Maintenance Plan;
- (f) **Contract Schedule 6** – Waste Management Plan;
- (g) **Contract Schedule 7** – Innovative Suggestions that can Bring Positive Values/Benefits to the Society;
- (h) **Contract Schedule 8** – Years of Experience in Operating Catering Outlet(s);
- (i) **Contract Schedule 9** – Experience and Qualifications of the

- Senior Manager;
- (j) **Contract Schedule 10** – Valid and Relevant ISO and OHSAS Certifications;
 - (k) **Contract Schedule 11** – Monthly Licence Fee;
 - (l) **Contract Schedule 12** Information Required for Financial Vetting of Tenderer;
 - (m) **Form of Security Deposit Election** – Security Deposit (without any indication on the Monthly Licence Fee); and
 - (n) **Non-collusive Tendering Certificate.**

3.4 When completing the tender, any alteration by the Tenderer to its own submission in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the original ones. All such amendments shall be initialed by the Tenderer in ink.

4. Failure of Submission

4.1 Tenderers shall submit the tenders containing the documents set out in **Paragraph 3.3** above on or before 12:00 noon (Hong Kong time) on the Tender Closing Date.

4.2 **A Tenderer's tender will not be considered further if by the Tender Closing Date, the Tenderer has failed to submit any of the following:-**

- (a) the “**Offer to be Bound**” of the **Tender Form** duly signed by the Tenderer; and
- (b) the quotation for the Monthly Guaranteed Amount and the Percentage of the Monthly Gross Receipts as required in **Contract Schedule 11 (Monthly Licence Fee)**.

4.3 A Tenderer's tender will not be considered further if by the Tender Closing Date or upon any subsequent request which may be made by the Government under **Paragraph 15**, the Tenderer has failed to submit any of the following :

- (a) **Contract Schedule 2** (Working Background and Status of the Tenderer);
- (b) All other information requested in **Contract Schedule 11** (Monthly Licence Fee) apart from those specified in **Paragraph 4.2(b)**; and
- (c) **Non-collusive Tendering Certificate.**

The Tenderer should provide all the above items specified in this **Paragraph 4.3** at

the same time when it submits its Tender. The Government may, but is not obliged, exercise its discretion to request any of these items after the Tender Closing Date where they are found missing in accordance with **Paragraph 15**. However, if the same is not provided upon request, the Tenderer's tender will not be considered further.

5. Two Envelopes System in Submission of Tender

5.1 Tenderers are required to submit a Price Submission and a Technical Submission in the manner as described in this **Paragraph 5.1**. Tenderers should note that a marking scheme (as more particularly described in **Contract Schedule 1**) will be used for the assessment of their tenders. A completed tender, in three (3) identical sets (the original copy and two (2) photocopies), shall be submitted separately in two (2) sealed envelopes, the outside of which **should not** bear any indication which may relate the tender to the Tenderer, as follows:

(a) The **Price Submission** (the original copy and two (2) photocopies of **Contract Schedule 11 - Monthly Licence Fee**, fully completed together with projected profit and loss accounts and cash flow statements for the Contract Period) must be enclosed in a sealed envelope clearly marked "Tender Ref.: LC/CS/T/GR/PVM/HKCH/2022/01 - Tender for the Grant of Licence to Operate the Catering Outlets at the Low Block of Hong Kong City Hall – Price Submission" (Tender Label L1 provided); and

(b) The **Technical Submission** (the original copy and two (2) photocopies of all other remaining information and documents required in this tender as stipulated in **Contract Schedules 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12** as well as the **Form of Security Deposit Election, Non-collusive Tendering Certificate** and the **Tender Form**, fully completed, signed (in the case of the "**Offer to be Bound**" in the Tender Form), but **without** any indication on the Monthly Licence Fee) must be enclosed in a sealed envelope clearly marked "Tender Ref.: LC/CS/T/GR/PVM/HKCH/2022/01 - Tender for the Grant of Licence to Operate the Catering Outlets at the Low Block of Hong Kong City Hall – Technical Submission" (Tender Label L2 provided).

5.2 A completed tender i.e. the two (2) sealed envelopes as described in **Paragraph 5.1** above, shall be enclosed in another sealed envelope and addressed to the **Chairman, Central Tender Board** by using Tender Label L3 as provided. The tender must be deposited in the Government Secretariat Tender Box ("Specified Tender Box") located at the Lobby of the Public Entrance on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong before 12:00 noon (Hong Kong Time) on the Tender Closing Date specified in the **Lodging of Tender** at the **Tender Form**. **Late tenders or tenders not deposited in the Specified Tender Box will not be considered.**

5.3 In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or "extreme conditions after super typhoons" announced by the Government is/are in force, for any duration between 9:00 a.m. (Hong Kong

time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the tender closing time will be postponed to 12:00 noon on the first working day after the Tropical Cyclone Warning Signal No. 8 is lowered, or the Black Rainstorm Warning Signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force.

- 5.4 In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 a.m. and 12:00 noon (Hong Kong time) on the Tender Closing Date, the Government will announce extension of the tender closing time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department.
- 5.5 The Government Representative will not accept any tender submitted by methods other than as indicated in **Paragraphs 5.1 and 5.2**.
- 5.6 When completing a tender (including the “**Offer to be Bound**”), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer; or
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer;
 - (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Cap. 310 of the Laws of Hong Kong); or
 - (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in **Paragraph 5.6(a)(i), (a)(ii), (a)(iii) or (b)** above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

6. Monthly Licence Fee

- 6.1 Each Tenderer shall propose its Percentage of the Monthly Gross Receipts and Monthly Guaranteed Amount in **Contract Schedule 11**. Tenderers may refer to **Clause 6** of the **Conditions of Contract** in respect of payment of the Monthly Licence Fee under the Contract. Such Monthly Licence Fee shall be denominated in Hong Kong dollars.

- 6.2 Tenderers should note the Percentage of the Monthly Gross Receipts and the Monthly Guaranteed Amount quoted by the Contractor and accepted by the Government shall remain valid and binding throughout the Contract Period. No request for price variation will be considered. A Tender with any proposed price variation mechanism will not be considered further.
- 6.3 The Monthly Licence Fee shall not include rates, Government rent and taxes payable in respect of the Licence Area. Apart from the Government Provisions, all assets required, and all liabilities to be incurred from carrying out the Business at the Licence Area shall be the responsibility of the Contractor with no recourse against the Government or the Government Representative.
- 6.4 Each Tenderer may make certain that the Percentage of the Monthly Gross Receipts and the Monthly Guaranteed Amount quoted are accurate before submitting its tender. Without prejudice to the powers of the Government Representative to seek clarification or to negotiate with a Tenderer, the Government Representative is not obliged to accept any request for price adjustment on whatsoever ground.
- 6.5 Should it be found on examination by the Government Representative after the Tender Closing Date that a Tenderer has made unintentional errors in the figures stated in its Tender, the Government Representative, may but is not obliged, seek clarification from the Tenderer or request the Tenderer to confirm in writing whether it is prepared to abide by what the Government Representative considers should be the correct figures.

7. Information of the Tenderer

Each Tenderer shall provide the following details relating to itself in **Contract Schedule 2**:

- (a) name of the Tenderer;
- (b) The business vehicle of the Tenderer : limited company / sole proprietor / partnership, and date of establishment or incorporation;
- (c) shareholders / partners / proprietor of the Tenderer and their percentages of shareholding / equity interest ;
- (d) names and correspondence addresses of the following:
 - (i) director / partners / sole proprietor of the Tenderer; and
 - (ii) the contact person of the holding company or subsidiary company of the Tenderer (if any)
- (e) a copy of a valid Business Registration Certificate and copies of other documents evidencing its business status;

- (f) where the Tenderer is a limited company incorporated under the laws of Hong Kong, its Memorandum (if any) and Articles of Association, a Certificate of Incorporation, Certificate of Change of Name (if any), and latest annual return filed with the Companies Registry, and all filings with the Companies Registry subsequent to such annual return, or equivalent documents where the Tenderer is not a limited company incorporated under the laws of Hong Kong; and
- (g) where the Tenderer is a partnership, a copy of the excerpt of the partnership agreement evidencing the identities of the partners.

8. Submission of Documents for Financial Vetting

8.1 If the Estimated Contract Value of its tender exceeds HK\$10,000,000, a Tenderer has to demonstrate its financial capability before it can be considered for the award of the Contract. For this purpose, the Tenderer, upon request by the Government, shall provide the following documents and any other financial information that is considered necessary including those to be submitted in its tender (in **Contract Schedule 11** and **Contract Schedule 12**) for the purpose of financial vetting.

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts relating to the Catering Business of the group in which the Tenderer is a subsidiary of another company (if applicable) (as defined in the **Interpretation**) for the three (3) financial years prior to the Tender Closing Date. The audited accounts must comply with the following requirements:
 - (i) The audited accounts must be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622).
 - (ii) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Closing Date.
 - (iii) The audited accounts must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income statement), statement of changes in equity, statement of cash flows and notes to the accounts.
 - (iv) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by its local law.
 - (v) If any such accounts are in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided.

- (vi) If the Tenderer is a partnership, audited accounts for each member of the partnership must be submitted if the members are incorporated bodies.

Remarks: Unaudited accounts are acceptable only if the Tenderer is an unincorporated entity where audited accounts are not mandatorily required, or the Tenderer is a newly established business where the first accounts are not yet available. For unincorporated entities, tax records such as profits tax assessment issued by the Inland Revenue Department for the past three (3) financial years (if available) should be provided. The unaudited accounts and tax records must be certified by the sole proprietor, partners, directors of the Tenderer, certified public accountants or other accountants acceptable to the Government.

- (b) Management accounts with a period ending not more than three (3) months before the Tender Closing Date if management accounts have not been covered by the latest audited accounts. The accounts shall be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (i) the sole proprietor, partners or directors of the Tenderer, or (ii) certified public accountants or other accountants acceptable to the Government;
- (c) Projected statement of profit and loss and other comprehensive income and statements of cash flows of the Contract for each contract year and the pre-operating period (if applicable) and if possible, those of the company during the Contract Period setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the source of finance and other particulars showing how the Tenderer will deal with the Contract:
 - (i) They should be certified by the Tenderer's director or company secretary (in the case of a company) or by the Tenderer (in the case of sole proprietor). For a partnership, separate certification from each member of the partnership is required.
 - (ii) The assumptions used in preparing the projections should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided.
 - (iii) The assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections.
- (d) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Closing Date or a date fixed by the Government) and stipulating the expiry date of the facilities;

- (e) Copies (certified by the sole proprietor, a partner, a director or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable; and
- (f) Written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable.

8.2 Tenderer failing to submit the required information will be considered as failing the financial vetting. The Tenderer is required, in such event, in addition to an amount equal to three (3) times the Monthly Guaranteed Amount, deposit an additional amount equivalent to –

- (a) five percent (5%) of the estimated total Contract value (i.e. the total Monthly Guaranteed Amount to be paid by the Contractor during the Contract Period); or
- (b) two (2) months' Monthly Guaranteed Amount,

whichever (a) or (b) is the lower, as security for due and proper performance of the Contract.

9. Tenders to Remain Open

9.1 It is an essential requirement that a Tender shall remain valid and open for acceptance for a period not less than one hundred and eighty (180) days from the Tender Closing Date ("**Tender Validity Period**").

9.2 A Tenderer who counter-proposes a shorter Tender Validity Period than the period specified in **Paragraph 9.1** will be disqualified and its Tender will not be considered further.

9.3 Without prejudice to the Government's rights and claims vis-à-vis any Tenderer who withdraws its Tender during the Tender Validity Period, due notice will be taken of any withdrawal during the Tender Validity Period and without prejudice to any other rights and remedies that the Government may have against the Tenderer, such withdrawal may prejudice the Tenderer's future status as a Government supplier or service provider.

10. Selection of Tender

Without prejudice to other rights and powers of the Government not to consider a Tender under other applicable provisions in the Tender Documents, the evaluation of Tenders will be conducted in accordance with the marking scheme set out in **Contract Schedule 1**.

11. Basis of Acceptance

- 11.1 The Government Representative is not bound to accept the tender with the highest combined score or any tender, and reserves the right to accept all or any part of a tender at any time within the Tender Validity Period (including without limitation any of the proposals sets out in the Contract Schedules). Without prejudice to the generality of the foregoing, in case the Monthly Guaranteed Amount and/or the Percentage of the Monthly Gross Receipts offered by the Tenderer with the highest overall combined price and quality score is unreasonably low with reference to the advice of the Commissioner for Rating and Valuation, the Government may refrain from awarding the Contract to the relevant Tenderer.
- 11.2 Tenderers should note that their offers will be considered **on an overall basis. Tenders with only partial offer within the Licence Area will not be considered.**
- 11.3 Unless the Government decides that it is in the public interest not to award the Contract, subject to the other provisions of the Tender Documents, the Contract will normally be awarded to the Tenderer who passes the completeness check, quality criteria evaluation and price evaluation as referred to in **Contract Schedule 1**, or the Tenderer whom the Government considers to be fully capable of performing the Contract.

12. Negotiation

The Government reserves the right to negotiate with all or any Tenderer(s) about any terms and conditions in the Tender Documents and of the Contract.

13. Award of the Contract

- 13.1 Unless and until the **Memorandum of Contract** have been executed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government Representative and any Tenderer. References to award of the Contract mean the signing of the **Memorandum of Contract**.
- 13.2 The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “**Conditional Acceptance of Tender**”). Within twenty-one (21) days from the date of such Conditional Acceptance of Tender, the successful Tenderer shall be obliged to fulfill all of the following conditions to the satisfaction of the Government Representative (or such later date as the Government Representative may allow):
- (a) the provision of the Security Deposit as required under **Paragraph 23**;
 - (b) the provision of the Electricity Deposit as required under **Paragraph 23**;
 - (c) the prepayment of the Monthly Guaranteed Amount in respect of the fourth (4th) month of the Contract Period;

- (d) such changes to **Contract Schedules 4 (Menus, Service Packages, Marketing and Customer Service Plan)** as the Government Representative considers appropriate; and
 - (e) such other conditions as the Government Representative may stipulate in the Conditional Acceptance of Tender.
- 13.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Tenderer specified in **Paragraph 13.2** above to the satisfaction of the Government, the Government will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing **Memorandum of Contract**. The Contract will incorporate, to the extent accepted by the Government Representative, the Tender submitted by the successful Tenderer (subject to such other changes as the Government Representative may stipulate in exercise of its powers under the Tender Documents or such changes as the parties may agree). If a Tenderer fails to fulfill all or any of the conditions mentioned in **Paragraph 13.2** above (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the **Memorandum of Contract** upon notification by the Government (“defaulting Tenderer”), the Conditional Acceptance of Tender will become void and be of no further force.
- 13.4 The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and remedies of the Government, the defaulting Tenderer shall be responsible for the difference in the total Estimated Contract Value based on the amount of the Monthly Guaranteed Amount submitted by that defaulting Tenderer and the eventual Contractor who will be awarded the Contract whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise. On the other hand, notwithstanding anything in the Tender Documents or in the Conditional Acceptance of Tender to the contrary, in the event that the Government exercises any of its discretion under **Paragraph 17 or 18**, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a Conditional Acceptance of Tender and fulfilled all the conditions specified in **Paragraph 13.2**.
- 13.5 Tenderers who do not receive any notification of acceptance within the Tender Validity Period shall assume that their tenders have not been accepted.

14. Counter-proposals

- 14.1 The Tenderer must not submit any proposal that has the effect of varying or modifying all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and the award of the Contract.
- 14.2 If a Tenderer fails to comply with **Paragraph 14.1**, subject to any clarification which the Government may, but is not obliged to, make under **Paragraph 15**, its Tender will be disqualified and will not be considered further by the Government.

- 14.3 For counter-proposals to provisions other than those as specified in **Paragraph 14.1 or Paragraph 14.4**, it shall equally be the case that no Tenderer may make any counter-proposals to any such requirement. Counter-proposals from a Tenderer in contravention of this restriction will entitle the Government to disqualify the Tenderer unless the Government in its absolute discretion elects to negotiate with the Tenderer concerning such counter-proposal. Following such negotiation, if the Tenderer is still unwilling to withdraw such counter-proposal, or otherwise revise it on terms acceptable to the Government, the Government may still disqualify the Tenderer. Any accepted counter-proposal following from a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.
- 14.4 Without prejudice to **Paragraph 14.1**, any Tenderer who submits a tender that directly or indirectly attempts to preclude or limit the effect of any provisions of these Terms of Tender may also be disqualified.

15. **Request for Information**

In the event that the Government determines that:

- (a) clarification in relation to any tender is necessary;
- (b) a document or a piece of information, other than the document or information set out in **Paragraph 4.2**, is missing from the tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A tender may not be considered further (or will not be considered further where it is expressly stated to be the case in the relevant provision of the Tender Documents) if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the tender further or may proceed to evaluate the tender on an "as is" basis.

16. **Tenderer's Commitment**

The entire Tender, any subsequent clarification, and permitted submissions from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government Representative, be incorporated into and made part of the Contract in such manner as the Government Representative considers appropriate and become binding on the Tenderer.

17. Government Discretion

17.1 Notwithstanding anything to the contrary in these Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the award of the Contract or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or its related person;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) in the event of a claim or allegation made any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract or the Government having grounds to believe that any thing(s), service(s) or material(s) supplied or previously supplied by the Tenderer or its related person infringes or will infringe any Intellectual Property Rights of any person;
- (d) any time during the twenty-four (24) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer was in significant or persistent default(s) in the performance of any substantive requirement or obligation under any other Government contract awarded by the Director of Leisure and Cultural Services regardless of whether the default(s) led to the actual termination of the relevant Government contract or whether such default(s) has been remedied (a “Contract Default”);
- (e) the Tenderer or a related person or a director or management staff of the Tenderer has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the award of the Contract) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract;
- (f) in the event of any professional misconduct or any act or omission having been committed during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract that adversely reflects on or casts doubt on the commercial integrity of the Tenderer or a related person or a director or management staff of the Tenderer; or
- (g) any failure of the Tenderer or its related person to pay taxes to the

Government during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract.

The grounds specified in **Paragraphs 17.1(a) to 17.1(g)** are separate and independent, and shall not be limited by reference to or inference from the other of them.

17.2 For the purposes of **Paragraph 17.1**, each Tenderer shall provide in **Contract Schedule 2** at the time of submission of its Tender (and thereafter up to the time of the award of the Contract in relation to any event occurring between the time of submission and the time of the award of the Contract) all information at least in relation to itself and those information in relation to its related person or its director or management staff which it has knowledge that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:

- (a) details of any petition or proceeding mentioned in **Paragraph 17.1(a)**;
- (b) details of conviction as mentioned in **Paragraph 17.1(e)** in Hong Kong or any overseas jurisdiction;
- (c) details of all infringement claims or allegations and / or settlement agreement as mentioned in **Paragraph 17.1(c)**;
- (d) details of all Contract Defaults as mentioned in **Paragraph 17.1(d)**;
- (e) details of any professional misconduct or act or omission that adversely reflects or casts doubt on the commercial integrity of the Tenderer or a related person as mentioned in **Paragraph 17.1(f)**; and
- (f) details of any failure to pay taxes as mentioned in **Paragraph 17.1(g)**.

If none of the events as mentioned in **Paragraphs 17.2(a) to 17.2(f)** above has ever occurred within the applicable period as mentioned in the relevant sub-Paragraph in **Paragraph 17.1**, the Tenderer shall provide a statement to that effect by completing the relevant part of **Contract Schedule 2** at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification.

17.3 In addition to the information mentioned in **Paragraph 17.2**, the Government reserves the right to request from a Tenderer or from other sources and take into account all information about:

- (a) the Tenderer itself (viz. in relation to any information relevant to any of the events mentioned in **Paragraph 17.1**);
- (b) any of the directors or management staff of the Tenderer (viz. information relevant to the event mentioned in any of **Paragraphs 17.1(e) and (f)** applicable to any such person);

- (c) any of the related persons of the Tenderer (viz. information relevant to any of the events mentioned in any of **Paragraphs 17.1(a) to (g)** applicable to any such person); and
- (d) the manufacturer of any proposed food and beverages to be offered (viz. information relevant to the event mentioned in **Paragraph 17.1(c)** applicable to such person).

and such other information which is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under **Paragraph 17.1**.

- 17.4 Such information relating to any of the aforesaid persons may include, without limitation, details of any claim or allegation of infringement or settlement agreement as referred to in **Paragraph 17.1(c)**; details of any Contract Default referred to in **Paragraph 17.1(d)**; details of any conviction of serious offences referred to in **Paragraph 17.1(e)**; details of any professional misconduct, acts or omissions referred to in **Paragraph 17.1(f)** and of any failure to pay taxes to the Government referred to in **Paragraph 17.1(g)** above.
- 17.5 If the Tenderer fails to comply with the request made by the Government pursuant to **Paragraph 17.3** above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to **Paragraph 15**. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to **Paragraph 17.1(b)** above.
- 17.6 In providing the information required under **Paragraphs 17.2 and 17.3** above, the Tenderer may show cause to satisfy the Government that the petition, proceeding, conviction record, infringement claim or allegation, or Contract Default, any professional misconduct or act or omission as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 17.7 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty percent (50%) or more of the issued share capital of the Tenderer ("majority shareholder"); or
 - (b) a holding company or a subsidiary of the Tenderer; or
 - (c) a holding company or a subsidiary of a majority shareholder of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty percent (50%) or more

of its issued share capital or controls the composition of its board of directors.

The expressions “holding company” and “subsidiary” have the meanings given to them in the Companies Ordinance (Cap. 622).

- 17.8 If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership); or
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child of both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.
- 17.9 References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in any of **Paragraph 17.1(c), 17.1(d), 17.1(e), 17.1(f), or 17.1(g)**.

18. Cancellation of the Invitation to Tender

- 18.1 Notwithstanding anything to the contrary in the Tender Documents, if it is in the public interest to do so, (a) the Government reserves the right to cancel this Invitation to Tender, and not award the Contract; or (b) re-conduct the evaluation specified in **Paragraph 10** to identify the successful Tenderer.
- 18.2 After cancellation pursuant to **Paragraph 18.1** above, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Tender on such terms and conditions as the Government considers appropriate.

19. Consent to Disclosure

- 19.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, particulars (including the nature and quantity) of the Business to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer, and the total Monthly Guaranteed Amount for the entire Contract Period, and the calculation of the Monthly Licence Fee payable.
- 19.2 Nothing in **Paragraph 19.1** above shall prejudice the Government’s power to disclose whenever it considers appropriate information of any nature whatsoever

(whether or not specified in **Paragraph 19.1** 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):

- (a) the 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);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) 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; or
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under **Paragraph 19.1** above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

20. Personal Data Provided

- 20.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from this Invitation to Tender). In the case of the successful Tenderer, the purposes shall be extended to include Contract enforcement and management, and resolution of dispute arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- 20.2 By submitting a Tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in **Paragraph 20.1** above.
- 20.3 An individual to whom personal data belongs or a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.

- 20.4 Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Leisure and Cultural Services Department.

21. Licence, Permit and / or Certificate

The Contractor shall comply with all applicable laws and regulations in the operation of the Business and shall obtain and maintain throughout the Contract Period all licences, permits, certificates, waivers or exemptions which are required for the operation of the Business under all applicable laws and regulations of Hong Kong (viz., “Requisite Permits”). Tenderers are strongly advised to examine and assess the site conditions in advance to determine all Requisite Permits which are required under all applicable laws and regulations to run the Business at the Licence Area. The responsibility for applying the Requisite Permits and fulfillment of the requirements stated therein (including provision of necessary ventilation equipment and other equipment in the kitchen area) shall lie with the Contractor. Neither the Government nor the Government Representative shall be held responsible in the event of the Contractor’s failure or inability for any reason to obtain or renew any Requisite Permits. Nothing contained in the Tender Documents or in the Contract shall be construed to fetter the discretion of any public officer or authority including Director of Food and Environmental Hygiene as the licensing authority.

22. Restrictions on Assignment and Sub-contracting

- 22.1 Unless otherwise with the prior written consent of the Government, the Contractor shall not assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract (including without limitation the parting possession of the Licence Area in any manner whatsoever or the sub-contracting of the operation of the Business or any part thereof). The performance of the Contract by the Contractor shall be personal to it.
- 22.2 Without prejudice to **Paragraph 22.1** above, the person who signs a tender as Tenderer shall be deemed to be acting as a principal unless he discloses therein that he is acting as an agent only, in which case he shall also disclose therein the name and address of his principal.

23. Security Deposit and Electricity Deposit

- 23.1 The successful Tenderer shall pay the Government a deposit in the amount specified in **Paragraph 23.2** below (“Security Deposit”) as security for the due and faithful performance of the Contract either in cash or in the form of a bank guarantee and to be issued by a bank licensed under the provisions of the Banking Ordinance (Cap. 155) in the form attached at **Appendix to the Form of Security Deposit Election**, and the bank guarantor shall be approved by the Government Representative and in accordance with **Clause 8** of the **Conditions of Contract**. Tenderers are therefore required to state their option in the **Form of Security Deposit Election**.
- 23.2 The amount of the Security Deposit shall be three (3) times the Monthly Guaranteed

Amount quoted in **Contract Schedule 11** and if the Tenderer fails the financial assessment, plus the additional amount as specified in **Paragraph 8.2**.

- 23.3 If the successful Tenderer elects to pay the Security Deposit by way of a bank guarantee, the bank guarantee shall come into effect on or before the first day of the Contract Period unless another date is specified in the Conditional Acceptance of Tender. In the event that another date is so specified, the bank guarantee shall take effect no later than such date.
- 23.4 The successful Tenderer shall pay the Government an electricity deposit (“Electricity Deposit”) as security in respect of the Contractor’s obligation under **Clause 19.3** of the **Conditions of Contract** in the amount of HK\$450,000 (“Electricity Deposit”).
- 23.5 The Contract Deposit, whether paid by way of cash (if any is remaining) or banker’s guarantee, shall be returned to the Contractor or released in accordance with **Clause 8.2** of the **Conditions of Contract**.

24. Free Decoration Period

Tenderers should note that there will be a Free Decoration Period for fitting out of the Licence Area and the payment of the Monthly Licence Fee during the Free Decoration Period is set out in **Clause 6.4** of the **Conditions of Contract**. The Contractor’s obligations of fitting out are set out in **Clause 12** of the **Conditions of Contract**.

25. State of Premises

- 25.1 Tenderers are strongly advised to visit the Licence Area before submitting the tenders and the successful Tenderer shall accept the Licence Area in the state and condition in which it is at the date on which the possession is given (i.e. on the first date of the Contract Period).
- 25.2 Subject to the due execution of the **Memorandum of Contract**, occupancy of the Licence Area will be given to the Contractor upon commencement of the Contract Period or such other date as specified by the Government in the **Memorandum of Contract**.

26. Tenders of the Unsuccessful Tenderer

Tenders of unsuccessful Tenderers will be destroyed three (3) months after the execution of the **Memorandum of Contract** by the successful Tenderer and the Government Representative.

27. Costs of Preparation of Tender

Each Tenderer shall submit its tender at its own cost and expense. Neither the Government nor the Government Representative shall be liable for any costs and

expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its tender including all costs and expenses relating to (a) communication or negotiations with the Government; or (b) attending briefings, document inspections, site visits or surveys made by the Tenderer, whether before or after the Tender Closing Date.

28. Contractor's Performance Monitoring

Without prejudice to those provisions in the **Conditions of Contract** where it is stated that the Contractor's future tender will not be considered under the circumstances specified therein including without limitation **Clause 43(k)**, the Contractor's performance under the Contract will be monitored and may be taken into account when its future offers for other tenders / quotation exercises are evaluated.

29. New Information

Each Tenderer should inform the Government Representative in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Documents. The Government Representative reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

30. Tender Addenda

Should the Government require any amendments to be made to the Tender Documents, the Government will issue to every person who is known to have collected the Tender Documents numbered addenda giving full details of such amendments. The Tenderer shall acknowledge receipt of these addenda. These addenda shall form a part of the Tender Documents and shall take priority over the documents previously issued.

31. Disclaimer

31.1 Tenderers shall study all attachments to the Tender Documents (including the **Annexes** and **Contract Schedules**) carefully before submitting their tenders. Tenderers shall note that all information and statistics provided by the Government and the Government Representative in connection with this Invitation to Tender are for reference only.

31.2 Forecast or estimation and all other information, statistics and forecast set out in the Tender Documents or any information or clarification provided from time to time or given at the briefing session (collectively "briefings"), are provided purely for the Tenderer's information on an "as is" basis without warranty of any kind. Neither the Government nor the Government Representative gives any warranty, representation or undertaking that any information, statistics and forecast provided in the Tender Documents or any information or clarification provided from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or

timely for any purpose whatsoever.

- 31.3 To the maximum extent permitted by laws, neither the Government nor the Government Representative accepts any liability or responsibility for (a) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), (b) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (c) any cost or expense, suffered or incurred by any Tenderer arising from the use of, or reliance on, any information, statistics or forecast provided in the Tender Documents, or any information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Business do not meet the expectation or projection of the successful Tenderer or do not recoup the investment cost incurred or by any margin.

32. Offering Gratuities

The Tenderer shall not and shall ensure that his officers and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any public officer or employee of the Government. Any breach of or non-compliance with this Paragraph by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer, the Government Representative shall be entitled to terminate the Contract under **Clause 42** of the **Conditions of Contract**.

33. Authentication of Documents

By submitting a tender in response to the Invitation to Tender, each Tenderer authorises the Government to obtain from

- (a) any person whose particulars are set out in the tender submitted by the Tenderer, and
- (b) any issuing body of any of the certificates or documentary evidence required in the Tender Documents, all information which the Government considers appropriate and relevant to the evaluation of the tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer represents that such consent has been duly obtained.

34. Communication with the Government

- 34.1 All communications given or made by the Government Representative or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in **Clause 51** of the **Conditions of Contract**, save that the Government Representative may, by prior notice to a Tenderer, require

the Tenderer to send or deliver a written communication by post or facsimile only. The Tenderer should note that the Government Representative will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

34.2 All communications in relation to the Invitation to Tender shall be conducted directly between the Government Representative and the Tenderer.

35. Tenderer's Enquiries

35.1 Any enquiries from Tenderers concerning these Tender Documents up to the date of lodging its tender with the Government Representative shall be in writing and submitted to Manager (City Hall) (Building Management), Hong Kong City Hall, 5 Edinburgh Place, Central, Hong Kong or fax to facsimile number 2877 0353.

35.2 After lodging the tender with the Government, the Tenderer shall not attempt to initiate any contact, whether direct or indirect, with the Government Representative on its tender or the Tender Documents. The Government Representative shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.

35.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

36. Tender Briefing Session / Site Visit

36.1 Tenderers are invited to attend a tender briefing session / site visit to be held by the Government Representative on **9 September 2022 (Friday) at 3:00 p.m.** at the **Hong Kong City Hall** before submitting their tenders in order to acquaint themselves with the requirements of the Government Representative.

36.2 Each Tenderer may send no more than three (3) representatives to attend the tender briefing session / site visit.

36.3 Tenderers are required to fill in the **“Enrolment Form for the Tender Briefing Session – Annex G** and send it by fax to the Assistant Manager (City Hall) (Building Management) at (852) 2877 0353 on or before **7 September 2022 (Wednesday)** for registration.

37. Licence to Use the Tender Documents

37.1 A Tender once submitted will become the property of the Government. Tenders of

unsuccessful Tenderers may be destroyed in accordance with **Paragraph 26**. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tender) and under the Contract and without prejudice to the warranties set out in **Clause 48** of the **Conditions of Contract**, each Tenderer grants to each of the Government and the Government Representative, their respective assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender (if any) for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith and also for the purposes of disclosure under **Paragraph 19**. Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong.

- 37.2 The Tenderer shall keep the Government Representative informed in writing of any materials that are subject matters of the licences granted or to be granted to which the Tenderer is not empowered to grant licences pursuant to **Paragraph 37.1** above and any restrictions whatsoever affecting the use thereof.
- 37.3 The Tenderer hereby undertakes to procure at its own costs and expense from the relevant third parties all proper licences, clearances and releases in writing to be granted in favour of the Government, the Government Representative, their respective authorised users, assigns and successors-in-title pursuant to the terms of licence under **Paragraph 37.1**.
- 37.4 The Tenderer hereby irrevocably waives and undertakes to procure at its own costs and expense all authors including his employees, sub-contractors and agents to irrevocably waive all moral rights (whether past, present or future) in all materials comprised in the Tender, such waiver shall operate in favour of the Government, the Government Representative, their respective authorised users, assigns and successors-in-title and shall take effect upon submission of such materials.
- 37.5 The Tenderer shall at its own costs and expense do and execute any further things, documents and materials (or procure that the same be done or executed) as may be required by the Government to give full effect to this **Paragraph 37** and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 37.6 By submitting a tender, the Tenderer represents and warrants that none of the materials comprised in the Tender submitted infringes the Intellectual Property Rights of any person.
- 37.7 The Tenderer shall indemnify the Government, the Government Representative, their respective assigns, successors-in-title, and authorised users on the terms set out in **Clause 48(a) and (b)** of the **Conditions of Contract** in the event that the exercise by any of them of the rights set out in **Paragraph 37.6** above infringes or is

alleged to infringe the Intellectual Property Rights of any person.

38. Warranty against Collusion

- 38.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the **Non-collusive Tendering Certificate** referred to in **Paragraph 38.2** below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 38.2 The Tenderer shall complete and submit to the Government a **Non-collusive Tendering Certificate** (in the form set out in one of the forms titled as such) as part of its Tender.
- 38.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in **Paragraph 38.1** above or in **Non-collusive Tendering Certificate** submitted by it under **Paragraph 38.2** above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Tenderer's Tender;
 - (b) if the Government has accepted the tender, withdraw its acceptance of the Tenderer's Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under **Clause 42.1** of the **Conditions of Contract**..
- 38.4 By submitting a Tender, a Tenderer is regarded to have undertaken to 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, warranties and/or undertakings in **Paragraph 38.1** above or in **Non-collusive Tendering Certificate** submitted by it under **Paragraph 38.2** above.
- 38.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in **Paragraph 38.1** above or in **Non-collusive Tendering Certificate** submitted by it under **Paragraph 38.2** above may prejudice its future standing as a Government contractor or service provider.
- 38.6 The rights of the Government under **Paragraphs 38.3 to 38.5** above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

39. Complaints About the Tendering Process or Award of the Contract

The tendering process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Director of Leisure and Cultural Services who will personally examine the complaint and refer it to the approving authority / relevant tender boards for consideration if it relates to the tendering system or procedures followed. Tenderers shall lodge the complaint before disposal of documents of unsuccessful Tenderers which shall be within three (3) months upon the award of Contract.

40. Survival

All rights, powers and licences of the Government under the Tender Documents or granted pursuant to any terms thereof may be exercised by the Government in accordance with their terms notwithstanding the award of the Contract or cancellation of this Invitation to Tender.

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PART 2
CONDITIONS OF CONTRACT

1. Nature of Contract

It is expressly agreed between the contracting parties that this Contract creates no tenancy or lease or any form of legal rights on land whatsoever between the contracting parties except the right to use the Licence Area in accordance with the provisions of the Contract. This Contract is granted to entitle the Contractor to offer Food and Beverages at the Licence Area of the Hong Kong City Hall. All rights, powers and claims of the Government may be exercised and enforced by the Government Representative on behalf of the Government.

2. Contract Period

2.1 Subject to all rights and powers of the Government Representative under the Contract, and any early termination or extension pursuant to any applicable provisions of the Contract, the Contract Period shall be for a term of seven (7) years to commence from the date specified in **Clause 2.2**, inclusive of a Free Decoration Period for fitting out the Licence Area upon the commencement of the Contract Period.

2.2 The commencement date of the Contract Period shall be **1 January 2023** unless a different date is specified in **Clause 3** of the **Memorandum of Contract** (which can be any date earlier or later than the aforesaid date as determined by the Government Representative at her sole and absolute discretion).

2.3 A major renovation project for the Venue is being planned and it is uncertain when it will commence. If the entire Venue is to be closed for such major renovation project, the Government Representative may early terminate this Contract under **Clause 42.4** by giving no less than nine (9) months' prior written notice but such notice may only be issued any time after the end of the first forty-eight (48) months of Contract Period.

2.4 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 26** exceeds thirty (30) days, notwithstanding **Clause 2.1**, the Contract Period will be extended accordingly by the same number of days equivalent to the accumulated period of suspension or closure with the other terms and conditions of the Contract remaining unchanged. Partial closure of some part(s) but not the entire Licence Area will not lead to any extension of the Contract Period.

3. The Obligation to Carry On the Business

3.1 Subject to the terms and conditions of the Contract, the Government Representative grants the entitlement to the Contractor to operate the Chinese Restaurant, the International (non-Chinese) Restaurant and the Foyer Bar at the designated portions of the Licence Area for the supply and sale of Food and

Beverages at these Catering Outlets in compliance with all terms and conditions set out in the Contract (“Business”). In consideration of the opportunity being given by the Government Representative for operating the Business at the Licence Area for the Contract Period, the Contractor undertakes to carry on the Business in compliance with all requirements set out in the Contract no later than three (3) months after the date of commencement of the Contract Period. As part of the Business, the Contractor shall also be requested to provide ad hoc catering or refreshment services at such other areas of the Venue as the Government Representative at its absolute discretion may set aside and the Contractor shall upon such request provide the said services at the time and in the manner set forth in the request (“Ad Hoc Catering Services (1)”).

- 3.2 The Government Representative shall be entitled to request at any time and from time to time the Contractor to provide reception services including but not limited to provision of pre-performance reception, interval drinks for hirers of the Venue as well as special service arrangement including but not limited to provision of speedy set menus for audience in a rush for admission to the performances and the Contractor shall upon such request provide the said services at the time and in the manner set forth in the request (“Ad Hoc Catering Services (2)”).
- 3.3 The Contractor shall carry on the Business at the Licence Area throughout the opening hours as set out in **Annex A** except when otherwise authorised by the Government Representative in writing, and at such additional or alternative opening hours as may be approved or prescribed by the Government Representative in writing.
- 3.4 The Business shall be operated by the Contractor as the principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative.
- 3.5 The Contractor shall as soon as practicable advise the Government Representative the date of commencement of the Business.

4. Government’s Right

Provided always that notwithstanding anything to the contrary herein, the Government reserves the right to:

- (a) authorise and permit any person other than the Contractor to provide chargeable whether to the Government or to the consumer Catering Business at the Venue on not more than twenty-four (24) events in any twelve (12) calendar month period within the Contract Period; and
- (b) distribute or cause, suffer or permit to be distributed any food, drinks and refreshments whatsoever free of charge at any of the functions and/or activities at the Venue or any part thereof at any time and without limit, and the Government shall in no circumstances be liable to the Contractor in respect of any liabilities, losses or damages, if any, occasioned by the

Government's exercise of any of the aforesaid rights.

5. Conduct of Business

- 5.1 Subject to **Clauses 5.2 and 5.3**, this Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other area within or outside the Venue or otherwise (unless for the provision of Ad Hoc Catering Services as from time to time demanded by the Government Representative). The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Venue other than the Licence Area.
- 5.2 The Contractor shall use the following portions of the Licence Area only for the purpose as designated for such portions of the Licence Area and shall not use, cause, suffer or permit to be used any such portion of the Licence Area or any part thereof for any other purpose.
- (a) the portion of the Licence Area more particularly delineated in the floor plan in **Annex C** as the venue for the operation of the Chinese Restaurant, viz., for serving Food and Beverages designated for such Chinese Restaurant for immediate consumption by customers to be seated at such venue;
 - (b) the portion of the Licence Area more particularly delineated in the floor plan in **Annex D** as the venue for the operation of the International (non-Chinese) Restaurant, viz., for serving Food and Beverages designated for such International (non-Chinese) Restaurant for immediate consumption by customers to be seated at such venue;
 - (c) the portion of the Licence Area more particularly delineated in the floor plan in **Annex E** as the venue for the operation of the Foyer Bar, viz., for serving Food and Beverages designated for such Foyer Bar for immediate consumption by customers to be seated at such venue or for take-away;
 - (e) the portion of the Licence Area more particularly delineated in the floor plan in **Annex C** as the kitchen for preparing or processing or reheating food and drinks for the Chinese Restaurant, the International (non-Chinese) Restaurant and Foyer Bar (“Kitchen”); and
 - (f) the portion of the Licence Area more particularly delineated in the floor plan in **Annex F** as an area to serve as storage area, staff changing room and back office for use by the Contractor (“Back Office”).
- 5.3 The Contractor shall operate each Catering Outlet only within the portion of the Licence Area designated for such Catering Outlet. The Contractor shall operate the Kitchen and Back Office only within the respective portions of the Licence Area designated for such Kitchen and Back Office. The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Licence Area for other purpose without the prior written consent of the Government Representative.

- 5.4 The names of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government Representative at its absolute discretion may consider reasonable to prescribe, at any time and from time to time. Save and except as permitted or directed by the Government Representative, such name shall not be changed.

6. Payment of Monthly Licence Fee and Statement of Accounts

- 6.1 For each month of the Contract Period (apart from the Free Decoration Period) (starting from the day immediately following the last day of the Free Decoration Period), the Contractor shall pay to the Government Representative a Monthly Licence Fee (exclusive of rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs of utilities incurred in the operation of the Business such as water, waste discharge, and electricity) without any deduction or set-off whatsoever.
- 6.2 The Monthly Licence Fee in respect of each month during the Contract Period (excluding the Free Decoration Period) shall comprise a Monthly Guaranteed Amount, plus a sum known as “Monthly Percentage Fee” to be calculated in the manner as described below under this Clause:

- (a) The Monthly Percentage Fee in respect of a month shall be calculated by the formula as follows:

Monthly Gross Receipts in respect of that month	<u>Multiplied</u> <u>by</u>	the Percentage of Monthly Gross Receipts specified in Contract Schedule 11	<u>Less</u>	Monthly Guaranteed Amount specified in Contract Schedule 11
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- (b) Further if the Monthly Percentage Fee so calculated for a particular month is a negative amount, there shall be no Monthly Percentage Fee for that month.
- 6.3 Without prejudice to anything to the contrary under this **Clause 6**, the Monthly Guaranteed Amount shall be payable on or before the first (1st) day of each and every month of the Contract Period (after the Free Decoration Period) without any deduction or set-off whatsoever except that the Monthly Guaranteed Amount in respect of the fourth (4th) month shall have been paid in accordance with **Paragraph 13.2** of the **Terms of Tender**. The Monthly Percentage Fee in respect of each month of the Contract Period (after the Free Decoration Period) shall be payable no later than fourteen (14) days after the end of that month (unless otherwise specified by the Government in writing) if the product of the Monthly Gross Receipts and the Percentage of Monthly Gross Receipts shall be greater than the Monthly Guaranteed Amount of the month.

6.4 In respect of the Free Decoration Period :

- (a) Subject to (b) and (c) below, no Monthly Licence Fee shall be payable whilst fitting out work is being carried out by the Contractor at the Licence Area but the Contractor shall pay and bear all outgoing and charges, including but not limited to electricity, water and gas charges, in respect of the Licence Area but without prejudice to the reimbursement arrangement for the payment of electricity as set out in **Clause 19.2**;
- (b) the Monthly Licence Fee in respect of a Catering Outlet shall be payable immediately on a pro-rata basis as soon as the Contractor commences the Business at that Catering Outlet during the Free Decoration Period up to the end of the originally scheduled Free Decoration Period (where applicable); and the Monthly Guaranteed Amount shall be pro rata adjusted in the manner as specified in **Clause 6.7(iv)** below; and
- (c) without prejudice to the obligation of the Contractor to start the Business at the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar no later than the beginning of the fourth (4th) month from the date of commencement of the Contract Period, the entire Monthly Licence Fee (but not just in respect of the Catering Outlets which have started operation) shall be payable as soon as the Free Decoration Period has ended even if the fitting out works continue beyond the Free Decoration Period.

6.5 If the Contractor fails to pay a Monthly Licence Fee by the due date specified in the demand note issued by the Government Representative or any other amount payable by the Contractor under the Contract, the Contractor shall pay a surcharge on the Monthly Licence Fee or such other amount calculated at a rate equivalent to the average of the best lending rates from time to time of all of the note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made.

6.6 No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in individual provisions of the Contract.

6.7 In each of periods mentioned in following cases of (i) to (v), (each a “relevant period”), there shall be adjustment of the Monthly Guaranteed Amount to be arrived at by multiplying the daily rate with the actual number of days of the relevant period (or in the case of any temporary closure, the actual number of days of that month which is unaffected by the temporary closure). The daily rate shall be arrived at by dividing the Monthly Guaranteed Amount by the actual number of days in the month in which the relevant period falls:

- (i) If the first (1st) day of the fourth (4th) month of the Contract Period does not start on the first (1st) day of a calendar month, this relevant period shall be from its start day to the last day of the calendar month in which it falls, and there shall be adjustment of the Monthly Guaranteed Amount for the fourth (4th) month of the Contract Period based on the number of days in that relevant period.
 - (ii) If the remaining period of the Contract Period after the last complete month is not a complete month, there shall be adjustment of the Monthly Guaranteed Amount for such remaining period.
 - (iii) If there is any temporary closure of the whole of the Licence Area under **Clause 26** within a month of the Contract Period, there shall be pro rata adjustment of the Monthly Guaranteed Amount for that month and the relevant period under this scenario shall be those number of days within that month when there is no temporary closure.
 - (iv) If the Free Decoration Period shall be less than three (3) months and the Business shall commence thereafter, the relevant period under this scenario shall be from the date when the Business commences until the last day of the month in which in the commencement falls and the Monthly Guaranteed Amount shall be calculated on a pro rata basis .
 - (v) If a temporary closure affects one or more Catering Outlet(s), the portion of the Monthly Guaranteed Amount attributable to such Catering Outlet shall only be payable in respect of actual number of days of that month unaffected by the temporary closure.
- 6.8 Before the expiry of the fourth (4th) year of the Contract, the Government Representative will conduct an assessment to determine whether or not the prevailing Monthly Guaranteed Amount is acceptable taking into account of all relevant matters including but not limited to the latest open market rental of the Licence Area. Subject to the result of the review assessment, the Monthly Guaranteed Amount for the period from the fifth (5th) year to the seventh (7th) year may either remain unchanged as offered by the Contractor in **Contract Schedule 11** or be increased. If the prevailing Monthly Guaranteed Amount is to be increased, the open market rental assessed by the Government Representative shall be adopted as the new Monthly Guaranteed Amount for the period from the fifth (5th) year to the seventh (7th) year of the Contract. The Government Representative shall issue a written notice to the Contractor and request the Contractor to confirm its acceptance of the increased Monthly Guaranteed Amount within one (1) month or such longer time as specified by the Government Representative (“Specified Deadline”). Notwithstanding **Clause 42.4**, should the Contractor refuse to or otherwise fail to confirm its acceptance of the increased Monthly Guaranteed Amount before the Specified Deadline, the Government may by nine (9) months’ notice in writing terminate the Contract and the consequences specified in **Clause 43** shall equally apply as if there is a termination under **Clause 42.4** by the Government.

- 6.9 The Contractor shall, within fourteen (14) days after the expiry of each month during the continuance of the Contract Period and within fourteen (14) days after the termination or expiry of the Contract Period:
- (a) submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the Monthly Gross Receipts generated from the Business in the Licence Area and the amount of the Monthly Percentage Fee that shall be payable to the Government Representative for that month. The statement of accounts shall be certified as being accurate and complete by the Managing Director of the Contractor or such other person as the Government Representative may from time to time approve or prescribe in writing; and
 - (b) if the statement of accounts is not submitted within fourteen (14) days as stated above, pay to the Government Representative by way of a provisional Monthly Percentage Fee for that month the sum equivalent to the highest of the Monthly Percentage Fee paid in respect of any month within the twelve (12) months' period immediately preceding the month in question (or within such number of months if the actual number of months elapsed is less than twelve (12) months) PROVIDED always that when the statement of accounts for the month in question is later submitted by the Contractor, the Contractor shall pay to the Government Representative forthwith an amount equivalent to the Monthly Percentage Fee as shown in the statement of accounts less the amount of the provisional Monthly Percentage Fee held by the Government Representative for the month in question within fourteen (14) days of the demand in writing. Where the amount of the provisional Monthly Percentage Fee held by the Government Representative for the month in question is greater than the Monthly Percentage Fee shown, the Government Representative shall pay to the Contractor the difference within thirty (30) days of the demand in writing.
- 6.10 Upon the request from time to time of the Government Representative, the Contractor shall within thirty (30) days from the date of such request a statement of accounts in the form as the Government Representative may approve. The statement of accounts shall show the Monthly Licence Fee, the Monthly Gross Receipts, the Monthly Percentage Fee and the Monthly Guaranteed Amount in respect of any one (1) or more month(s) requested in that written request. Such statement of accounts shall be audited and certified as being accurate and complete by a practice unit within the meaning of the Financial Reporting Council Ordinance (Cap. 588) (as this Ordinance may be amended from time to time including the Financial Reporting Council (Amendment) Ordinance 2021) ("Auditor").
- 6.11 Within three (3) months after the end of each Contract Year, the Contractor shall submit to the Government Representative audited statement of accounts showing the Monthly Licence Fee, the Monthly Gross Receipts, the Monthly Percentage

- Fee and the Monthly Guaranteed Amount in respect of each month within such Contract Year. The audited statements shall be audited and certified to be accurate and complete by an Auditor and in the form as the Government Representative may approve.
- 6.12 In the event that the amount of the Monthly Licence Fee as shown in the audited statement of accounts submitted by the Contractor under **Clause 6.10 or 6.11** for any period covered by such accounts shall exceed the Monthly Licence Fee actually paid by the Contractor to the Government Representative in respect of that period, the amount of the shortfall shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand from the Government Representative. In addition, the Contractor shall also pay interest on the shortfall amount at the rate specified in **Clause 6.5** to accrue from the date which it should have been paid up to the date of actual payment.
- 6.13 If the audited statement of accounts is not submitted by the deadline as specified in **Clause 6.11**, the Contractor shall pay to the Government Representative by way of a provisional top up amount to the Monthly Percentage Fee for the Contract Year equivalent to the highest Monthly Percentage Fee paid during that Contract Year multiplied by the number of months covered by that Contract Year and then subtract the same with the total amount of Monthly Percentage Fees already paid by the Contractor in respect of that Contract Year (“top-up amount”). In the event that the amount of the Monthly Percentage Fee as shown in the audited statement of accounts eventually submitted by the Contractor for a Contract Year shall exceed the Monthly Percentage Fee actually paid by the Contractor to the Government Representative in respect of that period (taking into account any top-up amount paid in respect of that period), the amount of the shortfall shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand from the Government Representative. In addition, the Contractor shall also pay interest on the shortfall amount at the rate specified in **Clause 6.5** to accrue from the date which it should have been paid up to the date of actual payment.
- 6.14 Where any statement provided under **Clause 6.10 or 6.11** (whether on-time or late as mentioned in **Clause 6.13**) shows that any Monthly Licence Fee in respect of one (1) or more month(s) as audited in that statement is less than the amount actually paid by the Contractor, the Government may (a) appoint a second Auditor at its cost to audit the amounts specified in **Clause 6.10** for such month(s); or (b) pay the difference without interest within thirty (30) days after the receipt of the statement. In addition, the Government may also appoint a second Auditor should it not be satisfied with the statement provided under **Clause 6.10 or 6.11**. In the case of the appointment of a second Auditor, the audited statement produced by the second Auditor with such scope as requested by the Government shall be binding on the Parties in the absence of manifest error. If the statement from the second Auditor shows that there is any under-payment of the Monthly Licence Fee in respect of one or more

month(s), the same obligation of the Contractor as set out in **Clause 6.12 or 6.13** (where applicable) shall apply in respect of each such month. If the statement from the second Auditor shows that there is any over-payment of the Monthly Licence Fee in respect of one or more months, the Government shall pay the difference to the Contractor without interest within thirty (30) days after the statement of the second Auditor.

6.15 The Contractor shall throughout the Contract Period maintain and keep proper accounts and all the receipts and appropriate vouchers in relation to all Monthly Gross Receipts and retain the same for at least seven (7) years. Such accounts including the supporting receipts and vouchers shall be made available for inspection at all times by the Government Representative or its authorised person. If a second Auditor is to be appointed by the Government, it shall be given access to all of the aforesaid documents and materials as the second Auditor may request.

6.16 For the avoidance of doubt, it is hereby expressly agreed and declared that the acceptance by the Government Representative of any accounts or audited accounts submitted under **Clause 6.10 or 6.11** or any money paid by the Contractor in accordance with this Clause shall not in any way whatsoever bar or otherwise preclude the Government Representative from subsequently disputing the accuracy of any such accounts or the correctness of any such sum and that in the event that any further sum whatsoever be found due from the Contractor to the Government Representative, the same shall be paid by the Contractor to the Government Representative on demand plus interest to accrue from the due date to the date of actual payment in full at the rate specified in **Clause 6.5**.

6.17 Throughout the Contract:

(a) “Contract Year” shall mean each successive twelve (12) months of the Contractor falling within the Contract Period except that the first Contract Year shall commence from the first day of the Contract Period and ending on the first financial year of the Contractor which falls within the Contract Period; and the last Contract Year shall end on the last day of the Contract Period.

(b) “Monthly Gross Receipts” in respect of a month shall mean:

the gross proceeds or revenue received or receivable by the Contractor in respect of the Business in respect of that month without any deduction whatsoever (except as expressly allowed under (i) below) and which include:

(i) the gross proceeds derived from the sale of food and beverages (including Food and Beverages) at the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar within that month (“Menu Proceeds”); and all service charges and tips (regardless of the mode of payment) but less ten percent (10%) of the Menu Proceeds;

- (ii) the gross proceeds derived from the Ad Hoc Catering Services provided within the Venue; and
- (iii) any other income (except profits arising from the sale of capital assets belonging to the Contractor) deriving from or in respect of the Business.

7. Non-exclusive Right of the Contractor

- 7.1 The Contractor shall have, during the continuance of the Contract Period, but subject always to all rights and powers of the Government Representative under the Contract, the non-exclusive, non-transferable, non-assignable right to access and to occupy the Licence Area for the operation of the Business within the Licence Area in accordance with all requirements and restrictions set out in the Contract and performance of all other obligations under the Contract which are required to be performed at the Licence Area.
- 7.2 The Government as the owner of the Licence Area, whether acting through the Government Representative or otherwise, reserves all rights and powers to enter into the Licence Area for any purpose whatsoever without any notice or reference or consent from the Contractor.
- 7.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Venue.
- 7.4 Nothing in this Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorise any person to supply any food or drink or other catering or hosting services at the Venue. The Contractor is not entitled to claim any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorisations.

8. Security Deposit

- 8.1 The Security Deposit, if in the form of cash, shall be retained by the Government, or if in the form of a bank guarantee, shall remain in force, in either case, from the date of the commencement of the Contract Period until the date specified in (a) or (b) below, whichever is applicable:
- (a) the date falling two (2) months after the expiry or early termination of the Contract Period; or
 - (b) upon early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding claim or right of the Government Representative or the Government, the date on which all such obligations, liabilities and rights and claims have actually been carried out, completed and discharged (as confirmed by the Government

Representative in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

The aforesaid period (depending on whichever is applicable) is hereinafter referred to as the “Guarantee Period”

- 8.2 Subject to **Clause 8.5** below, only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash and if any is remaining) be refunded to the Contractor without interest; or, if in the form of a bank guarantee, be discharged or released.
- 8.3 The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Security Deposit (whether in cash or in the form of the bank guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 8.4 If any deduction is made by the Government from the Security Deposit in cash or a call is made on the bank guarantee during the Guarantee Period, the Contractor shall, within twenty-one (21) days on demand in writing by the Government, deposit a further sum or provide a further bank 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 Security Deposit and, where applicable, the additional security amount required under **Paragraph 8.2** of the **Terms of Tender**.
- 8.5 In the event that this Contract is early terminated under **Clause 42.1**, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government Representative upon such termination without prejudice to the Government Representative’s claims and demands under the Contract which cannot be satisfied by the Security Deposit.

9. Restriction on Assignment and Sub-contracting

- 9.1 Unless otherwise with the prior written consent of the Government, the Contractor shall not assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract (including without limitation the parting possession of the Licence Area in any manner whatsoever or the sub-contracting of the operation of the Business or any part thereof). The performance of the Contract by the Contractor shall be personal to it.

9.2 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever tire), and employees, officers and agents of any such sub-contractors as if they were its own.

10. Licence, Permit and / or Certificate

10.1 The Contract does not confer any licence, permit, certificate, waiver or exemption which the Contractor is obliged to apply for under all applicable laws and regulations in order to operate the Business in the Licence Area (“Requisite Permits”). Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.

10.2 The Contractor shall apply for and successfully obtain a provisional licence to operate the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar at the Licence Area designated for such Catering Outlet under section 33C of the Food Business Regulations (Cap. 132X) (“Cap. 132X”) (“Provisional Licence”) before commencement of the operation of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar.

10.3 After having obtained such Provisional Licence for the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar, the Contractor shall obtain a full licence under section 31 of Cap. 132X to operate the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar at the designated Licence Area for that Catering Outlet before the Provisional Licence expires (“Full Licence”) or renew the Provisional Licence once more under section 33C(4) of Cap. 132X and shall obtain a Full Licence before the renewed Provisional Licence expires. In the event that the Contractor fails to do so, the Government shall be at liberty to terminate the Contract under **Clause 42.1(g)** or suspend the Contract under **Clause 25.1**.

10.4 Notwithstanding **Clauses 10.2 and 10.3**, if the Contractor so chooses, it may apply directly for a Full Licence instead of a Provisional Licence provided that it can successfully obtain such Full Licence within three (3) months from the date of commencement of the Contract Period in order that it can commence the Business no later than three (3) months after the date of commencement of the Contract Period. In the event that the Contractor opts to apply for a Full Licence instead of a Provisional Licence but fails to obtain such Full Licence within the aforesaid period, the Government shall be at liberty to terminate the Contract under **Clause 42.1(g)** or suspend the Contract under **Clause 25.1**.

10.5 Apart from the Provisional Licence and Full Licence as specified in **Clauses 10.2 and 10.3** or where applicable **Clause 10.4**, the Contractor shall apply for and obtain all other Requisite Permits for the operation of the Business at the Licence Area including without limitation the necessary licences or permits as required under the Dutiable Commodities Ordinance (Cap. 109) for the sale of alcoholic liquor.

- 10.6 The entitlement to operate the Business at the Licence Area is conditional on the Contractor having obtained all Requisite Permits, and that they remain valid and in force throughout the Contract Period and that the Contractor complies with all conditions and requirements stated therein. A Provisional Licence and/or Full Licence to be obtained under the aforementioned provisions must be for the kind of food business which legally entitles the Contractor to operate the Catering Outlet at the designated Licence Area. Obtaining a Licence for the incorrect kind of food business would be treated as breach of these provisions.
- 10.7 Without affecting the generality of the foregoing, the Contractor shall make no claim of any kind whatsoever against the Government or the Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any Requisite Permits.
- 10.8 Without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business no later than the beginning of the fourth (4th) month of the Contract Period, the Contractor agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor cannot operate its Business pending the consideration of its applications and issuance or renewal of the Requisite Permits. The non-issuance of any of the Requisite Permits by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 10.9 The Contractor shall produce copies of all Requisite Permits, including but not limited to Business Registration Certificate, from time to time upon demand by the Government Representative.

11. Warranties and Undertakings

- 11.1 The Contractor warrants and undertakes to the Government that: –
- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract, to perform all its obligations under this Contract and to operate the Business in the Licence Area in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;
 - (b) this Contract constitutes the binding obligations of the Contractor in accordance with its terms;
 - (c) the entry into this Contract, the performance by the Contractor of its obligations under it and the operation of the Business will not conflict with or result in the breach of:
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum (if any) and articles of association);

- (ii) any contract or arrangement to which the Contractor is a party or by which it is bound;
 - (iii) any order, judgment or decree of any court or government agency to which the Contractor is a party or by which it is bound; or
 - (iv) any applicable laws and regulations.
- (d) it will comply with and observe all applicable laws and regulations in the operation of the Business in the Licence Area and in the performance of its obligations under this Contract.
- 11.2 (a) The Contractor shall throughout the Contract Period keep and maintain proper books and records and all the receipts and appropriate vouchers in respect of the Business including *inter alia* records of the Monthly Gross Receipts and cause all such books and records to be made up on a monthly basis and retain the same for at least seven (7) years. The Contractor shall allow such person or persons as may be authorised by the Government at all reasonable times upon prior notice access to all books and records of the Contractor, and if required, to make copies of the same.
- (b) The Contractor shall allow the Government to disclose whenever it considers appropriate or upon request (in writing or otherwise) by any third party all or any information of the Business, including but not limited to releasing information related to the Monthly Gross Receipts and other financial information relating to the Business obtained from the Contractor including disclosure to prospective tenderers for the contract following this contract or any other contract.

12. **Fitting Out**

- 12.1 The Contractor shall accept the Licence Area and the Government Provisions in the state and condition when possession is given. However, the Government Representative shall make good any defects (whether structural and/or non-structural) of the Licence Area and ensure the Government Provisions specified in **Contract Schedules 14 and 15** are in good working order when possession is given to the Contractor. The Contractor shall be responsible for carrying out necessary alterations and other works at Contractor's own cost in order to suit the proposed usage and relevant licence requirements.
- 12.2 The Contractor warrants and undertakes to perform all of the following: –
- (a) During the Free Decoration Period, to fit out the Licence Area at the Contractor's own cost and expense in accordance with such plans, drawings and specifications and other details as shall have been first submitted to and approved in writing by the Government (including the **Business Plan** set out in **Contract Schedule 3**) in a good and proper workmanlike fashion and in all respects in a style and manner appropriate to the Venue and to maintain the same throughout the Contract Period in

good repair and condition to the satisfaction of the Government. For the purposes of fitting-out, the Contractor shall observe and comply with all such procedures and stipulations in accordance with the **Technical Schedule** specified in **Contract Schedule 14**. In particular, the Contractor shall be responsible for any fitting out / alteration / maintenance works to the building structure / building elements / building services installations within the Licence Area for the purpose of obtaining relevant Requisite Permits (including the Provisional Licence and the Full Licence) at its own cost and expense.

- (b) Prior to the commencement of any work, submit to the Government Representative for prior written approval all such plans, drawings, specifications, and other details as the Government may require of all the works which are required to be carried out by the Contractor under **Clause 12.2(a)**. Unless otherwise approved by the Government, these plans, drawings, specifications shall not deviate from the **Business Plan** submitted in **Contract Schedule 3**, but such plan shall equally be subject to the approval of the Government even if the tender containing such plan has been accepted.
 - (c) During the Free Decoration Period, to decorate the Licence Area in a décor approved in advance in writing by the Government and to a standard satisfactory to the Government and to maintain the standard of décor at all times to the Government's satisfaction. The Contractor shall ensure that the design and supervision requirements set out under the Building Ordinance and the subsidiary legislation made thereunder and any amendments thereto are complied with in the design and construction of the works; and
 - (d) Prior to the commencement of the operation of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar, to provide sound isolation for these Catering Outlets to minimise the disturbance of the noise level to the activities held at the Concert Hall and the Foyer of the Venue.
- 12.3 The Contractor shall furnish and provide all such equipment, furniture utensil and all other materials of whatsoever nature necessary for the efficient operation of the Business including those facilities as specified in the **Business Plan, Menus, Service Packages, Marketing and Customer Service Plan** in **Contract Schedules 3 and 4**. All such equipment and furniture and utensil shall be of a design and standard to the satisfaction of the Government.
- 12.4 The Contractor shall perform all work as specified in the **Technical Schedule** of **Contract Schedule 14** whether during the Free Decoration Period or otherwise throughout the Contract Period.

13. Maintenance and Repair

- 13.1 The Contractor shall keep and maintain at all times all Government Provisions stated in **Contract Schedules 14 and 15**, and all other Government properties

- located at the Licence Area (moveable or immovable) or otherwise from time to time provided to the Contractor for use (if any) (viz., “Government Provisions”) in good repair, clean and serviceable condition to the Government’s satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Provisions in good repair, clean and serviceable condition at any time upon request by the Government Representative and/or at the end or sooner termination of the Contract
- 13.2 The Contractor shall keep and maintain at all times at the expense of the Contractor the Licence Area including the internal face of structural elements such as concrete ceiling/concrete flooring/internal side of external walls, interior plaster or other finishing material to walls, floors and ceilings, plumbing, drainage and all fixtures and fittings therein including all interior doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatus in good clean and proper repair condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 13.3 The Contractor shall repair or replace at the expense of the Contractor all the electrical wiring installations and fittings within the Licence Area and all such electrical wiring installations and fittings of equipment/system belonging to the Contractor, if any, in any other part of the Licence Area if so required by the Government Representative and the relevant authority.
- 13.4 The Contractor shall repair, keep and maintain at all times to the satisfaction of the Government Representative at the expense of the Contractor the service lift and dumb-waiter for the service of the Licence Area in good and working condition using a registered lift contractor(s) as approved in writing by the Government Representative. The maintenance for every lift shall be carried out to comply in all respects with the Lifts and Escalators Ordinance (Cap. 618).
- 13.5 The Contractor shall keep and maintain at all times to the satisfaction of the Government Representative all lavatories and water apparatus approved for use by patrons of the Licence Area in good repair and clean and serviceable condition (fair wear and tear excepted) and in accordance with all relevant statutory regulations.
- 13.6 The Contractor shall pay or reimburse to the Government Representative the cost incurred by the Government Representative in replacing all broken and damaged interior windows in the Licence Area irrespective of by whom or under whatever circumstances the same be broken or damaged.
- 13.7 The Contractor shall keep and maintain at all times all the equipment and furniture used in the course of carrying the Business in good repair and condition to the Government’s satisfaction and to replace the same or any of the same with new ones whenever necessary or when the Government reasonably demands.
- 13.8 Except for the fitting-out work and other work expressly required under the Contract, the Contractor shall not make any alteration or addition to the Licence Area or any Government Provisions without the prior permission in writing by the

- Government and shall not carry out the repairs to the same without first obtaining the prior approval of the Government. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government and of a standard acceptable to the Government.
- 13.9 The Contractor shall not make or permit any alteration or addition to the Licence Area or to the electrical wiring installation or to the Government's fixtures and fittings or to install any plant apparatus or machinery therein without having first obtained the written consent of the Government. Any application by the Contractor for the Government's consent under this Clause shall be accompanied by a plan showing the proposed changes. The Government shall be entitled to prescribe the maximum weight and location of any safe and other heavy equipment and to require that the same stand on supports of such dimensions and material to distribute the weight as the Government may deem necessary.
- 13.10 The Contractor shall be liable to the Government for any damage or loss to the Licence Area or any of the Government Provisions. If the Licence Area or any Government Provisions is found damaged or lost, as the case may be in whatsoever scale and from whatsoever cause while in the occupation or possession or control of the Contractor, the Government or the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government or the Government Representative all losses, liabilities, costs and expenses that it has incurred in the execution of such repair or replacement together with all costs and expenses incurred by the Government and the Government Representative for procuring such repair or replacement service, monitoring such repair or replacement service and in taking all other necessary actions in the light of the Contractor's breach of this Clause.
- 13.11 All Government Provisions shall remain the property of the Government and the Government Representative reserves the right to take stock checking of the same at any time and the Contractor shall provide every assistance to the Government Representative for this purpose.
- 13.12 For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Licence Area under the Occupiers Liability Ordinance (Cap. 314) ("Cap. 314") during the continuance of the Contract. The Contractor shall indemnify each of the Government and the Government Representative fully from and against everything stated in **Clauses 37.2(a) and 37.2(b)** including claims arising from any incident occurring within the Licence Area which constitutes as a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in Section 3 of Cap. 314. To the extent permitted under Cap. 314, neither the Government nor the Government Representative shall be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under section 5 of Cap. 314.
- 13.13 The Contractor shall keep proper record showing the details of the maintenance and repairs and shall provide such record to the Government within the time frame specified by the Government upon request.

14. Services

- 14.1 The Contractor shall ensure that during the continuance of this Contract and during the opening hours of the Licence Area there is provided and maintained at the Licence Area an efficient and adequate supply of Food and Beverages of a style, type and quality to the satisfaction of the Government. Without prejudice to the generality of the foregoing, the Contractor shall at all times ensure that the Business operated at the Licence Area shall at all times suffice to meet the reasonable needs of the users of the Venue and its facilities including but not limited to members of the general public, persons attending the functions and activities being held in the Venue and group visitors to the Venue.
- 14.2 The Contractor shall carry out the Business which is commensurate with the services, image, functions and activities of the Venue and to satisfy the needs of the Venue's core clients including performance patrons of various ages and styles, overseas and local performers, production crew, sponsors and VIP guests, ancillary facilities users, marriage registry and library users, tourists, casual visitors as well as office staff.
- 14.3 The Contractor shall provide seating accommodation in the Licence Area not in excess of the number as stipulated in **Contract Schedule 13** or otherwise as permitted by the Government Representative and to comply with the seating layout as approved by the Government Representative and the relevant authority thereof in writing.
- 14.4 The Contractor shall become an EatSmart restaurant under the EatSmart@restaurant.hk Campaign run by the Department of Health, within six (6) months of the Contract Period and for the remaining part of the Contract Period.
- 14.5 The Contractor shall not request or receive any charges for admission to the Licence Area or its surroundings, nor request or receive any other additional charges whatsoever other than service charges and / or tips, if any, levied up to ten percent (10%) of the menu price (or such increased rate as the Government Representative may from time to time approve in writing).
- 14.6 The Contractor shall accept payment for all items sold at the Licence Area by all internationally recognised credit cards.
- 14.7 The Contractor shall ensure that a high standard of customer service is maintained and all staff conduct themselves in a courteous manner to the satisfaction of the Government.
- 14.8 In conducting the Business, the Contractor shall observe and comply with the **Business Plan, Menus, Service Packages, Marketing and Customer Service Plan, Hygiene Maintenance Plan, Waste Management Plan and Innovative Suggestions that can Bring Positive Values/Benefits to the Society** as set out in **Contract Schedules 3, 4, 5, 6 and 7** and in the final form as approved by the Government.

15. Other Covenants

In addition to other undertaking, obligations and covenants found in the Contract, the Contractor shall comply with and observe, and shall ensure the compliance with, all of the following:

- (a) not to cause, suffer or permit any floor show or other entertainment whatsoever to be staged in or from the Licence Area without the prior written approval of the Government which approval may be revoked at any time by the Government at its absolute discretion;
- (b) not to use any gramophone, radio, television, loudspeaker, musical instrument or karaoke instrument or similar apparatus or equipment in such a way that the same shall be audible outside the Licence Area;
- (c) not to cause, suffer or permit any smoking whatsoever to take place in or at the Licence Area;
- (d) if the Government so requires, the Contractor shall display in a prominent position in the Licence Area a sufficient number of signs to indicate that smoking is prohibited in the area and such signs shall be of a design and size as approved or prescribed by the Government and shall be maintained at all times by the Contractor in good and legible condition;
- (e) not to cause, suffer or permit any cooking of food, other than boiling of water or heating or re-heating of food, at the Foyer Bar without the approval of the Government Representative nor cause, suffer or permit the preparation, heating or re-heating of food in areas of the Licence Area which are not approved by the Government;
- (f) not to use the Licence Area or any part thereof, or cause, permit or suffer the same to be used, for any illegal or immoral purpose, gambling or any other purpose not permitted under the Contract;
- (g) not to cause, suffer or permit any games to be played in the Licence Area with the exception of mahjong at the Chinese Restaurant, and subject to the provisions of the Gambling Ordinance (Cap. 148) and to any conditions that the Government Representative may prescribe, provided that the Government Representative may at any time direct the Contractor to cease to permit the playing of mahjong for any period; and
- (h) not to set aside or reserve the whole or any part of the Licence Area for the exclusive use of any person or organization or for any other purpose or function, save and except where the Government Representative at its absolute discretion may permit or require.

16. Green Measures Relating to Disposable Tableware

- 16.1 The Contractor shall not provide plastic straws for any customers.
- 16.2 The Contractor shall provide reusable tableware for dine-in customers and shall not provide any type or item of disposable cutlery (e.g. stirrer, fork, knife, spoon and chopsticks) and disposable food/drink containers (e.g. cups, bowls, dishes, plates and boxes) for dine-in customers.
- 16.3 The Contractor shall not provide any disposable cutlery (e.g. stirrer, fork, knife, spoon and chopsticks) and disposable food/drink containers (e.g. cups, bowls, dishes, plates and boxes) by default or in sets for take-away customers.
- 16.4 If requested by take-away customers, the Contractor may provide non-plastic disposable cutlery (e.g. soft wood or bamboo) and non-plastic disposable food/drink containers (e.g. paper, plant fibre or metal foil) on a need basis for take-away food or drinks provided that such non-plastic disposable cutlery is not provided in sets. The Contractor shall charge and fully recover the cost of the non-plastic disposable tableware item(s) from those customers in line with the “user pays” principle. In any event, the Contractor shall not provide disposable plastic tableware.
- 16.5 **Clauses 16.3 and 16.4** shall also apply to any food/drink not consumed by a dine-in customer which the customer wishes to take away and for this purpose the customer shall be regarded as a take-away customer of the food/drink to be taken away.
- 16.6 For clarity purpose, plastic includes poly-foam, polyethylene, poly-lactic acid (PLA), oxo-plastic and all other types of plastic. It does not include paper coated with plastic or wax. “Tableware” includes straws and stirrers, cutlery (e.g. stirrer, fork, knife, spoon and chopsticks), food/drink containers (e.g. cups, bowls, dishes, plates and boxes) and individually packed wet tissues.
- 16.7 The Contractor shall comply with the requirements and conditions as stipulated in **Clauses 16.1 to 16.6** to the satisfaction of the Government and the decision of the Government as to whether the Contractor has complied with those requirements and conditions to the satisfaction of the Government shall be final, conclusive and binding on the Contractor.
- 16.8 In the event that the Contractor fails to comply with the requirements and conditions as stipulated in **Clauses 16.1 to 16.6** in relation to disposable tableware-free measures to the satisfaction of the Government, without prejudice to any other right or remedy which the Government may have in relation to any breach, non-compliance and non-performance of the conditions of the Contract on the part of the Contractor, the Government shall have the right to institute appropriate actions against the Contractor, including but not limited to applying lower marks in the future assessment of a tender for this Contract or another contract similar to this Contract, and/or terminate this Contract.

- 16.9 The Contractor may provide disposable plastic tableware when warranted by genuine service/operational needs and with prior approval in writing by the Government under exceptional circumstances, such as delivery of public service in emergency situations (e.g. special/ad-hoc operations, emergency responses) and special operational requirements (e.g. special hygiene measures required during disease outbreaks, prolonged outdoor work).
- 16.10 The Contractor may provide disposable (including plastic) straws free-of-charge on request to meet special needs arising from the medical requirements or physical conditions of individual customers.
- 16.11 The Contractor may provide plastic lids for cups and bowls for take-away food or drinks.
- 16.12 The Contractor may provide prepackaged food with disposable tableware not made of poly-foam if cooking or preparation of food is not allowed at the designated Licence Area or at such other areas of the Venue as the Government Representative at its absolute discretion may at any time and from time to time set aside.
- 16.13 The decision of the Government as to whether **Clauses 16.9 to 16.12** apply shall be final, conclusive and binding on the Contractor.

17. Air-conditioning and Ventilation System

- 17.1 Separate unit of air-conditioner will be made available for the entire floor of the Venue at which the Chinese Restaurant is located. The Government Representative will use its best endeavours to maintain the same in good repair and condition. Provided always that the Government Representative shall in no event whatsoever be held responsible for any failure or interruption of any such air-conditioner at Chinese Restaurant and Foyer Bar from any cause whatsoever or for any damage or loss (direct or indirect) whatsoever caused thereby. Provided further that notwithstanding any failure or interruption as aforesaid, all payments payable under this Contract by the Contractor shall remain payable in full at all times.
- 17.2 As more particularly stipulated in **Paragraph 9** of the **Technical Schedule of Contract Schedule 14**, the Contractor shall be responsible, at its own cost, for installing a separate / additional air-conditioning and ventilation system and its maintenance at each of the Catering Outlets. All electricity supplied to such air-conditioning and ventilation system shall be separately metered by meters installed by the Government Representative (viz., Government Meters as specified in **Clause 19.2**). The Contractor shall comply with the directions and instructions of the Government Representative regarding installation and shall at its own expense be responsible for their periodic inspection, maintenance and repair and for the replacement of defective wiring and the Contractor shall be strictly liable for any damage caused by the installation, operation or removal of such units. Provided that in the event of undue noise, vibration, heat or dripping of water being caused or generated by any air-conditioning and/or ventilation units

installed hereunder, the Government Representative may require the Contractor to remove or replace such installations forthwith and to make good any loss or damage caused to the Licence Area or the Venue.

18. Premises Hygiene, Food Hygiene and Safety

- 18.1 Apart from live sea-food stock for the Chinese Restaurant, the Contractor shall not keep or permit or suffer to be kept in the Licence Area or any part thereof any animals or pets, and shall take all such steps and precautions to the reasonable satisfaction of the Government to prevent the Licence Area or any part thereof from becoming infested by any pests or vermin.
- 18.2 The Contractor shall not do, or cause or suffer or permit to be done, any act or thing whereby the policy or policies of insurance in respect of the premises of which the Licence Area forms part against damage by fire or liability to third parties for the time being subsisting may become void or voidable or whereby the rate of premium or premiums thereon may be increased, and shall repay to the Government on demand all sums paid by the Government by way of increased premium or premiums thereon and all expenses incurred by the Government in and about any renewal of such policy or policies rendered necessary by a breach of this Clause.
- 18.3 The Contractor shall take all reasonable precautions to protect the Licence Area from damage by fire, storm, typhoon or the like and shall install and provide suitable equipment and systems and so on to protect the Licence Area and Government Provisions from any such damage, and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government. Such installation shall thereupon become the property of the Government free of any costs or charges. The Contractor shall be responsible for maintaining and repairing such installation in safe and proper condition at its own expense as well as to remove the same should the Government so direct.
- 18.4 The Contractor shall assume full responsibility for the safety of all operations and methods of operations.
- 18.5 The Contractor shall be responsible for the safety of any vehicle which it uses or brings alongside or onto the Venue and it shall indemnify each of the Government and the Government Representative from and against everything specified in **Clause 37.2(a) and (b)** arising from the use of such vehicles.
- 18.6 The Contractor shall provide and maintain at all times proper insulated and refrigerated containers solely for the storage of frozen confections and shall store in such insulated and refrigerated containers all frozen confections available for sale in the Licence Area.
- 18.7 The Contractor shall keep all articles of food and beverages stored or offered for

sale at the Licence Area effectively protected against flies, cockroaches, vermin, dust and dirt.

- 18.8 The Contractor shall not sell or offer for sale any liquid refreshment other than in sterile drink cups or in the original containers supplied by the manufacturers of such refreshment.
- 18.9 The Contractor shall cleanse and immerse crockery, cutlery and utensils used in the preparation or serving of food and beverages in boiling water for no less than one minute and dry the same by evaporation before each use, and store the same in vermin-proof and dust-proof cupboards when not in use.

19. Outgoings

- 19.1 The Contractor shall pay all the charges and deposits for electricity, gas, fuel, sewage services, telephones and water consumed on or in the Licence Area (including but not limited to electricity charges for electricity consumed by air-conditioning and ventilation system and any other equipment, machinery and installation whatsoever installed in the Licence Area under **Clause 17.2** or other applicable provision, and all of the air-conditioners made available to the Licence Area under **Clause 17.1 (collectively “Contractor Electrical Equipment”)**). Except in the case of electricity charges, the Contractor must at its own cost arrange the relevant utility companies to install separate meters in its own name for measurement of the utilities consumed by the Contractor and settle the charges, deposits, and installation charges directly with the utility companies.
- 19.2 Due to technical reasons, the Contractor may not apply for separate meters from the power company for the metering of electricity consumed by the Contractor’s Electrical Equipment. Separate meters shall be installed by the Government Representative for this purpose (“Government Meters”). The Government will pay the entire amount of the monthly electricity bill for all electricity consumed within the Venue (including fuel clause adjustment) (“Gross Electricity Charge”). The Contractor shall throughout the Contract Period be obliged to reimburse the Government its share of the Gross Electricity Charge (“Contractor Electricity Share”) each month for the period to which the monthly electricity bill relates. The Contractor’s Electricity Share based on each monthly electricity bill shall be paid by the Contractor to the Government within fourteen (14) days upon presentation of a demand note from the Government together with a copy of that electricity bill. Each amount of the Contractor Electricity Share shall be calculated in accordance with the following formula:

The Gross Electricity Charge as shown in a monthly bill issued by the power company shall be divided by the total electricity consumption as shown in that monthly bill (“Unit Rate”). This Unit Rate shall then be multiplied by the electricity consumption by the Contractor Electrical Equipment over the same period to which the monthly bill relates as measured by all Government Meters (“Contractor Electricity Consumption”). Where there is any period covered by a monthly bill issued by the power company which is outside the Contract Period, there shall be further pro rata adjustment of the Unit Rate by dividing it by the

- number of days in the month to which the monthly bill relates. Such adjusted Unit Rate will then be multiplied by the Contractor Electricity Consumption and further multiplied by the number of days of the Contract Period which is covered by the month to which the monthly bill relates.
- 19.3 In addition to the Contractor Electricity Share payable under **Clause 19.2**, the Contractor shall pay a deposit to the Government Representative as security for its obligation under **Clause 19.2** in the amount of Hong Kong Dollars Four Hundred and Fifty Thousand (HK\$450,000) (“Electricity Deposit”). The Electricity Deposit shall be payable within thirty days (30) days from the date of the notification of conditional acceptance of tender in cash or cashier order under **Paragraph 13.2(b)** of the **Terms of Tender**.
- 19.4 In the event that the Contractor shall fail to pay a Contractor Electricity Share under **Clause 19.2**, without prejudice to other rights and claims of the Government, the Government shall be entitled to make deduction from the Electricity Deposit and/or from the Security Deposit (both shall have been paid pursuant to **Paragraph 23** of the **Terms of Tender**) in satisfaction of such Contractor Electricity Share in such order as the Government in its absolute discretion deems fit. The Electricity Deposit may be deducted, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 19.5 If any deduction is made by the Government Representative from the Electricity Deposit, the Contractor shall, within twenty-one (21) days on demand in writing by the Government, deposit a further sum in a sum equal to the amount so deducted, which further sum shall be added to the residue of and form part of the Electricity Deposit.
- 19.6 The Electricity Deposit (if any amount is remaining) will only be refunded to the Contractor without interest when the Contractor has duly discharged its obligations under **Clause 19.2** in respect of all Contractor Electricity Shares payable throughout the Contract Period.
- 19.7 The Government will conduct an assessment every year within the Contract Period to review the amount of the Electricity Deposit. In the event that two (2) times the amount of the average Contractor Electricity Share over the past twelve (12) months is more than the Electricity Deposit, the Contractor shall be required to top up the Electricity Deposit by such further amount as the Government Representative may require. Alternatively, the Government may not require any top up depending on the excess amount.
- 19.8 The Contractor shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever

reasons.

- 19.9 The Contractor shall pay and discharge all outgoings and expenditure whatsoever which may be incurred by the Contractor arising from or in respect of or otherwise howsoever in connection with the Business.

20. Cleansing, Collection and Disposal of Refuse and Litter

- 20.1 The Contractor shall maintain to the satisfaction of the Government the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition. If the Government in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof, the Government may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government in its reasonable opinion may allow the necessary cleaning and servicing works in the Licence Area. In the event that the Contractor fails to carry out the works as directed, the Government may without further notice suspend the right of the Contractor to carry out the Business at the Licence Area under **Clause 25.1** in order to cause the Licence Area and its immediately vicinity to be cleaned and serviced and the Contractor shall pay the costs thereof to the Government on demand and shall remain liable to pay the Monthly Licence Fee to the Government Representative without any deduction.
- 20.2 The Contractor shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government and shall collect all refuse and litter therein.
- 20.3 The Contractor shall comply with the latest Municipal Solid Waste Charging Scheme (information of which can be found at the Government website at https://www.epd.gov.hk/epd/msw/htm_en/content.htm). The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government at any time and from time to time for the removal and disposal of all refuse and litter collected in the course of the Business, or which is otherwise deposited by customers of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government (or if the Municipal Solid Waste Charging Scheme has come into operation, the designated bags required by the Scheme which shall be procured by the Contractor at its own cost) and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Licence Area nominated by the Government at any time and from time to time in such manner as approved or prescribed by the Government.
- 20.4 The Contractor shall arrange cleaning of the refuse collection point and all passage ways leading from the Licence Area to the refuse collection point on daily regular basis or at a frequency as prescribed by the Government.
- 20.5 The Contractor shall carry out cleansing and clearing of all grease traps in relation to the Licence Area for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes/facilities in relation to/connected to the

- Licence Area for which the Contractor is liable at frequent intervals to the Government's reasonable satisfaction to prevent choking and blockage of the installations. For reducing the likelihood of recurrent choking and blockage of the installations, the Contractor shall arrange at the expense of the Contractor professional pipe cleaning at least on half-yearly basis or at a frequency as prescribed by the Government at any time and from time to time for clearing clog in the course of the Business. Where the Government Representative reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government undertake at its own expense either an emulsifying or a neutralising effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government.
- 20.6 The Contractor shall thoroughly clean the Kitchen and other permitted food preparation areas, at least, on a daily basis, and at least twice a year employ a specialist cleaning contractor as may be approved or prescribed by the Government Representative to deep clean the kitchen exhaust and ventilation systems in the Licence Area to the satisfaction of the Government.
- 20.7 The Contractor shall take all reasonable steps to prevent the accumulation of any stains, dirt, grease or other matter discharged from the Licence Area through the kitchen exhaust or ventilation system on any part of the exterior of the Venue and in the event of such stains, dirt, grease or other matter accumulating on any part including but not limited to the external wall, the Contractor shall at such regular intervals as may be approved or prescribed by the Government undertake the cleaning of such parts to the satisfaction of the Government using a contractor approved or prescribed by the Government. The Contractor shall ensure that waste water that comes out from the Licence Area is free of grease and shall not cause, suffer or permit to be caused the waste water discharging onto areas surrounding the Licence Area and the Venue.
- 20.8 In the event of failure to comply with this **Clause 20**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government if the removal and disposal of such refuse and litter is being carried out by the Government or in cleansing and clearing any of the drains, sewers, grease traps, kitchen exhaust and ventilation systems choked or blocked due to the act, default or negligence of the Contractor.
- 20.9 At the sole cost of the Contractor, the Contractor shall employ or use only such cleaner or cleaning agent within the Licence Area as the Government shall approve or prescribe, provided always that such approval may be withdrawn by the Government upon notifying the Contractor that it has reasonable grounds for such withdrawal.
- 21. Water Supply and Electricity Supply**
- 21.1 The Contractor shall at its own expense install and provide all necessary water supply required for its Business and pay all fees and charges in connection herewith.

- 21.2 All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out by qualified personnel approved in writing by and to the satisfaction of the Government, and such installation shall thereupon become the property of the Government free of any costs and charges. The Contractor shall be responsible for maintaining and repairing such installation at its own expense as well as removing the same should the Government so direct.
- 21.3 The Contractor shall ensure all water pipe installation of the cooking equipment will interface with the approved water supply plan by Water Supply Department (“WSD”). Separate application to WSD might be required for any cooking apparatus which involved connection to the main water supply system of the Venue, to ensure no contamination to the system will be affected.
- 21.4 The Contractor, if so permitted by the Government, may consume electricity from supply points which are available at the Licence Area to operate its Business as more particularly specified in **Paragraph 6** of the **Technical Schedule** in **Contract Schedule 14**. All consumption of electricity from such supply points must be separately metered by the Contractor applying for the meters from the power company. The Contractor shall pay all deposits, fees and charges in connection therewith. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatuses associated therewith in or serving the Licence Area in safe and proper condition and to comply in all respects with the Electricity Ordinance (Cap. 406) and its subsidiary legislations and / or the Government Representative with respect to the utilities.
- 21.5 Any installation, alteration and addition of wiring and lighting fittings to the existing Government provisions, and all other electrical works, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out by a Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406D) and to the satisfaction of the Government. The Contractor shall be responsible for maintaining and repairing such fittings at its own expense as well as removing the same should the Government so direct. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to Government for retention.

22. Admission of Contractor Personnel to Government Premises

- 22.1 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.

- 22.2 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.
- 22.3 The Contractor shall require all Relevant Personnel, save for those exempted, to present vaccination record showing dosage(s) complying with such dosage schedule requirements set out in the Vaccine Pass website prior to their entry into indoor government premises which are their places of work, or for work-related purposes (including for meetings and for fulfillment of duties). The number of vaccine doses required may be revised by prior written notice through the publication on the aforesaid website.
- 22.4 Exemption from the requirement to present vaccination record will be granted to (a) those who are medically unfit for COVID-19 vaccination as supported by a valid medical certificate; and (b) pregnant staff with prior exemption to be granted by the Government on a case-by-case basis. The exempted categories of Relevant Personnel mentioned in this Clause may be revised by prior written notice from the Government to the Contractor.
- 22.5 For the purpose of **Clauses 22.3 and 22.4**, the Contractor shall comply with the entry requirement of Government premises, implementation approaches, requirement on the vaccination record and other relevant documentations to be presented, consequence of non-compliance, maintenance and updating of the register of vaccination status, and all other necessary requirements as determined by the Government by prior written notice from the Government to the Contractor.
- 22.6 The Contractor shall ensure that the Relevant Personnel will have given consent to the Contractor to pass the personal data in relation to **Clauses 22.3 and 22.4** above to authorised persons of the Government for the purposes of the provisions of this **Clause 22** and other provisions of the Contract.
- 22.7 In the event that the Contractor fails to comply with this **Clause 22** 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 42** of the Conditions of Contract.

23. On-site Personnel

- 23.1 In deploying staff for operating the Business, the Contractor shall comply with the staffing structure plan and the staff training plan in **Contract Schedule 3** to the extent as accepted by the Government.
- 23.2 The Contractor shall require all persons employed or appointed to work at the Licence Area (whether by the Contractor or by any of its sub-contractors of whatever tier) (collectively, "On-site Personnel") to submit to such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Licence

- Area any person found by the medical practitioner to be likely to spread a communicable disease.
- 23.3 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance at the Licence Area at all times to supervise On-site Personnel.
- 23.4 The Contractor shall be responsible for the good conduct of all On-site Personnel while they are in the Licence Area or any other parts of the Venue, and shall ensure that they will behave accordingly.
- 23.5 The Government shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any member of On-site Personnel.
- 23.6 The Government shall be entitled to refuse to admit to the Licence Area or any part thereof any member of On-site Personnel, whose admission will be, in the reasonable opinion of the Government, undesirable.
- 23.7 Any removal demanded or refusal made under **Clauses 23.5 and 23.6** shall not be construed as a breach of the Contract by the Government and the Contractor shall continue to carry out its obligations under the Contract.
- 23.8 The Government shall in no circumstances be liable either to the Contractor or any of its sub-contractors or any member of On-site Personnel in respect of any liabilities, losses or damages occasioned by such removal demanded or refusal made as stipulated in **Clauses 23.5 and 23.6** and the Contractor shall fully indemnify the Government against everything stated in **Clause 37.2(a)** and **37.2(b)** arising from any such removal or refusal.
- 23.9 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of its Business and of a type approved by the Government Representative for the use all On-site Personnel.
- 23.10 The Contractor shall provide lockers for the staff to store their clothing and personal effects in the Back Office and not allow personal effects such as clothing, footwear, luggage, umbrellas and other articles to be stored or left in any other places inside or outside the Licence Area.
- 23.11 The Contractor shall ensure that at all times when On-site Personnel are at work or on duty in the Licence Area they shall wear such clothes and uniforms in a clean and tidy manner.
- 23.12 The Contractor shall ensure that all On-site Personnel shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 23.13 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for the carrying out of the Business. Such record shall include the name, the Hong Kong Identity Card number and a photograph of such On-site

- Personnel and shall be produced for inspection by the Government on request. All personal data submitted by the Contractor will be used by the Government Representative for the purpose of this Contract only.
- 23.14 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 under **Clause 42.1(g)** if the Contractor is convicted of any offence under the Employment Ordinance (Cap. 57).
- 23.15 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 under **Clause 42.1(g)** if the Contractor is convicted of any offence under the Minimum Wage Ordinance (Cap. 608).
- 23.16 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 under **Clause 42.1(g)** if the Contractor is convicted of any offence under the Employees' Compensation Ordinance (Cap. 282).
- 23.17 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 in the Hong Kong Special Administrative Region, or is convicted of an offence for aiding and abetting another person to breach his condition of stay, without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(g)**.
- 23.18 The Contractor shall comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509), and any other legislation pertaining to the health and safety of its own staff, the employees or agents of the Government and / or the Government Representative and any other parties who may be affected by the Contractor's operation of its Business. Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(g)** if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance (Cap. 509).
- 23.19 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 under **Clause 42.1(g)** if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- 23.20 Any conviction mentioned in **Clauses 23.14 to 23.19** or any other provision of this Contract does not have to relate to this Contract. The conviction of a related person (as defined in **Paragraphs 17.7 and 17.8** of the **Terms of Tender**) or officer of the Contractor or any person being such officer during any part of the

Contract Period may also be taken as the conviction of the Contractor and gives the same rights and remedies including the power to terminate under **Clause 42.1(g)**.

24. Arrangement During Epidemic Illness

In the event of illness of any epidemic nature breaking out or situations related to suspected or confirmed communicable disease cases, the Contractor shall comply with all such orders, arrangements or regulations as may be issued by the Government. The Contractor shall comply with any instructions issued by the Government Representative regarding measures to be adopted to prevent or control diseases of any kind.

25. Suspension of the Business

- 25.1 In the event that the Contractor is in breach of any term and condition of the Contract, the Government shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area or any one or more Catering Outlet(s) ("Suspension for Default", and the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar affected by the Suspension for Default is "Suspended Business") by notice in writing to the Contractor for a period as specified in such notice and the Suspension for Default may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice. Without prejudice to the generality of the foregoing, the Government may suspend the Contractor's right to carry on the Business or any one or more Catering Outlet(s) at the Licence Area upon the default of the Contractor as mentioned in **Clause 20.1 or Clause 34.2** or the failure of the Contractor to obtain the **Requisite Permits** as mentioned in **Clause 10.3 or Clause 10.4** where applicable.
- 25.2 Upon a Suspension for Default, the Contractor shall have no right to operate the Suspended Business at the Licence Area during the period of such Suspension for Default. The Contractor shall remain liable to pay the Monthly Licence Fee of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar in respect of the period of Suspension for Default and perform and observe all other obligations under the Contract.
- 25.3 In the event that any default leading to the Suspension for Default has been remedied to the satisfaction of the Government, the Government may cancel the Suspension for Default by notice in writing to the Contractor ("notice of resumption"). Upon receipt of such notice, the Contractor shall resume the Suspended Business at the Licence Area by such date as specified in the notice of resumption. The Contract Period will not however be correspondingly extended due to any suspension under **Clause 25.1**.
- 25.4 Neither the Government nor the Government Representative 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 Contractor arising out of or in relation to any Suspension for Default under **Clause 25.1**.

26. Closure of the Licence Area

- 26.1 Without prejudice to the rights and powers of the Government (including under **Clause 25** to effect a Suspension for Default), the Government may require a temporary closure of the Licence Area or any part thereof for any operational or other reason (including any of the reasons as specified in **Clause 25.2**) which is otherwise than due to any default of the Contractor by giving not less than seven (7) days' notice to the Contractor specifying the period of the temporary closure. The Contract Period may or may not be correspondingly extended after the temporary closure in accordance with **Clause 2.4** depending on whether the temporary closure affects the entire Licence Area or just parts thereof. In the event of former, the Contract Period may be extended in accordance with **Clause 2.4** but not in the case of latter. Notwithstanding the foregoing, for any closure of the Licence Area necessitated under the Prevention and Control of Disease Ordinance, Cap. 599 of the Laws of Hong Kong or any of its subsidiary legislation (collectively "**Cap. 599**"), no separate notice from the Government Representative will be given. Unless otherwise determined by the Government Representative in his absolute discretion, there will remain at least one (1) entrance and exit open to the allow members of the public accessing the Venue, even if the Venue is closed under Cap. 599. During such time, all three (3) Catering Outlets shall remain open at the Licence Area unless the relevant Catering Outlet(s) is also required to be closed under Cap. 599.
- 26.2 Without prejudice to the generality of **Clause 26.1**, the Government reserves the right to require a temporary closure of the Licence Area in whole or in part, by reason of fire or storm or damage or spread of epidemic as mentioned in **Clause 24** (not being the result of wilful default or misconduct or negligence of the Contractor, its employees or agents) or an act of God or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Contract Period. The renovation of other parts of the Venue shall not entitle the Contractor to claim or request temporary closure of the Licence Area or deduction of the Monthly Licence Fee.
- 26.3 Where the demand of such closure or suspension of Business by the Government Representative is due to any repair or maintenance or building modification, notwithstanding **Clause 26.1**, the Government will give the Contractor at least one (1) month's prior notice before the commencement date of such closure and suspension, if it is practicable in the circumstances.
- 26.4 During the period of temporary closure of the entire Licence Area (including all such parts of the Licence Area designated for the operation of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar) for seven (7) days or more (but not otherwise), no Monthly Guaranteed Amount shall be payable in respect of such period, and there shall be a pro rata deduction of the Monthly Guarantee Amount based on the number of days of temporary closure based on the calculation as stated in **Clause 6.7**. In the event that there is only

temporary closure of part(s) of the Licence Area designated for the operation of one or more Catering Outlet(s) for seven (7) days or more, such portions of the Monthly Guaranteed Amount attributable to such Catering Outlet as stated in **Contract Schedule 11** shall not be payable during such temporary closure with further pro rata deduction based on the number of days of temporary closure as aforesaid. The Monthly Licence Fee shall continue to be payable in the event of temporary closure of the Back Office of the Licence Area.

- 26.5 Upon any temporary closure of the entire Licence Area pursuant to this **Clause 26**, the Contractor shall cease carrying on the Business at the Licence Area for so long as the temporary closure continues.
- 26.6 Subject to **Clause 26.1 and 26.4**, neither the Government nor the Government Representative 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 Contractor arising out of or in relation to any temporary closure or cessation of the Business under this **Clause 26**.
- 26.7 Notwithstanding anything herein to the contrary, the Government reserves the right to give less than seven (7) days' notice for urgent closure due to emergency events which are beyond its reasonable control.
- 26.8 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof for a period of less than seven (7) days will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

27. Stock and Sale of Food Commodities

- 27.1 The Contractor only has the right to sell Food and Beverages at the Licence Area. Without prejudice to the generality of the foregoing, unless otherwise specified in the Contract, the Contractor shall stock in sufficient quantities and sell the Food and Beverages as stipulated in **Contract Schedule 4** to the extent as accepted by the Government and such other food and beverages from time to time approved by the Government of a standard to the satisfaction of the Government.
- 27.2 Any food or beverage or any other goods or service to be sold at the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar not belonging the style of such Catering Outlet may only be sold after obtaining the prior written approval of the Government. Any deduction of items from the Food and Beverages may only be made after obtaining the prior written approval of the Government.
- 27.3 The Contractor shall only sell the food and beverages consistent with the style of Catering Outlet, viz. Chinese food in the Chinese restaurant, Western or Asian style food in the International (non-Chinese) Restaurant. Subject to the foregoing, and observation and compliance with all other requirements in the Contract including **Contract Schedule 4**, the Contractor will nonetheless be

allowed, according to market demand, to introduce extra items of food or beverages apart from the existing items of Food and Beverages which are consistent with the style of the relevant Catering Outlet without the need for obtaining the prior written approval of the Government Representative.

- 27.4 The Contractor shall not sell drinking water in plastic bottles measuring one (1) litre (L) or less at the Licence Area and shall comply with the Government's latest policies on this issue during the Contract Period.
- 27.5 The Contractor shall provide to customers upon request receipts for any food and beverage sold at the Licence Area.
- 27.6 Notwithstanding the prior approval of any items appearing in **Contract Schedule 4** or other prior approval from time to time, the Contractor shall remove forthwith from display and not sell or continue to sell, stock or display at or from the Licence Area any food, beverage or services or any other items whatsoever used or provided in or from the Licence Area or in connection with the performance of this Contract:
- (a) to which the Government Representative has notified its objection to the Contractor as being inconsistent with the objectives of the Business or the objectives or images of the Venue or the Government or the Government Representative; or
 - (b) of which there is allegation of infringement of Intellectual Property Rights of any person; or
 - (c) which consists of or contains any materials that infringe or are alleged to infringe the Intellectual Property Rights of any person;

and neither the Government nor the Government Representative shall be liable for any losses suffered or expenses incurred whatsoever by the Contractor as a result of such suspension from sale or removal of item concerned.

- 27.7 The Contractor shall not stock, sell or provide at the Licence Area any cigarettes, cigars or tobacco products whatsoever. The Contractor shall obtain such necessary licence or permit as is required under the Dutiable Commodities Ordinance (Cap. 109) for sale of alcoholic liquor, if such permission for sale is given by the Government Representative.
- 27.8 The Government Representative reserves the right to question the price of any item for sale at the Licence Area at any time and the Contractor shall provide justification for the price being charged.
- 27.9 The Contractor shall submit to the Government for information the menu containing a list of all items sold at the Licence Area together with their prices to be supplied and sold at the Licence Area not less than seven (7) days prior to their coming into force.

- 27.10 The Contractor shall abide by any directions as to the quality of the Food and Beverages sold or offered for sale at the Licence Area as may be given by the Hong Kong Consumer Council.

28. Display of Commodity Prices

- 28.1 The Contractor shall prominently display at all times the prices of the authorised food and beverage and services in respect of the Business at the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar. The displays shall be in both Chinese and English and shall be put up in such form, manner and at such locations as shall be approved or prescribed by the Government.
- 28.2 In the case of goods which have a wholesaler or manufacturer recommended Hong Kong retail price, a price not higher than that price shall be adopted and where such prices are stated in foreign currencies, the Contractor shall make available for inspection the Hong Kong Dollar exchange rates applied by the Contractor to the currencies concerned to any customer who so requests, and notify the Government of any changes to the said exchange rates. Where no recommended Hong Kong retail price is available, the goods will be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlets, or in the case where such goods are not sold by the Contractor at its other retail outlets, within the range of prices charged in similar types of retail outlets in Hong Kong.
- 28.3 The Government Representative reserves the right to question the price of any item for sale at the Licence Area at any time and the Contractor shall provide justification for the price being charged.

29. Erection of Structure

- 29.1 The Contractor shall not allow or permit any structure to be erected in or on the Licence Area and its immediate vicinity except those stipulated in **Clause 28.1** and apart from one (1) signboard for each of the Chinese Restaurant, the International (non-Chinese) Restaurant and the Foyer Bar bearing the trade name(s) for the Business in both English and Chinese which has been approved in writing by the Government.
- 29.2 The size and location of, and the ways of erecting, the signboards stipulated in **Clause 29.1** shall be approved by the Government in writing.

30. Store of Dangerous Goods and Prohibited Goods

Except a reasonable quantity to be stored at the Licence Area required for the operation of the Business, the Contractor shall not keep, store or cause, permit or suffer to be kept or stored in the Licence Area any dangerous or prohibited goods or liquid petroleum gas or any other types of fuel within the meaning of the Dangerous Goods Ordinance (Cap. 295) or any arms, ammunition, explosives or combustible substances.

31. Fire Precautions

- 31.1 The Contractor shall provide and maintain in proper and serviceable condition fire-fighting equipment to the satisfaction of the Government and comply with any directions issued by the Government or the Director of Fire Services in connection with the Licence Area.
- 31.2 The Contractor shall only use electricity as fuel in the Foyer Bar and town gas as fuel in the Chinese Restaurant and the International (non-Chinese) Restaurant. No naked flame is permitted in the Licence Area.

32. Watchman

- 32.1 The Contractor shall not allow any person including but not limited to any watchman to remain in the Licence Area overnight without the prior permission in writing by the Government. The Contractor shall immediately remove such person from the Licence Area if the Government notifies the Contractor in writing of the withdrawal of its approval for such person to stay overnight in the Licence Area.
- 32.2 The Contractor shall ensure that each of the watchmen possesses a valid security personnel permit issued under the Security and Guarding Services Ordinance (Cap. 460) and submit the name and Hong Kong Identity Card number of such watchmen to the Government for prior written approval.

33. Access by the Government for Repair

Whilst the Government Representative has no obligation to do so, the Contractor shall permit the Government Representative or any of its servants or agents with or without workmen at all reasonable times to enter upon the Licence Area or any part thereof to carry out repairs and works thereto and to any fixtures, fittings, installations and equipment whatsoever therein owned by either the Government Representative or the Government and to view the condition and state of repair thereof.

34. Inconvenience or Annoyance Caused at the Venue

- 34.1 The Contractor shall ensure that On-site Personnel 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.
- 34.2 The Contractor shall not do anything at the Licence Area or any part of the Venue or in the immediate vicinity thereof which may be or become a nuisance or annoyance (including but not limited to the making of excessive noise or sound) or cause damage or inconvenience or discomfort to the users of the Venue, the Government, its employees or agents working in the Venue. The Government shall be entitled to suspend the Contractor's right to carry on the Business at the

Licence Area under **Clause 25.1** for non-compliance with this **Clause 34.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.

- 34.3 The Contractor shall not place or leave, or cause, suffer or permit to be placed or left any of its trade equipment, stores, provisions, furniture, fixtures, fittings, chattels or other things whatsoever at any places within the Licence Area or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government if the Government in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this Clause and without prejudice to any other rights and remedies which the Government has or may have under the Contract, the Government shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Contractor to seize and dispose of any such property in such manner as the Government may see fit without any liabilities whether towards the Contractor or any person otherwise and the Contractor shall pay the Government on demand all the costs in relation with such removal and / or disposal which are incurred by the Government.

35. Inspection and Rejection

- 35.1 The performance of any obligation by the Contractor of this Contract including the supply of food and beverages provided at the Licence Area shall be subject to inspection by the Government Representative at any time.
- 35.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government Representative may reject any action undertaken by the Contractor or the result of such action which does not strictly conform to the terms and conditions of the Contract, including any action that may constitute as non-compliance with any condition stated in Requisite Permits or will lead to revocation of any of such Requisite Permits.
- 35.3 Within twenty-four (24) hours (or such longer times as maybe notified by the Government Representative) of being notified in writing of the rejection of any action undertaken by the Contractor or the result of such action, the Contractor shall take necessary action to rectify such rejected action or the result of such action to the satisfaction of the Government Representative.
- 35.4 If the Contractor shall fail to rectify such rejected action or result of action, the Government may, but it is not obliged, without prejudice to any other rights and remedies available to the Government carry out and complete such rectification by its own staff or by its agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith on demand. The normal working hours for the staff of the Government are, with the exception of public holidays, from 9 am to 5:30 pm from Mondays to Fridays. In addition to the administrative costs recoverable from the Contractor for performing any such work within the normal working hours, if any work is carried out by the staff of the Government outside these normal working

hours, the Contractor shall also be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

36. Contractor's Act and Default

Any act, default, neglect or omission of any officer, employee, agent or sub-contractor (of whatever tier) of the Contractor, or those officers, employees or agents of such sub-contractors, or any patron or visitor of the Licence Area (collectively "Contractor Responsible Group"), shall be deemed to be the act, default, neglect or omission of the Contractor and the Contractor shall be responsible for it as if it were its own.

37. Liability and Indemnity

37.1 Neither the Government, the Government Representative nor any of the public officers, employees or agents of the Government shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees, sub-contractors, agents, visitors to, or patrons of, the Licence Area howsoever caused; or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees, sub-contractors, agents, visitors to, or patrons of, the Licence Area, save and except any such injury or death caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of their employment).

37.2 Without prejudice to any other provisions of the Contract, the Contractor shall indemnify each of the Government, the Government Representative, their respective assigns, successors-in-title and the public officers of the Government (each an "Indemnified Person") from and 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 Claims");
- (b) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses (including without limitation those liabilities and indebtedness, losses, damage, injury or death arising from any Third Party Claim, and liabilities to pay damages or compensation, and all legal and expert fees and other awards, costs, payments, charges and expenses 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 Party);

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) the performance or breach of any provisions of the Contract by the Contractor, or by any person of the Contractor Responsible Group;
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor or by any person of the Contractor Responsible Group;
- (iii) any warranty or representation made by the Contractor in the Contract or in the tender submitted for the Contract or from time to time in the course of the Contract which is incorrect, inaccurate, incomplete or misleading;
- (iv) the non-compliance by the Contractor, or any person of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority;
- (v) any death or injury or loss or damage of property as mentioned in **Clause 37.1** except any death or injury caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment); or
- (vi) any claim or allegation for infringement of any Intellectual Property Rights of any person at or from the Licence Area or in connection with the performance of this Contract.

37.3 For the purposes of this Clause, “Negligence” (in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

37.4 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract, 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 any member of the Contractor Responsible Group.

37.5 The Contractor shall notify the Government in writing of any injury to or death of any of any member of the Contractor Responsible Group; and any loss of or damage to the Government Provisions or other property of the Government or to the property of any of the Contractor or of any member of the Contractor Responsible Group within forty-eight (48) hours of the occurrence of such injury, death, loss or damage or after such injury, death, loss or damage has come to the Contractor’s knowledge. The requirement of notifying the Government under this Clause shall not exempt or excuse the Contractor from compliance with any law.

38. Public Liability Insurance

- 38.1 The Contractor shall throughout the Contract Period effect at its own expense (a) a public liability insurance policy (“Public Liability Insurance Policy”) in the joint names of the Contractor and the Government in the sum of not less than **Hong Kong Dollars Ten Million (HK\$10,000,000)** for any one incident and unlimited number of claims in any one (1) year; and (b) product liability insurance (“Product Liability Insurance Policy”), in each case with an insurance company authorised by the Insurance Companies Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative in writing in advance.
- 38.2 The Public Liability Insurance Policy shall:
- (a) indemnify the insured in respect of all sums which each of the insured shall become legally liable to pay as compensation for any death of or injury to or illness suffered by any person (other than an employee where such death or personal injury arises out of and in the course of employment) or any loss or damage of property belonging to any person; and
 - (b) indemnify each of the insured from and against payment of legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.
- 38.3 The Product Liability Insurance Policy shall indemnify the Contractor in respect of all sums which insured shall become legally liable to pay as compensation for any death of or injury to or illness of any person due to poisoning by food and / or drink supplied by the Contractor at the Licence Area as well as the legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.
- 38.4 The Contractor shall keep each of the Public Liability Insurance Policy and Product Liability Insurance Policy in force throughout the continuance of the Contract Period and shall, if required, deposit with the Government for record copies of such Policies together with the receipt for payment of the current premiums.
- 38.5 Where the terms of the Public Liability Insurance Policy or the Product Liability Insurance Policy taken out by the Contractor require the insured parties to bear any excess amount in the event of claims, the Contractor shall be personally and solely responsible for the payment of such excess amount and shall reimburse the Government for such payment (if paid by the Government). Under no circumstances whatsoever shall Government Representative or the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 38.6 The Public Liability Insurance Policy shall include a cross liability clause so that it shall be treated that a separate policy has been issued to each of the Contractor and Government.

- 38.7 The Contractor shall take out and maintain the employees' compensation insurance as required under the Employees' Compensation Ordinance (Cap. 282).
- 38.8 The Contractor is responsible for lodging all claims with the insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage, provided that the Government Representative shall have the right to liaise with the insurance company on any matter of such claims.
- 38.9 If the Contractor fails to effect or to keep in force the Public Liability Insurance Policy or any other insurance which it may be required to effect under the terms and conditions of the Contract, the Government may effect and keep in force any such insurance and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with **Clause 8** or may recover the same as a debt due from the Contractor.
- 38.10 The Contractor shall conform to the terms and conditions of the Public Liability Insurance Policy and the Product Liability Insurance Policy, and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby these policies shall be rendered void or voidable, or which would otherwise amount to a breach of these. The Contractor shall bear the economic consequences of, and indemnify the Government Representative in full from and against everything stated in **Clauses 37.2(a) and (b)** which may arise from any failure of the Contractor to observe and comply with this Clause.

39. Government to Recover Cost

If the Contractor fails to carry out any of its obligations or duties under this Contract and the Government executes such obligations or duties on behalf of the Contractor, without prejudice to the other rights and claims of the Government, the Government shall be entitled to recover from the Contractor as a debt due to the Government all costs and expenses that it has incurred in executing such obligations or duties or procuring the service of a third party to execute such obligations or duties including all administrative and legal costs for supervising and monitoring the performance of such obligations and duties and enforcing its rights under this Clause.

40. Recovery of Sums Due

If the Contractor fails to pay any amount due or payable or otherwise upon demand by the Government pursuant to any applicable provision of the Contract, the Government shall be entitled to deduct the same from the Security Deposit in accordance with **Clause 8** and/or may recover the same as a debt due from the Contractor in such order as it deems appropriate regardless of whether it is specifically stated in the relevant provisions that such amount may be recovered

as a debt.

41. Set-off

Whenever under the Contract any sum of money is 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 Government contracts.

42. Termination

42.1 Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government, the Government may at any time by notice forthwith terminate the Contract in any of the following events:

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract and in the case of a breach capable of being remedied, the Contractor fails within fourteen (14) days (or such longer period as the Government may allow) to remedy the breach following from the issue of a notice from the Government requiring it to do so (such notice shall contain a warning of the Government's intention to terminate the Contract); or
- (b) if the Contractor is at any time adjudged bankrupt, or has a receiving order or orders for administration of its estate made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6) for the time being in force, or makes any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports to do so, or suffers any execution to be levied on its goods and assets in the Licence Area, or a petition is filed for the bankruptcy or winding up of its Business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government in writing; or
- (c) if the Contractor, being a company, passes a resolution, or the court makes an order for the liquidation of its assets, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances which have arisen entitle the court or debenture holders to appoint a receiver or manager; or
- (d) if the Contractor assigns or transfers or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government; or
- (e) if the Contractor unilaterally ceases the operation of any of the Catering Outlets at the designated Licence Area and / or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period; or

- (f) if there is any claim or allegation or the Government has reasonable grounds to believe that the Contractor in the course of performing the Contract, or any goods or materials supplied or to be supplied by the Contractor, has infringed or may infringe the Intellectual Property Rights of any person; or
 - (g) any event or circumstance occurs which enables the Government to terminate the Contract under any provision of the Contract including any of the following provisions:
 - (i) **Clause 10.3 or Clause 10.4 (Licence, Permit and / or Certificate);**
 - (ii) any of **Clauses 23.14 to 23.20 (On-site Personnel);**
 - (iii) **Clause 44 (Corrupt Gifts);** or
 - (iv) **Paragraph 38 of the Terms of Tender (Warranty against Collusion).**
- 42.2 If the Government is at any time prevented from performing the Contract by force majeure, then the Government shall serve a notice on the Contractor to this effect whereupon the Contract shall terminate immediately.
- 42.3 For the purpose of **Clause 42.2**, “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 parties to this Contract. 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 an authority, corporation, trade union, association or person. Failure to obtain or renew any Requisite Permit for carrying the Business for whatever reason including due to any change of applicable law and regulations may not be treated as force majeure but a default on the part of the Contractor.
- 42.4 Notwithstanding anything herein to the contrary, either party to the Contract may without cause early terminate this Contract by giving not less than nine (9) months’ notice to the other party but such notice may only be issued any time after the end of the first forty-eight (48) months of the Contract Period.
- 42.5 Instead of terminating the entire Contract pursuant to **Clause 42.1 or 42.2 or 42.4** of this Part, the Government may elect, but is not obliged, to terminate the Contract in relation to one or more but not all of the Catering Outlets (but termination of the Contract in relation to the Chinese Restaurant will also lead to termination of the Contract in relation to the Kitchen and Back Office) (collectively, “Terminated Catering Outlets”) in light of any of the events specified in **Clause 42.1** or otherwise pursuant to **Clause 42.2 or Clause 42.4 or Clause 10.3 or Clause 10.4** (“Partial Termination”).
- 42.6 The grounds for termination specified in this **Clause 42** are separate and

independent, and shall not be limited by reference to or inference from the other of them.

43. Effect of Termination

43.1 In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in **Clause 42** or otherwise (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government Representative’s and the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government Representative to terminate the Contract);
 - (ii) the rights and claims which have accrued to a party or the Government 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) (including without limitation **Clauses 6, 9, 11, 13, 15, 19, 36 to 61**);
- (b) neither the Government nor the Government Representative 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 Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under **Clause 37.2**, in the event that this Contract is terminated under **Clause 42.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government and the Government Representative arising from the Termination including without limitation to:
 - (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement contract is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination;
 - (ii) all administrative and legal costs incurred by the Government for earlier terminating the Contract;

- (iii) all administrative and legal costs incurred by the Government for issuing an invitation to bid for a new replacement contract similar to the Contract.
- (d) the Contractor shall forthwith pay up all unpaid Monthly Licence Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in **Clause 6.5**;
- (e) in the event that the Termination is under **Clause 42.1**, there shall be a forfeiture of the Security Deposit in its entirety without prejudice to the Government's claims and demands under the Contract which cannot be satisfied by the Security Deposit;
- (f) the Contractor shall immediately deliver up vacant possession of the Licence Area, and other working area and storage area provided by the Government Representative or used by the Contractor in a clean and tidy condition, and all Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government in good repair (fair wear and tear excepted) and in clean and hygienic condition. Provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government's consent, the Government may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government's fixtures and installations thereof by such deadline date as specified by the Government (whether to fall before or after the Termination) before delivering up the Licence Area to the Government. Alternatively, the Government may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government so chooses without any compensation to the Contractor whatsoever. For the avoidance of doubt, the Contractor shall be entitled to remove its own trade fixtures and trade equipment;
- (g) the Contractor shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at its own expense make good any damage to the Licence Area arising from such removal;
- (h) the Contractor and all persons of the Contractor Responsible Group shall vacate the Licence Area and deliver up all keys and access cards to the Government;
- (i) If the Contractor fails to comply with **Clause 43.1(f)** or **(g)** or **(h)**, the Government may forthwith enter the Licence Area to remove any persons therein, or to remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property, materials, machinery and

equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in a good repair and clean and serviceable condition. The Government 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 Contractor or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due from the Contractor;

- (j) the Contractor shall submit all outstanding statements and information as specified in **Clause 6**; and
- (k) **in the event of termination of the Contract by the Contractor by issuing a termination notice under Clause 42.4 above, any tender offer from the same Contractor (or its related person) for a contract immediately replacing this Contract will be rejected and will not be considered further.**

43.2 Upon a Partial Termination pursuant to **Clause 42.5**:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Catering Outlets shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
 - (ii) the rights and claims which have accrued to a party prior to the Partial Termination; and
 - (iii) the continued existence and validity of all remaining provisions of the Contract.
- (b) unless and to the extent otherwise approved by the Government, the same consequences specified in **Clause 43.1** shall apply save that references to "Termination" shall mean "Partial Termination"; references to "Catering Outlets" shall mean the Terminated Catering Outlets; references to "Licence Area" shall mean such portion of the Licence Area in relation to the Terminated Catering Outlets; and reference to "Government Provisions" shall mean such Government Provisions specifically for such Terminated Catering Outlets.

44. Corrupt Gifts

- 44.1 If the Contractor or any of the Contractor's employees or agents commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or under any law

of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, terminate the Contract under **Clause 42.1(g)**.

- 44.2 The Contractor shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract under this Clause.
- 44.3 The Contractor shall not, whether by itself or by any person employed by him to provide the services, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or change for any part of the services other than charges properly approved in writing by the Government Representative under the Contract. The Contractor shall prohibit its employees and agents who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Contract.
- 44.4 The Contractor shall within fourteen (14) days after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting any person employed by him to provide the services from soliciting or accepting any form of advantages in discharging its duties under the Contract. The Contractor shall ensure that any person employed by it to provide the services is well aware of the prohibited acts explicitly stated in **Clause 42.3** and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgment and compliance by the employees.

45. Monies or Valuables Found

All monies or other items of value found by the Contractor's employees and / or agents in carrying out the Business in the Licence Area shall be handed to the Government Representative as soon as possible and a written receipt obtained therefrom.

46. Publicity and Advertisement

- 46.1 The Contractor shall not exhibit, display, publish or use any advertising or other publicity materials or perform any act with an advertising nature either inside or outside the Licence Area or any part thereof except with the prior written consent of the Government.
- 46.2 Save and except where the Government at its discretion may permit or require, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Licence Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature.
- 46.3 Without prejudice to the generality of **Clause 46.2**, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or

outside the Licence Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature relating to any tobacco or tobacco related products.

- 46.4 The Contractor shall submit to the Government Representative all advertising and publicity materials relating to the Contract or other work done in connection with the Contract wherein the Government's name is mentioned or from the language used a connection with the Government can reasonably be inferred or implied.

47. Notice to be Displayed or Circulated in the Licence Area

If the Contractor proposes to display or circulate any notices requiring its employees, agents or the public to comply with the rules and regulations of the Government, the Government or other competent authorities or for the purpose of the operation of its Business under the Contract, it shall first seek the prior written consent of the Government and such consent can be withdrawn at any time at the discretion of the Government. All notices displayed or circulated by the Contractor in the Licence Area shall be written in both English and Chinese.

48. Intellectual Property Rights

The Contractor warrants to the Government that:

- (a) the Contractor will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person or persons by reason of the Contractor's possession, stocking, display or sale of any item of whatsoever nature used or provided in or from the Licence Area or any activity conducted in the Licence Area or in connection with the operation of the Business in the Licence Area or the performance of the Contract by the Contractor;
- (b) all items to be stocked, displayed or for sale in or from the Licence Area and/or all things or materials to be supplied or delivered by the Contractor under the Contract do not consist of or contain any materials which may infringe or are alleged to infringe the Intellectual Property Rights of any person;
- (c) in respect of any items to be stocked, displayed or for sale in the Licence Area, and in respect of which any Intellectual Property Rights are vested in a third party, the Contractor has or will have a valid and continuing licence or right under which it is entitled to stock, display or sell such items;
- (d) the Government, the Government Representative, their respective authorised users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person by the Contractor's possession, stocking, display or sale of any item of whatsoever nature used or provided in or from the Licence Area or any activity

conducted in the Licence Area or in connection with the operation of the Business in the Licence Area or the performance of the Contract by the Contractor;

- (e) the Government and the Government Representative and their authorised users, assigns and successors-in-title will not infringe any Intellectual Property Right of any person by the exercise of any of its rights under this Contract; and
- (f) if and to the extent any material (to be supplied or provided by the Contractor to the Government under the Contract including those statements under **Clause 7** and the plans, drawings, specifications and other details submitted and form part of the Contract Schedules) is required for performing the Contract or providing the Ad Hoc Catering Services contain any works or materials of which the Intellectual Property Rights belong to a third party, prior to use and incorporation of such works and materials for performing the Contract or providing the Ad Hoc Catering Services, the Contractor shall have obtained from such third party the grant of all necessary licences for itself and the Government, the Government Representative, their respective authorised users, assigns and successors-in-title to use such works and materials in the manner and for any of the purposes contemplated by this Contract. The costs of the above licences shall be borne by the Contractor.

49. Applicability of the Public Health and Municipal Services Ordinance

The Contract is subject to the provisions of the Public Health and Municipal Services Ordinance (Cap. 132) and of all regulations made thereunder, which may be applicable to the Licence Area and the Business.

50. Compliance with Law and Government Requirements

The Contractor shall observe and comply with all applicable laws of Hong Kong and requirements or regulations imposed from time to time by the relevant authorities in connection with the performance of its obligations under the Contract.

51. Service of Notice

- 51.1 Any notice or communication to be given herein shall be in writing and shall be sent to the address or fax number of the Government Representative set out below (in the case the Government Representative or the Government is the recipient) or the address or fax number of the Contractor set out in the **Memorandum of Contract** (in the case the Contractor is the recipient) or to such other address as either party shall notify the other in writing by no less than five (5) days' prior written notice. Notice may be delivered personally or by post, by courier, by facsimile or by email.

- 51.2 The Government Representative's details are as follows:

Address : 5 Edinburgh Place, Central, Hong Kong
Fax Number : 2877 0353
Email Address : mchbm@lcsd.gov.hk
Attention : Manager (City Hall) Building
Management

51.3 Any notice or communication shall be deemed given –

- (a) when left at the address of the recipient if delivered by hand during normal business hours;
- (b) one (1) working day after despatch by post;
- (c) when successfully despatched by email as evidenced by a return receipt whether generated manually or automatically; or
- (d) when successfully despatched by facsimile as evidenced by a successful transmission report generated by the facsimile machine.

52. Waiver of Remedies

52.1 Time shall be of the essence of the Contract. No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party. Nor shall any waiver of its rights 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.

52.2 Acceptance of any payment by the Government shall not be deemed to operate as a waiver by the Government of any right to proceed against the Contractor in respect of any breach, non-observance or non-performance by the Contractor of any of the terms and conditions of this Contract on the Contractor's part to be observed and performed.

52.3 No condoning, excusing or overlooking by the Government of any default, breach, non-observance or non-performance by the Contractor of any of the obligations of the Contractor under the Contract shall operate as a waiver of the Government's right under the Contract in respect of any continuing or subsequent default, breach, non-observance or non-performance.

53. Severability

53.1 In the event that any provisions of the Contract or any part thereof is at any time adjudged by a court of Hong Kong to be invalid, unlawful, illegal or otherwise howsoever unenforceable, such provisions or such part thereof, as the case may be, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions hereof.

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

53.3 Where, however, the provisions of any such applicable law of Hong Kong may be waived, they are hereby waived by the parties hereto the full extent permitted by such law to the end that the Contract shall be valid, binding and enforceable in accordance with its terms and conditions.

54. Entire Agreement

The Contract embodies the entire understanding of the parties and supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

55. Amendment

Unless where expressly specified which confers on the Government the unilateral power to make amendments, no amendment to any provision of the Contract shall be binding upon the parties unless it is made by a written instrument signed by each of the Government and the Contractor.

56. Further Assurance

The Contractor shall at its own costs and expenses do and execute any further things, documents and materials (or procure the same be done or executed) to give full effect to the Contract and shall provide all such things, documents and materials to the Government within fourteen (14) days of the date of written request by the Government or such longer period as may be agreed by the Government in writing.

57. Relationship of the Parties

57.1 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, a relationship of landlord and tenant, or a joint venture between the Government and the Contractor.

57.2 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.

58. Governing Law and Jurisdiction

The Contract shall be governed by and construed according to the laws of Hong Kong. The parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising from or

in connection with or in relation to the Contract.

59. Contracts (Rights of Third Parties) Ordinance

59.1 It is noted that there is no provision in Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (“Cap. 623”) which states that the Ordinance applies to the Government or contracts entered into by the Government.

59.2 Notwithstanding **Clause 59.1**, it is hereby declared that no person may be treated as a third party who or which may enforce any term of the Contract under or for the purposes of section 4 of Cap. 623.

59.3 Nothing in **Clause 59.2** is intended to affect the following:

- (a) the power of the Government Representative to act for the Government including the exercise of any right under, or the enforcement of any claim or remedy, arising from or in connection with or in relation to, this Contract;
- (b) the power of a public officer (including the Government Representative) under any law or regulation including any Ordinance or subsidiary legislation or any other legal instrument;
- (c) the power of a public officer to act by his own title or for the Government Representative or for the Government in any legal proceedings arising from or in connection with or in relation to the Contract (including the Secretary for Justice);
- (d) the rights and obligations of any personal representative, administrator or other successor-in-title of the Contractor;
- (e) the rights and obligations of any assignee or transferee of the Contractor under any assignment or transfer which has been approved by the Government pursuant to **Clause 9** but not otherwise;
- (f) the rights and obligations of any Government’s successor-in-title and person deriving title under any of them, and the Government’s assignee and transferee (and in the case of assignee or transferee, in accordance with the terms of the assignment and transfer agreed by the Government); and
- (g) the rights of the Government Representative or the Government under any guarantee or undertaking or insurance policy or other collateral contract granted or issued or entered into by any person other than the Contractor pursuant to the terms of the Contract.

60. Innovative Suggestions

- (a) The Government may, at its absolute discretion, accept one (1) or more of the Innovative Suggestions submitted by the successful Tenderer in its

Tender as found in the version of **Contract Schedule 7** attached to the **Memorandum of Contract** (“Accepted Innovative Suggestions”). The Accepted Innovative Suggestions shall form an integral part of the Contract;

- (b) The Contractor warrants that it shall perform the Contract in full compliance with all Accepted Innovative Suggestions. In the event that the Contractor fails to deliver any of the Accepted Innovative Suggestions, the Operator shall, subject to sub-clauses (c) and (d) below, pay to the Government a sum of money calculated according to the following formula as liquidated damages for EACH of such Accepted Innovative Suggestions which it fails to deliver within each twelve (12) Months (viz., each Contract Year):

$$LD = \frac{OF}{W(T)} \times \frac{M(IS)}{M(TP)} \times \frac{P(NIS)}{P(CY)}$$

where LD = the sum of money to be paid to the Government as liquidated damages

OF = the sum of the Charges payable for the Contract Year (before any adjustment upward or downward; and before any deduction) during which the Contractor fails to comply with the relevant Accepted Innovative Suggestion

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

M(IS) = the marks that would be given to one (1) Innovative Suggestion in accordance with the marking scheme (regardless of whether marks are actually given to the relevant Accepted Innovative Suggestion that the Operator fails to deliver) (viz., 4.24 marks)

M(TP) = the maximum technical marks for the Technical Proposal in the marking scheme (viz., 100 marks)

P(NIS) = The duration where the subject Innovative Suggestion is not delivered during the Contract Year

P(CY) = The duration where the subject Innovative Suggestion should be in place in the Contract Year

The amount calculated in accordance with the above formula represents a

reasonable sum proportionate to the Government's legitimate interest in the enforcement of the relevant Accepted Innovative Suggestion;

- (c) For any given point of time within the Contract Period, the number of Accepted Innovative Suggestions which the Operator fails to deliver and upon which liquidated damages are payable under sub-clause (b) above shall not exceed the maximum number of Innovative Suggestions to which marks could be awarded to a tenderer in the tender evaluation process (viz., 4 Innovative Suggestions);
- (d) The aggregate amount of liquidated damages payable pursuant to sub-clause (b) for the whole of the Contract Period may not exceed fifteen percent (15%) of the Estimated Contract Value (before any adjustment, upward or downward); and
- (e) The liquidated damages payable pursuant sub-clause (b) above shall be added to Monthly Licence Fee payable in respect of the next Month upon receipt of the Government's notification for such non-compliance. In the event that the non-compliance occurs in the last Contract Year, the deduction will be made from the Contract Deposit unless the Contractor pays the same in cash.

61. 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) these **Conditions of Contract**;
- (b) **Terms of Tender**;
- (c) **Contract Schedules 1 to 16** in the original form set out in the Tender Documents;
- (d) **Contract Schedules 2 to 12** as submitted by the Contractor as part of its tender and in their form final as approved by the Government upon or after the award of the Contract; and
- (e) **Annexes A to G.**

PART 3
CONTRACT SCHEDULES

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CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

1. Marking Scheme

1. A two-envelope approach with a technical to price weighting of **50:50** will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. All tenders will be assessed in the following manner.

Stage 1 – Completeness Check on the Tender Offers Submitted

2. All tenders received will be checked on whether all the documents and information required in the **Terms of Tender** have been submitted. Failure to submit (a) any of the documents stipulated in **Paragraph 4.2** of the **Terms of Tender on or before the Tender Closing Date** or (b) any documents specified in **Paragraph 4.3** of the **Terms of Tender on or before the Tender Closing Date** or upon subsequent request by the Government will render a tender invalid and will not be considered further.

Stage 2 – Technical Assessment

3. The maximum total technical marks are 100 and are divided into eight (8) criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. Passing marks of 6, 6, 2.5 and 2.5 are set for Assessment Criteria (1), (2), (3) and (4) respectively, which are 25% of the maximum mark of the respective Assessment Criteria. **Tenders that do not attain any of the above said passing marks for Assessment Criteria (1), (2), (3) and (4) will not be considered further.**

CONTRACT SCHEDULE 1**Marking Scheme for Tender Evaluation**

Assessment Criteria	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Marks Scored (M x S)	Passing Mark
			5	4	3	2	1	0		
(A) Execution Plan										
(1) Business Plan (See Notes 2 and 6)	24	6								6
(2) Menus, Service Packages, Marketing and Customer Service Plan (See Notes 3 and 6)	24	6								6
(3) Hygiene Maintenance Plan (See Notes 4 and 6)	10	2.5								2.5
(4) Waste Management Plan (See Notes 5 and 6)	10	2.5								2.5
(5) Innovative suggestions that can bring positive values/benefits to the society (See Note 7)	17	4.25								–
Sub-total for (A)		85								–
(B) Experience, Qualification and Certification										
(6) Years of experience in operating catering outlet(s) (See Note 8)	8	2								–
(7) Experience and Qualifications of the Senior Manager (See Note 9)	2	1								–
(8) Valid and relevant ISO and OHSAS Certifications (See Note 10)	5	1								–
Sub-total for (B)		15								–
Total Technical Mark		100								–

4. A tender which has passed Stage 2 assessment shall be considered as a “conforming tender”. A maximum weighted technical score of 50 will be allocated to the conforming tender with the highest total technical marks, while the weighted technical score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Technical Score} = 50 \times \frac{\text{Total technical mark of the conforming tender being assessed}}{\text{The highest total technical mark among the conforming tenders}}$$

[Note: The weighted technical score of each tender will be rounded to the nearest 2 decimal places. Figures with the value at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the value at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the value at the second decimal place.]

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

Explanatory Notes for Stage 2 – Technical Assessment

Note 1: for Assessment Criteria (1) to (8)

Tenderer's proposal, experience, qualification and certification will be rated as follows:

For Assessment Criteria (1) to (6)

Standard score of 4, 3, 2, 1 or 0 will be awarded.

For Assessment Criterion (7)

Standard score of 2, 1, or 0 will be awarded.

For Assessment Criterion (8)

Standard score of 5, 4, 3, 2, 1 or 0 will be awarded.

Note 2: for Assessment Criterion (1) – Business Plan

The Business Plan shall cover the following items:

- (a) details of vision and core value of the business including quality food, excellent customer service, integrity of service (to be illustrated and supported by statements, plans and drawings where appropriate) which can be fully compatible with the image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall, which is required under **Contract Schedule 3(a)**;
- (b) details of décor design including the design concept and layout plans for dining areas, kitchen/food serving areas, shop front, reception and restrooms, which aim to foster the image of the Venue as a cultural facility, which is required under **Contract Schedule 3(b)**;
- (c) details of hospitality facilities including dining table layout and tableware for the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar, which is required under **Contract Schedule 3(c)**; and
- (d) details of staff deployment and management including staff recruitment, staffing structure, training/re-training on customer services, and retention strategies, which is required under **Contract Schedule 3(d)**.

Note 3: for Assessment Criterion (2) – Menus, Service Packages, Marketing and Customer Service Plan

The Menus, Service Packages, Marketing and Customer Service Plan shall cover the following items:

- (a) details of the branding concept of a Tenderer's own branding including an overview of marketing and communication methods to create a unique brand identity and

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

clientele philosophy including the identification of target customer segment and formulation of various strategies to reach the target group, which is required under **Contract Schedule 4(a)**;

- (b) details in support of the promotion of the programmes of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall (e.g. displaying posters and pamphlets provided by the Venue at the prominent locations of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar, free Internet access, charging of mobile devices available for patrons, etc.), which is required under **Contract Schedule 4(b)**;
- (c) details of the marketing and customer services initiatives (e.g. advertising strategies, seasonal promotion programme, customer outreaching programmes, etc.) for promoting the image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall, which is required under **Contract Schedule 4(c)**;
- (d) details of the marketing strategies to promote revenue and encourage repeated visits of the customers (e.g. membership discount programme, etc.), which is required under **Contract Schedule 4(d)**;
- (e) a list of the signature cuisines, regular and special festive menus including the foods, drinks and beverages and their key elements which help attract customers, which is required under **Contract Schedule 4(e)**; and
- (f) details of the proposed service packages for the corporate events (e.g. a reception, a celebration feast, a boardroom luncheon, a conference refreshment, a farewell party, a company function, etc.), which is required under **Contract Schedule 4(f)**.

Note 4: for Assessment Criterion (3) – Hygiene Maintenance Plan

The Hygiene Maintenance Plan shall cover the following items:

- (a) guidelines and standards to kitchen staff on cleansing and food hygiene including food handling, food safety and kitchen hygiene, which is required under **Contract Schedule 5(a)**;
- (b) guidelines and standards to dining area staff on cleansing and hygiene including seating area hygiene and restroom hygiene, which is required under **Contract Schedule 5(b)**;
- (c) details of the monitoring system to ensure the staff's compliance with the proposed guidelines and standards, which is required under **Contract Schedule 5(c)**; and
- (d) details of training/refresher programmes for staff on hygiene maintenance, which is required under **Contract Schedule 5(d)**.

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

Note 5: for Assessment Criterion (4) – Waste Management Plan

The Waste Management Plan shall cover the following items:

- (a) guidelines and standards to kitchen staff on waste management to prevent pollution from greasy fume, wastewater and waste, which is required under **Contract Schedule 6(a)**;
- (b) guidelines and standards to dining area staff on waste management to prevent pollution from waste, which is required under **Contract Schedule 6(b)**;
- (c) details of the monitoring system to ensure the staff's compliance with the proposed guidelines and standards, which is required under **Contract Schedule 6(c)**; and
- (d) details of training/refresher programmes for staff on waste management, which is required under **Contract Schedule 6(d)**.

Note 6: for Assessment Criteria (1) to (4)

- (a) Standard scores will be given to each of Assessment Criteria (1) to (4) in accordance with the following five-grade approach and reference to “proposed plan” mean the plan covered by the relevant Assessment Criterion –

- 4 - The proposed plan is **practical** with **detailed information** on **all** items as required in the applicable Note above for the proposed plan.
- 3 - The proposed plan is **practical** with **detailed information** on **more than half** of the items and brief information covering the remaining items as required in applicable Note above for the proposed plan.
- 2 - The proposed plan is **practical** with **detailed information** on **half** of the items and brief information covering the remaining items as required in Note above for the proposed plan.
- 1 - The proposed plan is **practical** with **brief information** on **all** items as required in the applicable Note above for the proposed plan.
- 0 - The proposed plan is **impractical** or **fails** to provide information on **any** of the items as required in the applicable Note above for the proposed plan.

- (b) The meaning of “more than half” and “half” of the items of the respective plan are as below –

	Menus, Service Packages, Marketing and Customer Service Plan	Business Plan, Hygiene Maintenance Plan and Waste Management Plan
more than half	4 or 5	3
half	3	2

- (c) All the proposed plans and the information herein submitted by the successful Tenderer

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

under Assessment Criteria (1) to (4) shall form part of the Contract.

Note 7: for Assessment Criterion (5) – Innovative Suggestions that Can Bring Positive Values/Benefits to the Society

- (a) Marks will be given if the proposed innovative suggestions can bring about positive values/benefits to the Government or public at large.
- (b) Innovative suggestions shall contribute to any positive values or benefits, including, inter alia, the following –
- (i) Technological development (required under **Contract Schedule 7(a)**):
Application of new technology or innovative application of existing technology for promoting arts appreciation and contributing to the development of Smart City;
 - (ii) Social well-being (required under **Contract Schedule 7(b)**):
Fostering a caring society;
 - (iii) Environmental protection (required under **Contract Schedule 7(c)**):
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling on top of the green measures relating to disposable tableware as stated in the tender document (e.g. to introduce new green measures, etc.);
 - (iv) Local arts development (required under **Contract Schedule 7(d)**):
Offering special packages or initiating joint collaborations with arts organisations and explore or enrich experience of new visitors (e.g. complimentary food/beverages for patrons of the Venue/members of arts organisations, etc.) which shall be commensurate with the image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall, to promote arts and culture in the society.
- (c) Standard scores will be given in accordance with the following rule:
- 4 - **Four (4) or more practicable** innovative suggestions are proposed
 - 3 - **Three (3) practicable** innovative suggestions are proposed
 - 2 - **Two (2) practicable** innovative suggestions are proposed
 - 1 - **One (1) practicable** innovative suggestion is proposed
 - 0 - **No** practicable innovative suggestion is proposed.
- (d) Marks will not be given to any innovative suggestion which a Tenderer will neither be capable of nor responsible for implementation.
- (e) Each innovative suggestion will be counted once, irrespective of the number of positive values involved.
- (f) Tenderers shall highlight the proposed innovative suggestions and explain clearly with sufficient details on what benefits/positive values to which their proposed innovative suggestions can bring about in their submissions to facilitate tender evaluation as well as how they are to be implemented.
- (g) Tenderers shall submit the following information for demonstrating the effectiveness and

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

practicability of the innovative suggestions. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following –

- (i) if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle, etc.: scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
 - (ii) if the suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
 - (iii) if the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (h) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are NOT allowed to provide additional information not contained in their original tender submissions.
- (i) All practicable innovative suggestions accepted by the Government shall form part of the Contract.

Note 8: for Assessment Criterion (6) – Years of Experience in Operating Catering Outlet(s)

- (a) Assessment will be based on the aggregate number of relevant years of experience of a Tenderer in running catering outlet(s) **each with a seating capacity of not less than two hundred and fifty (250) persons any time within the past ten (10) years** immediately preceding the original Tender Closing Date.
- (b) Standard scores will be given to Assessment Criterion (6) in accordance with the following five-grade approach –
 - 4 - An aggregate of five (5) years' experience or more.
 - 3 - An aggregate of four (4) to less than five (5) years' experience.
 - 2 - An aggregate of three (3) to less than four (4) years' experience.
 - 1 - An aggregate of two (2) to less than three (3) years' experience.
 - 0 - An aggregate of less than two (2) years' experience, or failing to produce documentary proof to support its claim of experience.

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

- (c) Catering outlet(s) refer to licensed restaurant(s), e.g. general restaurant(s), Chinese restaurant(s) and light refreshment restaurant(s).
- (d) Local and/or outside Hong Kong experience will be counted.
- (e) The experience gained by a Tenderer will only be counted where the previous contract(s) was/were entered under the same name of the Tenderer. For the avoidance of doubt, a Tenderer's experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Tenderer shall not be considered. The meanings of "parent company" and "subsidiary" follow the meanings under the Companies Ordinance (Cap. 622).
- (f) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership, will be counted.
- (g) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of two (2) years' experience" is equivalent to having accumulated 730 days (i.e. 365 days x 2) of experience under different catering outlets.
- (h) It is not necessary for a Tenderer to have continuous experience in operating catering outlet(s) in the past ten (10)-year period immediately preceding the original Tender Closing Date.
- (i) For the purpose of tender assessment, the relevant experience in operating catering outlet(s) could be gained under the same catering outlet or different catering outlets. However, a Tenderer's experience under different catering outlets will not be double-counted for those overlapping periods. A Tenderer's experience under different catering outlets with overlapping periods is to be counted in accordance with the following examples:

Example:

Catering Outlet	Contract Period	Contract Period without Overlapping with an Earlier Contract	Number of Days Counted for Accumulated Experience
A	16.4.2013 – 15.4.2015	16.4.2013 – 15.4.2015	730
B	1.10.2014 – 31.3.2016	16.4.2015 – 31.3.2016	351 (29 days in Feb 2016)
C	1.1.2015 – 31.12.2016	1.4.2016 – 31.12.2016	275
Total:			1 356

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

Note 9: for Assessment Criterion (7) – Experience and Qualifications of the Senior Manager

- (a) Assessment will be based on working experience and qualifications on or before the original Tender Closing Date possessed by the Senior Manager nominated by the Tenderer.
- (b) Standard scores will be given to Assessment Criterion (7) in accordance with the following rule –
- 2 - The nominated Senior Manager possessing working experience and qualifications meeting the following two requirements –
 - (i) having an aggregate of **not less than five (5) years'** full-time working experience at management or supervisory level in catering, hotel management and/or marketing in the **past ten (10)-year** period immediately preceding the original Tender Closing Date; and
 - (ii) possessing a post-secondary qualification in catering, hotel management and/or marketing or equivalent issued by a registered post-secondary institution.
 - 1 - The nominated Senior Manager possessing either the experience or qualification requirements listed in (i) and (ii) of this Note above.
 - 0 - The nominated Senior Manager not possessing any one of the experience or qualification requirements listed in (i) and (ii) of this Note above, or failing to produce documentary proof to support its claim of the working experience or qualification.
- (c) A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee's letter/certificate), which is required under **Contract Schedule 9**, to substantiate its claim of the working experience or qualification.
- (d) Local and/or outside Hong Kong experience will be counted.
- (e) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of not less than five (5) years' working experience" is equivalent to having accumulated 1 825 days (i.e. 365 days x 5) of working experience.
- (f) It is not necessary for the nominated Senior Manager to have continuous full-time working experience at management or supervisory level in catering, hotel management and/or marketing in the past ten (10)-year period immediately preceding the original Tender Closing Date.
- (g) If more than one Senior Managers are nominated by a Tenderer, standard score will be given according to the numbers of experience and qualification requirements listed in (i) and (ii) of this Note above met by the nominated Senior Manager having the longest years of full-time working experience at management or supervisory level in catering, hotel

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

management and/or marketing in the past ten (10)-year period immediately preceding the original Tender Closing Date.

Note 10: for Assessment Criterion (8) – Valid and Relevant ISO and OHSAS Certifications

- (a) Standard scores will be given to Assessment Criterion (8) in accordance with the following rule –
- 5 - Accredited to all five (5) relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP).
 - 4 - Accredited to any four (4) relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 3 - Accredited to any three (3) relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 2 - Accredited to any two (2) relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP).
 - 1 - Accredited to any one (1) relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 0 - Not accredited to any of the relevant certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP), or failing to produce documentary proof to support its claim of possessing any relevant accreditation.
- (b) A Tenderer shall submit documentary evidence (e.g. a copy of certificate, etc.), which is required under **Contract Schedule 10**, to substantiate its claim of the accreditation. Accreditation not substantiated will not be taken into account.
- (c) For the purpose of counting the accreditation, “relevant certificate” means a certificate of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP) which are relevant to catering and are valid as at the original Tender Closing Date.

CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

Stage 3 – Price Assessment

5. The price evaluation will commence after completion of the technical assessment.
6. A maximum weighted price score of 50 will be allocated to the conforming tender with the highest total marks of monthly guaranteed amount and percentage of monthly gross receipts, while the weighted price score for other conforming tenders will be calculated by the following formulae –

$$\text{Mark of Monthly Guaranteed Amount} = 50\% \times \frac{\text{Monthly Guaranteed Amount of the conforming tender being assessed}}{\text{Highest Monthly Guaranteed Amount among the conforming tenders}}$$

$$\text{Mark of Percentage of Monthly Gross Receipts} = 50\% \times \frac{\text{Percentage of the conforming tender being assessed}}{\text{Highest Percentage offer among the conforming tenders}}$$

$$\text{Weighted Price Score} = 50 \times \frac{\text{Tenderer's combined score of percentage and guaranteed amount}}{\text{Highest tenderer's combined score of percentage and guaranteed amount among the conforming tenders}}$$

[Note: The weighted price score of each tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 4 above.]

Stage 4 – Calculation of Combined Score

7. The combined score of a conforming tender will be determined by the following formula –

$$\text{Weighted Technical Score} + \text{Weighted Price Score}$$
8. Normally, the Tenderer with the highest combined score will be recommended for acceptance subject to the requirement that the Government is satisfied that the successful Tenderer shall be fully (including technically, commercially and financially) capable of undertaking the Contract, and that the successful Tenderer shall be the most advantageous to the Government.

CONTRACT SCHEDULE 2**Working Background and Status of Tenderer**

3. Particulars of company (*Please attach copies of the latest audited or certified financial statements of the company*) :

(a) Year of establishment : _____

(i) Ownership : _____

(ii) If a subsidiary, name of parent company : _____

(b) No. of staff : _____

(c) Liability : _____ (as at _____)

(d) Capital -

(i) Authorised Capital : _____ (as at _____)

(ii) Issued Capital : _____ (as at _____)

(iii) Paid-up Capital : _____ (as at _____)

(e) Net worth (i.e. Total Assets – Liabilities) :
HK\$ _____ (as at _____)

4. Please provide contact person(s) in the event of any queries relating to the tender offer :

Name : _____

Post : _____

Address : _____

Telephone : _____

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or
Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 2

Working Background and Status of Tenderer

5. Information required under **Paragraph 17.2** of the **Terms of Tender**:

- * (a) I/We confirm that none of the events as mentioned in **Paragraphs 17.1(a)** to **17.1(f)** of the Terms of Tender has ever occurred.

- * (b) I/We confirm that the following event(s) as mentioned in **Paragraphs 17.1(a)** to **17.1(f)** of the **Terms of Tender** has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

6. Employee’s Compensation Insurance Policy
(No.)

which expires on

Name of Insurance Company

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or
Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3**Business Plan**

Each Tenderer should provide the following information for consideration:

- (a) Details of vision and core value of the business including quality food, excellent customer service, integrity of service (to be illustrated and supported by statements, plans and drawings where appropriate) which can be fully compatible with the image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall.
- (b) Details of décor design including the design concept and layout plans for dining areas, kitchen/food serving areas, shop front, reception and restrooms, which aim to foster the image of the Venue as a cultural facility.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Business Plan

(c) Details of hospitality facilities including dining table layout and tableware for the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar.

(d) Details of staff deployment and management including staff recruitment, staffing structure, training/re-training on customer services, and retention strategies.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 4

Menus, Service Packages, Marketing and Customer Service Plan

Each Tenderer shall provide the following information on proposed menus and service packages. The proposed menus and service packages shall aim to blend with the image of the Venue as a cultural facility. Each Tenderer shall also demonstrate how its promotional strategy will be compatible to the Venue's status as the premier cultural venue in Hong Kong:

- (a) Details of the branding concept of a Tenderer's own branding including an overview of marketing and communication methods to create a unique brand identity and clientele philosophy including the identification of target customer segment and formulation of various strategies to reach the target group.
- (b) Details in support of the promotion of the programmes of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall (e.g. displaying posters and pamphlets provided by the Venue at the prominent locations of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar, free Internet access, charging of mobile devices available for patrons, etc.).

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____
 Name of Authorised Representative : _____
 Signature of Tenderer Or
 Authorised Representative* : _____
 (with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 4**Menus, Service Packages, Marketing and Customer Service Plan**

- (c) Details of the marketing and customer services initiatives (e.g. advertising strategies, seasonal promotion programme, customer outreaching programmes, etc.) for promoting image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall.
- (d) Details of the marketing strategies to promote revenue and encourage repeated visits of the customers (e.g. membership discount programme, etc.).
- (e) A list of the signature cuisines, regular and special festive menus including the food, drinks and beverages and their key elements which help attract customers.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____
Name of Authorised Representative : _____
Signature of Tenderer Or
Authorised Representative* : _____
(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 4**Menus, Service Packages, Marketing and Customer Service Plan**

- (f) Details of the proposed service packages for the corporate events (e.g. a reception, a celebration feast, a boardroom luncheon, a conference refreshment, a farewell party, a company function, etc.).

(Note: If there is not enough space, please make photocopy of this sheet.)

Remarks: The proposed list of menu items and services for each Catering Outlet, once accepted and approved by the Government Representative, shall become the Foods/Services allowed for supply and sale at that Licence Area for which the Contractor shall seek the Government Representative's prior approval on any subsequent deletion of items. The Contractor shall only sell the food and beverages consistent with the style of Catering Outlet, viz. Chinese food in the Chinese restaurant, Western or Asian style food in the International (non-Chinese) Restaurant. Apart from the proposed list of Foods/Services, the Contractor will be allowed, according to market demand, to introduce extra items of food or services on a voluntary basis which will not be subject to the same restriction imposed on the Foods/Services.

Name of Tenderer : _____ Date : _____
 Name of Authorised Representative : _____
 Signature of Tenderer Or
 Authorised Representative* : _____
 (with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 5

Hygiene Maintenance Plan

Each Tenderer shall provide the following information:

(a) Guidelines and standards to kitchen staff on cleansing and food hygiene including food handling, food safety and kitchen hygiene.

(b) Guidelines and standards to dining area staff on cleansing and hygiene including seating area hygiene and restroom hygiene.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 5

Hygiene Maintenance Plan

(c) Details of the monitoring system to ensure the staff's compliance with the proposed guidelines and standards.

(d) Details of training/refresher programmes for staff on hygiene maintenance.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 6

Waste Management Plan

Each Tenderer shall provide the following information:

(a) Guidelines and standards to kitchen staff on waste management to prevent pollution from greasy fume, wastewater and waste.

(b) Guidelines and standards to dining area staff on waste management to prevent pollution from waste.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 6

Waste Management Plan

(c) Details of the monitoring system to ensure the staff's compliance with the proposed guidelines and standards.

(d) Details of training/refresher programmes for staff on waste management.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 7

Innovative Suggestions that can Bring Positive Values/Benefits to the Society

Each Tenderer shall state the proposed innovative suggestions and explain clearly what positive values/benefits their proposed innovative suggestions can bring about in its submission to facilitate tender evaluation, including, inter alia, the following:

- (a) Technological development –
Application of new technology or innovative application of existing technology for promoting arts appreciation and contributing to the development of Smart City.

- (b) Social well-being –
Fostering a caring society.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 7

Innovative Suggestions that can Bring Positive Values/Benefits to the Society

- (c) Environmental protection –
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling on top of the green measures relating to disposable tableware as stated in the tender document (e.g. to introduce new green measures, etc.).
- (d) Local arts development –
Offering special packages or initiating joint collaborations with arts organisations and explore or enrich experience of new visitors (e.g. complimentary food/beverages for patrons of the Venue/members of arts organisations, etc.) which shall be commensurate with the image and functions of the Venue as defined in the **Annex A** – the General Information on the Hong Kong City Hall, to promote arts and culture in the society.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____
 Name of Authorised Representative : _____
 Signature of Tenderer Or
 Authorised Representative* : _____
 (with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 8

Years of Experience in Operating Catering Outlet(s)

Each Tenderer shall submit the following information for evaluation according to the marking scheme in **Note 8 in Contract Schedule 1**. **Please refer to Note 8 in Contract Schedule 1 to ensure compliance with the requirements therein.**

Tenderers' Previous Experience in Relevant Business

Each Tenderer shall state its experience in running catering outlet(s) and the number of currently operated catering outlet(s) each with a seating capacity of not less than two hundred and fifty (250) persons anytime within the past ten (10) years, immediately preceding the original Tender Closing Date. Each Tenderer shall provide documentary proof evidence including but not limited to a copy of agreement, Business Registration Certificates, trading and profit and loss account of the catering business, layout/seating plans of the catering outlet(s) approved by Food and Environmental Hygiene Department to substantiate claim of relevant experience and seating capacity. Experience not substantiated will not be taken into account.

Name of catering outlet(s)	Location	Total area (sq.m) & seating capacity	Date of holding and duration	Food/service categories
	<i>Total no. of outlets</i>			<i>Total no. of years</i>

(If there is not enough space, please make photocopy of this sheet.)

(a) Proposed trade name(s) for the Licence Area. Please provide evidence of your full power, authority and legal right to carry out the business under the proposed trade name(s):

(b) Provide other pertinent information relating to the Tenderer's relevant experience which may assist the Government Representative in assessing the tender:

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 9

Experience and Qualifications of the Senior Manager

Each Tenderer shall nominate Senior Manager(s) who shall be the single on-site manager-in-charge operating the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar under the Contract. Each nominated Senior Manager shall possess working experience and qualifications meeting the following two requirements –

- (a) have an aggregate of not less than five (5) years' full-time working experience at management or supervisory level in catering, hotel management and/or marketing in the past ten (10)-year period immediately preceding the original Tender Closing Date; and
- (b) possess a post-secondary qualification in catering, hotel management and/or marketing or equivalent issued by a registered post-secondary institution.

Please refer to Note 9 in Contract Schedule 1 to ensure compliance with the requirements therein.

Years of relevant experience and qualifications of the nominated Senior Manager(s):

Name of the nominated Senior Manager(s)	Qualifications with documentary proof of employment history	Name and seating capacity of restaurant for past employment	Years of relevant experience

A Tenderer shall submit the relevant information and documentary evidence (e.g. a copy of employment contract/referee's letter/certificate) to substantiate its claim of the working experience or qualification.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 11**Monthly Licence Fee**

(Note: This Contract Schedule should be sealed in “The Price Submission” envelope)

In the event that I/We are awarded the Contract, I/We shall pay the Monthly Licence Fee pursuant to **Clause 6** of the **Conditions of Contract** in consideration of the grant of the right to operate the Business at the Licence Area. For this purpose, I/we propose below the Percentage of the Monthly Gross Receipts and the Monthly Guaranteed Amount:-

Period	Percentage of the Monthly Gross Receipts	Monthly Guaranteed Amount
		In Figure (HK\$)
For the Contract Period of seven (7) years starting from 1 st month to 84 th month, including the Free Decoration Period as stipulated in Clause 2.1 of Conditions of Contract but subject to any sooner termination or extension under any applicable provision of the Contract	_____ Percent (%) of Monthly Gross Receipts	HK\$ _____ only per calendar month in respect of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar which amount is to be further broken down with reference to each Catering Outlet as follows: Chinese Restaurant: HK\$ _____ International (non-Chinese) Restaurant: HK\$ _____ Foyer Bar: HK\$ _____

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 11

Monthly Licence Fee

(Note: This Contract Schedule should be sealed in “The Price Submission” envelope)

In accordance with Paragraph 8.1 of Terms of Tender, Tenderers are required to provide projected statement profit and loss and comprehensive income and statement of cash flows of the contract for each contract year and the pre-opening period (if applicable) and if possible, those of the company during the Contract Period setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the source of finance and other particulars showing how the Tenderers will deal with the Contract.

(Note: If there is not enough space, please make photocopy of this sheet.)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer Or

Authorised Representative* : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 13

Licence Area of the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar

1. Gross Floor Area and Location

A gross floor area of about 1 624 square metres for operating the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar as delineated and shown shaped red in **Annexes C, D and E** comprising:

- Chinese Restaurant with a kitchen together a gross floor area of about 1 350 square metres
- International (non-Chinese) Restaurant of a gross floor area of about 198 square metres
- Foyer Bar of a gross floor area of about 76 square metres

2. Rooms to Which the Contractor is Given Access

Seven (7) store/staff changing rooms/offices of a gross floor area of about 143 square metres are provided for the Licence Area as delineated and shown shaped red in **Annex F**.

3. Toilet Provision at Licence Area

Common toilet facilities shall be provided for the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar at the City Hall Low Block under the Government Representative's management as follows :

Male Toilets : 18 urinals, 10 cubicles and 13 wash basins (Low Block)

Female Toilets : 31 cubicles and 16 wash basins (Low Block)

4. Provisions Given by the Government

Provisions given by the Government for the Licence Area are shown on **Contract Schedules 14 and 15**.

(Note: The attached plans are approximates and for the purpose of identification and general reference only. The figures as to the respective areas of the Licence Area referred to in this Schedule are approximates and subject to final measurement. The layout of the Licence Area in the attached plans are also approximates and subject to final adjustment as may be shown in the final as-built plan(s) of the Licence Area. The Contractor is allowed to conduct Business for provision of other services at such other areas as the Government Representative at its absolute discretion may at any time and from time to time set aside.)

CONTRACT SCHEDULE 14

Technical Schedule

1. Core Clients of the Catering Outlets at the Hong Kong City Hall

The core clients of the catering outlets at the Hong Kong City Hall range from performance patrons of various ages and styles, overseas and local performers, production crew, sponsors and VIP guests, ancillary facilities users, marriage registry and library users, tourists, guests and casual visitors as well as office staff. The operation of the Licence Area by the Contractor aims to deliver efficient, adequate, balanced and quality catering services.

2. Chinese Restaurant

With a gross floor area of about 1 350 square metres on 2/F of the City Hall Low Block, the Chinese Restaurant offers a dining area of about 600 seats with a harbour view. This outlet provides the only kitchen for the Licence Area. The Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar have to share the kitchen facilities. Sound isolation shall be provided by the Contractor at the Chinese Restaurant to minimise the disturbance of the noise level to the activities held at the Concert Hall. Chinese provincial cuisine such as Cantonese, Shanghai, Beijing, Chiuchow, Hunan and etc. could be considered for this restaurant. The Chinese Restaurant should be open seven days a week. The daily operating hours should not be fewer than those as listed in **Contract Schedule 16**.

3. International (non-Chinese) Restaurant

With a gross floor area of about 198 square metres on 1/F of the City Hall Low Block, part of the International (non-Chinese) Restaurant offers a pleasant view facing the Memorial Garden. This outlet shares the same kitchen with the Chinese Restaurant and Foyer Bar. To ensure provision of a variety of culinary options, international cuisine such as French, Italian, Japanese, Oriental Thai or a fusion of different cuisines could be considered for this restaurant. The International (non-Chinese) Restaurant should be open seven days a week. The daily operating hours shall not be fewer than those as listed in **Contract Schedule 16**.

4. Foyer Bar

Located at the main foyer of the City Hall Low Block, the Foyer Bar has a gross floor area of about 76 square metres. This outlet shares the same kitchen with the Chinese Restaurant and International (non-Chinese) Restaurant. Besides alcoholic and non-alcoholic drinks, it should also serve meals which require no complicated kitchen facilities to supplement the International (non-Chinese) Restaurant and to provide hot fast meals including international and local dishes and other food, drink and beverage items in sufficient variety as well as take-away services to Venue patrons who have limited time before performances and the public such as office workers, casual visitors and tourists. Sound isolation should be provided by the Contractor at the Foyer Bar to minimise the disturbance of the noise level to the activities held at the Foyer. The Foyer Bar should be open seven days a week. The daily operating hours shall not be fewer than those as listed in **Contract Schedule 16**.

CONTRACT SCHEDULE 14

Technical Schedule

5. Other Provisions

5.1 Passenger Lift and Dumbwaiters

In the Licence Area, there is one dumb waiter serving between the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar levels. There is one passenger lift for transportation of patrons between the Foyer and upper levels at City Hall Low Block.

5.2 Service Lift

A service lift is provided for the Chinese Restaurant to transport materials from the ground level to the kitchen area at 2/F of the City Hall Low Block.

6. Electricity Supply

6.1 (i) One (1) 200 Amp, four (4) 63 Amp and one (1) 60 Amp three-phase power supply for the Chinese Restaurant will be made available in the switch room. The Contractor will be responsible for the subsequent wiring from the switch room to the desired locations within the Chinese Restaurant. The consumption of electricity via these power supplies will be separately measured by Government Meter(s) (as defined in **Clause 19.2** of the **Conditions of Contract**).

(ii) One (1) 63 Amp three-phase power supply for the International (non-Chinese) Restaurant will be made available in the switch room. The Contractor will be responsible for the subsequent wiring from the switch room to the desired locations within the International (non-Chinese) Restaurant. The consumption of electricity via this power supply will be separately measured by Government Meter(s) (as defined in **Clause 19.2** of the **Conditions of Contract**).

(iii) Two (2) 63 Amp three-phase power supply for Foyer Bar will be made available in the switch room. The Contractor will be responsible for the subsequent wiring from the switch room to the desired locations of the Foyer Bar. The consumption of electricity via these power supplies will be separately measured by Government Meter(s) (as defined in **Clause 19.2** of the **Conditions of Contract**)

6.2 The Contractor must engage Registered Electrical Contractor (REC)/Registered Electrical Worker (REW) to conduct electrical work and shall be responsible for all the costs involved. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to the Government Representative for retention. All alteration works must be removed and all original provisions restored at the end of the Contract Period or sooner termination of the Contract.

6.3 The Licence Area must be lit in such a way that other building users will not be adversely affected by any glare or reflection.

CONTRACT SCHEDULE 14

Technical Schedule

- 6.4 The Contractor must take down all electrical alteration works and reinstate the original electrical works and light fittings provided by the Government Representative at the Licence Area at the end of the Contract Period or sooner termination of the Contract.
- 6.5 The Contractor shall conduct periodic inspection, testing and certification on his electrical installations once every five (5) years, including the first (1st) year of the Contract, in accordance with Electricity (Wiring) Regulation (Cap. 406E). A copy of the endorsed Periodic Test Certificate (WR2) attached with schematics and test reports should be submitted to the Government Representative for retention.
- 6.6 All the electrical installation works to be carried out by the Contractor shall comply with the Building Energy Efficiency Ordinance (Cap. 610).
- 6.7 The Contractor shall comply a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within two (2) months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

7. Water Supply

- 7.1 The Contractor shall be responsible for making application to the Water Supplies Department and the Government Representative for the installation of its own meter and the cost thereof for the fresh water supply (including sewage charges) to the Licence Area. Any alteration work for operational needs shall be approved by the Water Authority with the prior permission of the Government Representative.
- 7.2 The Contractor shall pay and discharge all deposits and charges in respect of water (including sewage charges) consumed by the Contractor on or in the Licence Area, charges for sewage services and all costs of installation of all meters in connection therewith.

8. Drainage

- 8.1 Floor drain and grease traps are provided in the kitchen area of the Licence Area. The Contractor is responsible for submission to the Licensing Section of the Food and Environmental Hygiene Department for approval of any alteration works to the existing installations that he intends to suit the layout of food preparation area of the Licence Area. All alteration works including but not limited to raised flooring and surface channel shall be removed and all original provisions restored at the end of the Contract Period or sooner termination of the Contract.

CONTRACT SCHEDULE 14

Technical Schedule

- 8.2 The Contractor shall keep and maintain at all the times at the expense of the Contractor the drainage system, including all grease traps, drain pipes and manholes, etc. located within i) the Licence Area and/or ii) outside Licence Area but solely serving the Licence Area. The Contractor shall carry out cleansing and clearing of all grease traps in relation to/connected to the Licence Area for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes in relation to the Licence Area for which the Contractor is liable at frequent intervals to the Government's reasonable satisfaction to prevent choking and blockage of the installations and to ensure that all water and liquid discharged from the Licence Area are free of grease. For reducing the likelihood of recurrent choking and blockage of the installations, the Contractor shall arrange at the expense of the Contractor professional pipe cleaning at least on half-yearly basis or at a frequency as prescribed by the Government at any time and from time to time for clearing clog in the course of the Business. Where the Government reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government undertake at its own expense either an emulsifying or a neutralising effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government Representative.
- 8.3 The Contractor shall pay the Government on demand the cost incurred by the Government Representative in cleansing and clearing any of the drains, sewers and grease traps choked or blocked due to the act, default or negligence of the Contractor of any of its servants, agents, invitees, licensees or customers.

9. Air-conditioning and Kitchen Exhaust System

- 9.1 The Contractor shall:
- (a) provide the distribution of air ducts to obtain air-conditioning from the existing air ducts which are terminated at these outlets;
 - (b) connect the ventilation system in the kitchen area inside the Chinese Restaurant to the make-up air duct and exhaust air duct, which are terminated at the kitchen area;
 - (c) install additional air handling units, fan-coil units, or other air-conditioning equipment for provision of sufficient air-conditioning supply, if required, subject to the prior approval from the Government Representative. All condenser units must be located at a high level at the flat roof or other suitable locations as might be prescribed by the Government Representative;

CONTRACT SCHEDULE 14

Technical Schedule

- (d) avoid the air-conditioning fittings causing nuisance, including but not limited to noise, that will affect the activities of the hiring facilities of the Venue. The Government Representative is entitled to request the Contractor for prompt improvement;
 - (e) install a sufficient number of water scrubbers for the exhaust system of the Licence Area;
 - (f) take down all air-conditioning and kitchen exhaust system alternation works provided by the Government Representative at the Licence Area and reinstate the original works to the satisfaction of the Government Representative at the end of the Contract Period or sooner termination of the Contract; and
 - (g) read this Clause in conjunction with **Clause 17 of Conditions of Contract.**
- 9.2 The Government Representative shall in no event whatsoever be held responsible for any failure or interruption of air-conditioning service from any cause whatsoever or for any damage or loss (direct or indirect) whatsoever caused thereby.
- 9.3 All the air-conditioning installation works to be carried out by the Contractor shall comply with the Building Energy Efficiency Ordinance (Cap. 610).
- 9.4 The Contractor shall employ a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within two (2) months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

10. Fire Services Installations

If addition and alteration works to the existing fire services installations is required, the Contractor shall be responsible for such works and the new installations must be fed from the existing system in the Licence Area to the satisfaction of the Government Representative and comply with any directions issued by the Government Representative or the Fire Services Department.

11. Signage

All signage shall not be erected without prior approval from the Government Representative. Any electrical works required for installation of the signage shall be carried out by Registered Electrical Contractor (REC). No moving signs or flashing lights will be permitted.

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Technical Schedule

12. Toilet Provision

No alteration on the number of sanitary fittings for the Licence Area as stipulated in **Clause 3** of the **Contract Schedules 13** is allowed. Any interior refurbishment works inside the lavatory of the Licence Area should not be undertaken unless prior approval is given by the Government Representative.

13. Fitting Out Methods

- 13.1 In conducting fitting-out works, the Contractor shall maintain the work place in a clean, safe and decent condition to the satisfaction of the Government Representative. The fitting-out works must be carried out in such a way that the public and other users of the Venue are protected from excessive risks, noise and dirt.
- 13.2 The works area is to be completely sealed off by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 13.3 Before any welding work is carried out, the Government Representative must be informed. Precautionary measures must be applied to the smoke detectors to prevent activating the Fire Alarm System unnecessarily.
- 13.4 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative. Prior approval by Government Representative is required for the designated material and debris storage area.
- 13.5 The Contractor shall, at its own cost, pay all required cost for the fitting-out works.
- 13.6 The fitting-out works should comply with the updated Barrier Free Access Design Manual.

14. Working Hours for Fitting Out

- 14.1 The noise level of all fitting-out works shall not affect the activities held in the Foyer and hiring facilities of the Venue. The regulations issued by the Director of Environmental Protection shall be followed.
- 14.2 Fitting-out works which will cause nuisance, including but not limited to noise and smell, to the Venue users should only be carried out at a mutually acceptable time. The Contractor is responsible to apply for permission from the Director of Environmental Protection if special arrangement is deemed necessary.
- 14.3 The opening hours of the City Hall Low Block are 9:00 a.m. to 11:00 p.m. and those of the City Hall High Block are 8:30 a.m. to 10:00 p.m. The major facilities hirers generally will book during the sessions of 9:00 a.m. to 1:00 p.m., 2:00 p.m. to 6:00 p.m. and 7:00 p.m. to 11:00 p.m.

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- 14.4 The Government Representative shall reserve its right to halt any fitting-out works undertaken by the Contractor at any time during the period of the fitting-out works if such works are deemed to have impaired or interrupted the operation or use of the Venue or the activities of the users of the Venue.
- 14.5 During the period of the fitting-out works, the Contractor shall only permit those Registered Workers with valid safety training certificates as defined and required under the Factories and Industrial Undertaking Ordinance (Cap. 59) and under the Construction Workers Registration Ordinance (Cap. 583) to carry out the works. The Contractor shall keep a registrar of daily attendance of all the workmen working on site for periodic inspection by the Government Representative.

15. General

- 15.1 The Contractor shall design, submit for approval and implement the plan for obtaining a valid Licence from the Food and Environmental Hygiene Department or other licensing authorities as appropriate. All building works shall comply with the relevant statutory requirements. The Contractor should appoint and seek professional services from a competent person such as an Authorised Person (AP) and/or Registered Structural Engineer (RSE) to implement the construction works in the Licence area which shall fully comply with the Buildings Ordinance /Regulations and other relevant statutory requirements as well as the latest licensing requirements. The AP/RSE shall assess the structural feasibility and ensure their installation is structurally sound, and bear the full responsibility of his/her design, planning and supervision of the construction works to be carried out without any irregularities, in the aspects of statutory requirements, materials, design and workmanship, etc. No part of the works may have any adverse effect, structurally or in any other ways, on the existing building.
- 15.2 The Contractor should undertake to implement all necessary improvement works in the Licence Area and those do not comply with the Buildings Ordinance/Regulations and other relevant statutory requirements as well as the latest licensing requirements, at his own cost.
- 15.3 The Contractor's AP/RSE should advise on any improvement works necessary for the area(s) outside the Licence Area to meet the latest licensing requirements.
- 15.4 No claims should be allowed where the improvement works is necessary in either the Licence Area or outside the Licence Area, to comply with the Building Ordinance/Regulations and other relevant statutory requirements as well as the latest licensing requirements.

CONTRACT SCHEDULE 14**Technical Schedule**

- 15.5 The repair and maintenance of all the internal building elements, fixtures and fittings, including but not limited to plumbing and drainage pipe works, inside the Licence Area except the structure of the building should be undertaken by the Contractor. The Contractor shall at all reasonable times with or without prior notice allow the Government Representative and/or its agent and/or contractor to gain access for inspection and/or maintenance of the Licence Area or its adjoining area.
- 15.6 The Contractor shall at any time exercise due cares for the fitting-out works which may result in any damage/loss of properties/injury to persons. The Contractor shall indemnify the Government Representative for any such claim from damage/loss of properties/injury to persons.
- 15.7 Demolition and alternation of structural elements of the Licence Area are not allowed except with prior approval and consent from the Building Authority as well as the Government Representative.
- 15.8 The Contractor shall appoint adequate competent Safety Officers/Supervisors/representatives to ensure site safety for compliance with relevant statutory requirements.
- 15.9 No building structure and other elements/facilities under our maintenance purview may be damaged or affected. No work by the Contractor shall obstruct the future operation and maintenance of the existing building elements. The Contractor shall take down, re-site, remove or reinstate their renovated fixtures/services/installations, when so required by the Government Representative, at his own cost and any affected areas shall be made good to match the existing and to the satisfaction of the Government Representative.
- 15.10 All building elements or affected areas shall be made good after completion of their works and shall be reinstated to match with existing to the satisfaction of the Government Representative after expiry of the Contract Period.
- 15.11 All mechanical, electrical, fire services, specialised feature and equipment aspects should seek the comments of the maintenance agents of the Government Representative.

CONTRACT SCHEDULE 15**Government's Provisions Made Available to the Contractor**

Item	Description	Quantity
(1)	<u>Chinese Restaurant</u>	
	200 Amp 3-phase power supply	1
	63 Amp 3-phase power supply	4
	60 Amp 3-phase power supply	1
	Air Handling Unit (AHU) with cooling capacity of 388.78kW and supply air flow rate of 66 600m ³ /h for the dining area	1
	Fresh Air Intake Fan of air flow rate of 18 000 m ³ /h for the dining area	1
(2)	<u>International (non-Chinese) Restaurant</u>	
	63 Amp 3-phase power supply	1
(3)	<u>Foyer Bar</u>	
	63 Amp 3-phase power supply	2
(4)	Service lift of capacity of 1 135 kg for the kitchen area	1
(5)	Dumb-waiter of capacity of 90 kg for the kitchen area	1

CONTRACT SCHEDULE 16**Opening Hours of Licence Area**

<u>Outlets</u>	<u>Daily Minimum Opening Hours</u>	
Chinese Restaurant	Mondays to Saturdays	11:30 a.m. to 3:00 p.m. and 5:00 p.m. to 11:30 p.m.
	Sundays and Public Holidays	9:00 a.m. to 3:00 p.m. and 5:00 p.m. to 11:30 p.m.
International (non-Chinese) Restaurant		11:30 a.m. to 3:00 p.m. and 5:30 p.m. to 10:00 p.m.
Foyer Bar		11:30 a.m. to 10:00 p.m.

FORM OF SECURITY DEPOSIT ELECTION

(put in the Technical Submission envelope)

Tenderers are advised to read carefully the Tender Documents before completing this Form of Security Deposit Election.

To: The Chairman
Central Tender Board

I/we elect, to deposit with the Government the Security Deposit according to **Paragraph 23** of the Terms of Tender:-

- * (a) In cash, or
- * (b) By a Banker's Guarantee in the form at the **Appendix** hereto and as approved by the Government Representative and issued by a bank with a bank licensed under Section 16 of the Banking Ordinance (Cap. 155).

** Delete as appropriate. In the event that the Tenderer fails to elect which method of providing the Security Deposit, it will be assumed that the Tenderer will deposit cash with the Government.*

Name of Tenderer : _____ Date : _____
 Name of Authorised Representative : _____
 Signature of Tenderer Or
 Authorised Representative* : _____
 (with firm/company chop)

** Delete as appropriate*

FORM OF BANK GUARANTEE
FOR THE PERFORMANCE OF A CONTRACT

THIS GUARANTEE is made on the.....day of.....20.....
BY.....
of....., a bank with a valid banking licence within the meaning of the
Banking Ordinance, Cap. 155 of the Laws of Hong Kong (“Guarantor”)

IN FAVOUR OF

ASSISTANT DIRECTOR OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose
office is situated at the Leisure and Cultural Services Headquarters, 1 - 3 Pai Tau Street, Sha Tin
acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (“Government”)

WHEREAS

- (A) By a contract (“Contract”) to be made
between.....
of..... (“Contractor”) of
the one part and the Government of the Hong Kong Special Administrative Region of
the People’s Republic of China of the other part (designated as Leisure and Cultural
Services Department Contract No. LC/CS/T/GR/PVM/HKCH/2022/01), the
Contractor agrees and undertakes to operate a Chinese Restaurant, International
(non-Chinese) Restaurant and Foyer Bar at the Hong Kong City Hall upon the terms
and conditions of the Contract.
- (B) It is a condition precedent to the Government agreeing to grant the Contract that, inter
alia, the Contractor shall pay to the Government the Contract Deposit. The
Guarantor executes this Guarantee in favour of the Government.

THIS GUARANTEE EXECUTED AS A DEED WITNESSES as follows:

- (1) Where applicable, words and expressions used in this Guarantee (including the
recitals) shall have the meaning assigned to them in the Contract. All rights and
powers of the Government under this Guarantee may be exercised by the Government
Representative.
- (2) In consideration of the Government agreeing to enter into the Contract with the
Contractor:
- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary
obligor and not as a surety, and as a continuing security, the due and punctual
performance and observance by the Contractor of all of its obligations under the
Contract and the Guarantor shall pay to the Government on demand and
without cavil or argument all monies and liabilities which are now or at any
time hereafter shall become due or owing by the Contractor to or in favour of
the Government or the Government Representative under or in connection with

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the Contract together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government or the Government Representative by reason or in consequence of any default on the part of the Contractor in performing or observing any of its obligations under the Contract, regardless of any dispute between the Government or the Government Representative and the Contractor.

- (b) The Guarantor, as a principal obligor and not as a surety, and as a separate, independent and continuing obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified each of the Government and the Government Representative from and against and shall pay to the Government Representative on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government or the Government Representative arising from or in connection with the failure of the Contractor to perform or observe fully or punctually any of its obligations under the Contract.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as “the Contractor” or where the Contractor is a partnership, or any change in the partners or in its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Contractor and the Government or the Government Representative or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government or the Government Representative to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to clause (4) above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way, and the Guarantor hereby waives notice of or assent to:
- (a) any suspension of, termination, amendment, variation, novation or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government or the Government Representative, in whole or in part, in respect of the Contractor’s obligations under the Contract;
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with,

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exchange, waiver or renewal in respect of any right of action or remedy that the Government or the Government Representative may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government or the Government Representative in enforcing any right, power, privilege to or remedy available to the Government or the Government Representative in relation to the obligations of the Contractor set out in the Contract;

- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment, novation or sub-contracting has been consented to; and
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations by the Government or the Government Representative.
- (6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling two (2) months after the expiry or early termination of the Contract Period; or
 - (b) upon early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract or there is any outstanding right or claim of the Government or the Government Representative, the date on which all such obligations and liabilities, right and claim have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing which confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

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- whichever is the applicable.
- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government or the Government Representative may at any time hold (collectively “Other Security”) and this Guarantee may be enforced by the Government or the Government Representative without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government or the Government Representative specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, at the Leisure and Cultural Services Department of 9/F., 1 - 3 Pai Tau Street, LCS Headquarters, Shatin, New Territories, marked for the attention of the Director of Leisure and Cultural Services, facsimile number (+852) 2684 9634;
- (b) upon the Guarantor, at, marked for the attention of, facsimile number
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or facsimile addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed HK\$.....(Hong Kong Dollars.....Only.)

FORM OF BANK GUARANTEE
FOR THE PERFORMANCE OF A CONTRACT

IN WITNESS whereof the Guarantor has caused its [Common Seal/
Seal*] to be hereunto affixed the day and year first above written.

The [Common Seal/Seal*] of the said)
Guarantor was hereunto affixed)
and signed)
by)
.....)

[Name and Title])
duly authorised by its board of directors:) _____

In the presence of:
Signature of witness:

Name of witness: _____
Title of witness: _____

@ Signed Sealed and Delivered for and on)
behalf of and as lawful attorney of the)
Guarantor under power of attorney)
dated and deed of)
delegation dated)
by)
)
[Name and Title])

In the presence of:
Signature of witness:

Name of witness: _____
Title of witness: _____

* *Delete as appropriate.*

@ See Powers of Attorney Ordinance, Cap. 31

Note: When bank guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.

NON-COLLUSIVE TENDERING CERTIFICATE

(To be completed and returned together with the tender submission)

To: the Government

Dear Sir/Madam,

Non-collusive Tendering Certificate

1. I/We, (name of the Tenderer) _____ of
(address(es) of the Tenderer(s)) _____

refer to the Government's invitation to tender for the grant of a Licence to operate the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar at the Licence Area at the Hong Kong City Hall ("Invitation to Tender") and my/our Tender in response to the Invitation to Tender (Tender Ref.: LC/CS/T/GR/PVM/HKCH/2022/01).

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Tender:
- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

NON-COLLUSIVE TENDERING CERTIFICATE

(To be completed and returned together with the tender submission)

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the Government;
 - (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
 - (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
 - (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
 - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
 - (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
 - (g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in **Paragraph 38.1** of the **Terms of Tender**, the Government may exercise any of the rights under **Paragraphs 38.3 to 38.5** of the **Terms of Tender** in addition to and without prejudice to any other rights or remedies available to it against me/us.

NON-COLLUSIVE TENDERING CERTIFICATE

(To be completed and returned together with the tender submission)

6. Under the Competition Ordinance (Cap. 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Signed by the Tenderer/
Signed by an authorised signatory :
for and on behalf of the Tenderer _____

Name of the authorised signatory :
(where applicable) _____

Title of the authorised signatory :
(where applicable) _____

Date : _____

MEMORANDUM OF CONTRACT**Sample Memorandum of Contract to be signed**

THIS MEMORANDUM OF CONTRACT is made the _____ day of _____ 2022 BETWEEN THE ASSISTANT DIRECTOR (PERFORMING ARTS) OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1 - 3 Pai Tau Street, Sha Tin, New Territories acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (hereinafter referred to as "Government") of the one part,

AND

_____ (hereinafter referred to as "Contractor") of the other part.

WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LC/CS/T/GR/PVM/HKCH/2022/01), the Government has invited tenders for the grant of a Licence to operate the Chinese Restaurant, International (non-Chinese) Restaurant and Foyer Bar at the Licence Area at the Low Block of Hong Kong City Hall.
- (B) The Contractor's tender was accepted in principle by the Government by the issuance of the Conditional Acceptance of Tender to the Contractor pursuant to **Paragraph 13.1** of the **Terms of Tender**.
- (C) The Contractor has fulfilled all conditions specified in **Paragraph 13.2** of the **Terms of Tender** and the Conditional Acceptance of Tender.
- (D) Pursuant to **Paragraph 13.3** of the **Terms of Tender**, the parties hereto enter into this **Memorandum of Contract**.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
- 2. The Contract between the Government and the Contractor is hereby constituted and shall comprise the following documents:
 - (i) This Memorandum of Contract
 - (ii) Tender Form
 - (iii) Interpretation
 - (iv) Terms of Tender
 - (v) Conditions of Contract

MEMORANDUM OF CONTRACT

- (vi) First, Thirteenth to Sixteenth Contract Schedules (in their original form as found in the Tender Documents)
- (vii) Second to Twelfth Contract Schedules (in the form as submitted by the Contractor as part of its offer subject to any modifications as the parties may agree or as the Government may stipulate in exercise of its powers under the Tender Documents)
- (viii) Form of Security Deposit Election
- (ix) Non-collusive Tendering Certificate
- (x) Annexes A to G

3. The commencement date of the Contract Period shall be: _____.

4. For the purposes of **Clause 51** of the **Conditions of Contract**, the address and facsimile number of the Contractor are as follows:

Name of the Contractor: _____
 Address: _____
 Facsimile Number: _____
 Attention (Post Title): _____

IN WITNESS whereof the parties hereto have entered into this **Memorandum of Contract** on the day and year first above written.

SIGNED BY CONTRACTOR/THE)
 AUTHORISED REPRESENTATIVE for and)
 on behalf of THE CONTRACTOR) _____

Name of the Contractor/Authorised Representative: _____
 (Name)

Title of the Contractor/Authorised Representative: _____

In the presence of:
 Name of witness: _____

Title of witness:

ANNEXES

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ANNEXES

Annex A

General Information on the Hong Kong City Hall

1. Introduction

- 1.1 The Hong Kong City Hall was announced by the Antiquities Authority as declared monument under the Antiquities and Monuments Ordinance on 20 May 2022. It is situated at 5 Edinburgh Place, Central, Hong Kong. It is a multi-purpose cultural complex built to enhance the quality of life amongst the Hong Kong community. Located at the heart of Central District, it is synonymous with the development of culture and arts in Hong Kong. Recognised as one of the Hong Kong's most prominent centers of culture and arts, it is comprised of two separate blocks with a connecting Memorial Garden in the centre. The Low Block houses a 1 430-seat Concert Hall, a 463-seat Theatre, a 590 m² Exhibition Hall, an Arts Shop, a **Chinese Restaurant**, a **International (non-Chinese) Restaurant** and a **Foyer Bar**. The 12-storey High Block contains a 260 m² Exhibition Gallery, a 111-seat Recital Hall, two 40-seat Committee Rooms, a 7-level Public Library, a Marriage Registry and a Fast Food Restaurant.
- 1.2 Currently, the range of cultural activities at the Hong Kong City Hall includes concerts, theatrical, Cantonese opera/operatic songs, dance, variety shows performances and film shows; lectures of various kinds; exhibitions on calligraphy, photography, sculpture, printing, ceramics displays. In 2021/2022, a total of 382 functions were staged attracting patronage of over 187 000 at the Concert Hall and Theatre. The figures exclude a great amount of visitors of other venue facilities such as Exhibition Hall, Exhibition Gallery, Recital Hall, Committee Rooms, Public Library, Marriage Registry, etc. and the general public. More details on the Hong Kong City Hall are available at www.cityhall.gov.hk.
- 1.3 A location map of the Hong Kong City Hall is at **Annex B**.

2. Catering Service at the Hong Kong City Hall

- 2.1 Catering service is an important service area at the Hong Kong City Hall. A wide range of services is required to satisfy the needs of core clients including performance patrons of various ages and styles, overseas and local performers, production crew, sponsors and VIP guests, ancillary facilities users, marriage registry and library users, tourists, casual visitors as well as office staff.
- 2.2 The style and quality of services of the catering outlets should be commensurate with the services, image, functions and activities of the Hong Kong City Hall.
- 2.3 The Contractor shall also provide reception services including but not limited to provision of pre-performance reception, interval drinks for hirers of the Venue as well as special service arrangements including but not limited to provision of

ANNEXES

Annex A

General Information on the Hong Kong City Hall

speedy set menus for audience before and after performances and during intermission.

- 2.4 For the delivery of co-ordinated, efficient, adequate, balanced and quality catering service for the wide range of Venue users and the general public; for practical operation of the Business with sufficient stocking of food, drinks and beverages; and in view of the technical and physical limitation that only one kitchen is available at the Chinese Restaurant which has to be shared with other catering outlets at Low Block of Hong Kong City Hall, the licence will be granted to one Contractor who shall operate the catering outlets at the Licence Area on an overall basis.

3. Operation Hours

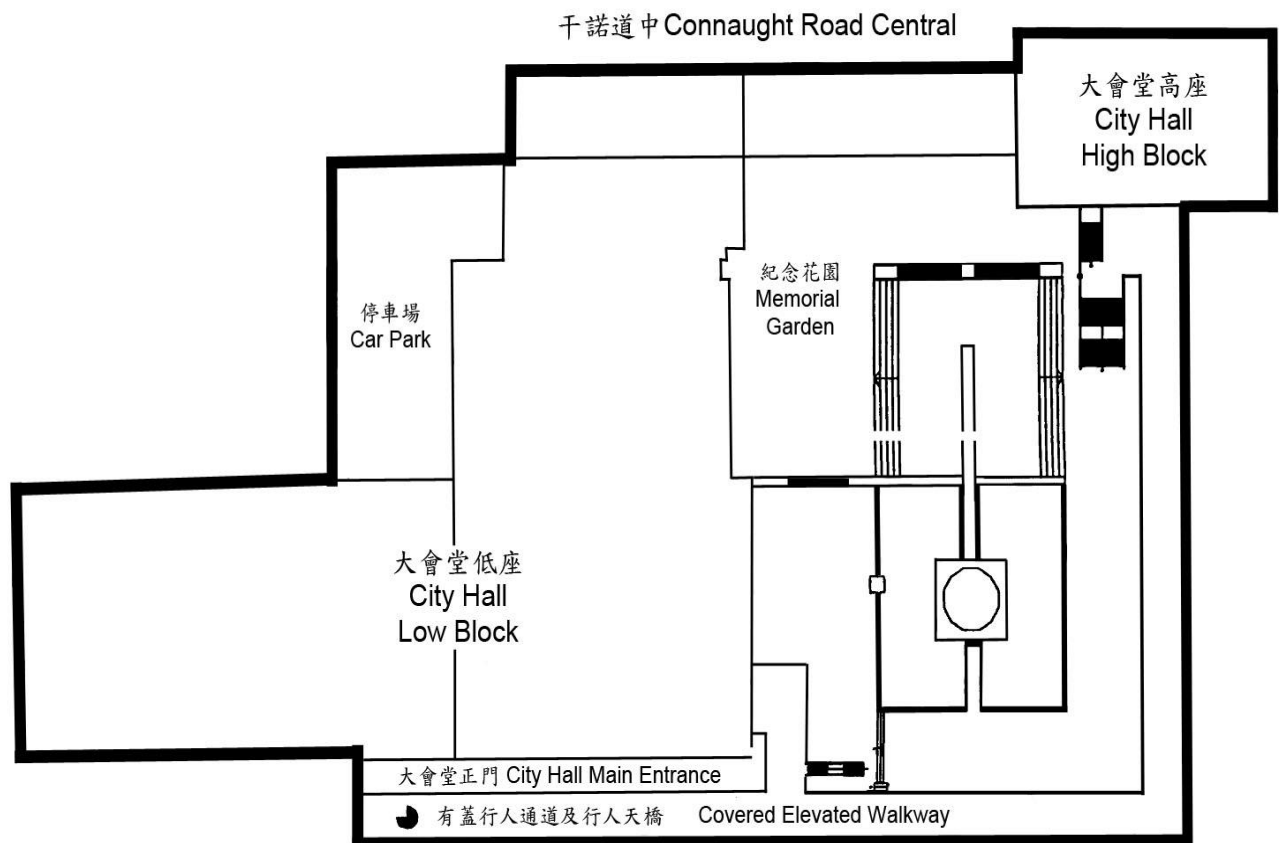
- 3.1 The Hong Kong City Hall opens seven (7) days a week daily from 9:00 a.m. to 11:00 p.m. , and may be closed at 5:30 p.m. on Chinese New Year Eve and during the public holidays of the Chinese New Year.
- 3.2 The Venue will be closed when typhoon signal no. 8 or above is hoisted until the signal is lowered to no. 3 or below. The Venue will remain closed if typhoon signal no. 8 is lowered or cancelled less than two (2) hours before the normal closing hour.
- 3.3 The Venue will open as usual when the Amber Rainstorm Warning or Red Rainstorm Warning is issued. The Venue will remain open to provide shelter to visitors and staff if the Black Rainstorm Warning is issued during the Venue's opening hours. The Venue will be closed when the Black Rainstorm Warning is issued before the opening hour of the Venue and will remain closed if the warning is lowered or cancelled less than two (2) hours before the normal closing hour.
- 3.4 The opening hours of the catering outlets within the Licence Area, although negotiable, should be at least compatible with that of the Venue's opening hours which may be changed from time to time.

For the avoidance of doubts, the information provided herein is for Tenderers' reference only and the Government shall bear no responsibility for the validity of the information so provided.

ANNEXES

Annex B

Location Map of the Hong Kong City Hall



ANNEXES

Annex C

Floor Plan of Chinese Restaurant with Kitchen

(The area as delineated and shown shaped red in the attached plan)

Second Floor, City Hall Low Block
(not to scale)



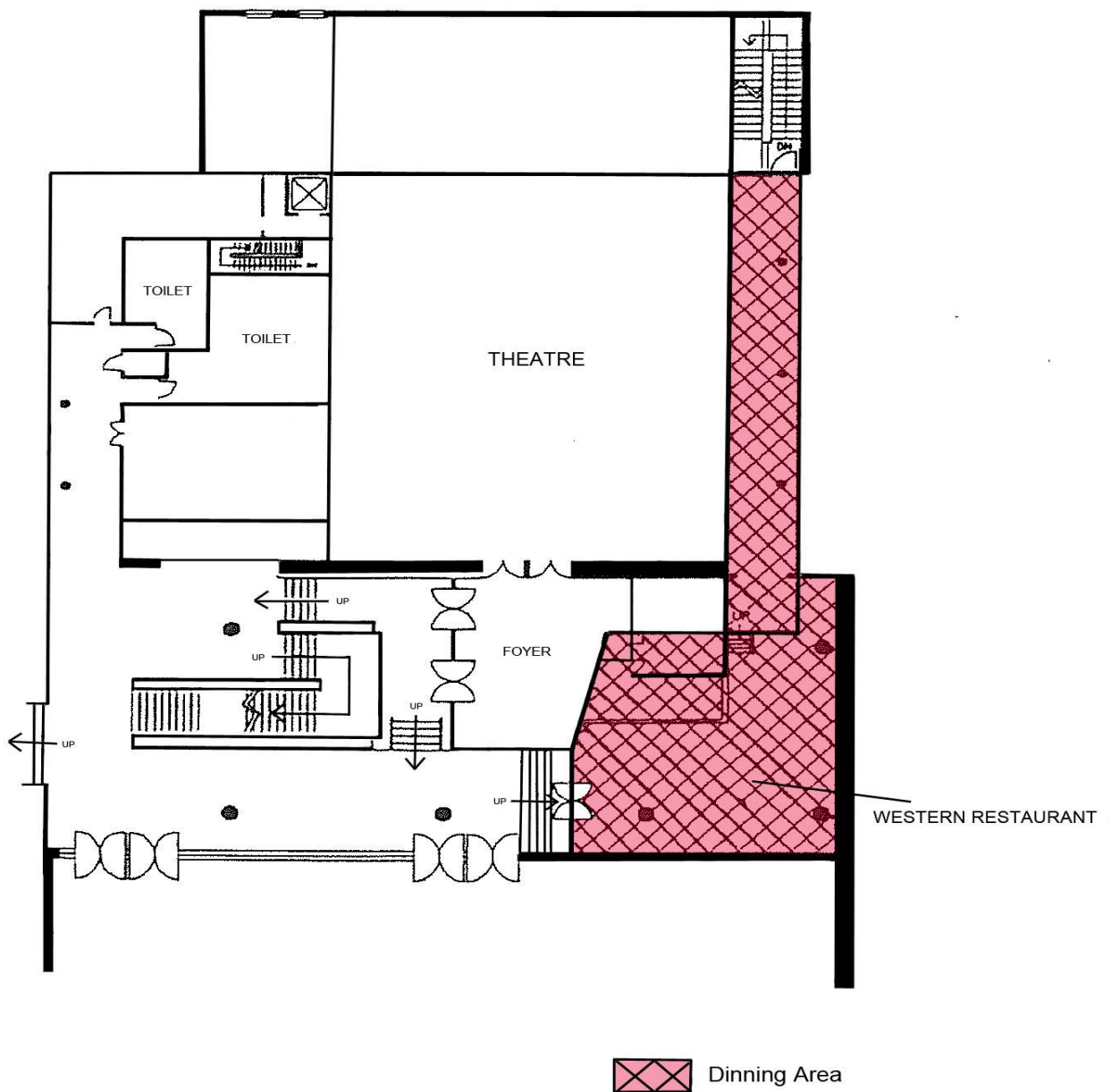
ANNEXES

Annex D

Floor Plan of International (non-Chinese) Restaurant

(The area as delineated and shown shaped red in the attached plan)

First Floor, City Hall Low Block
(not to scale)



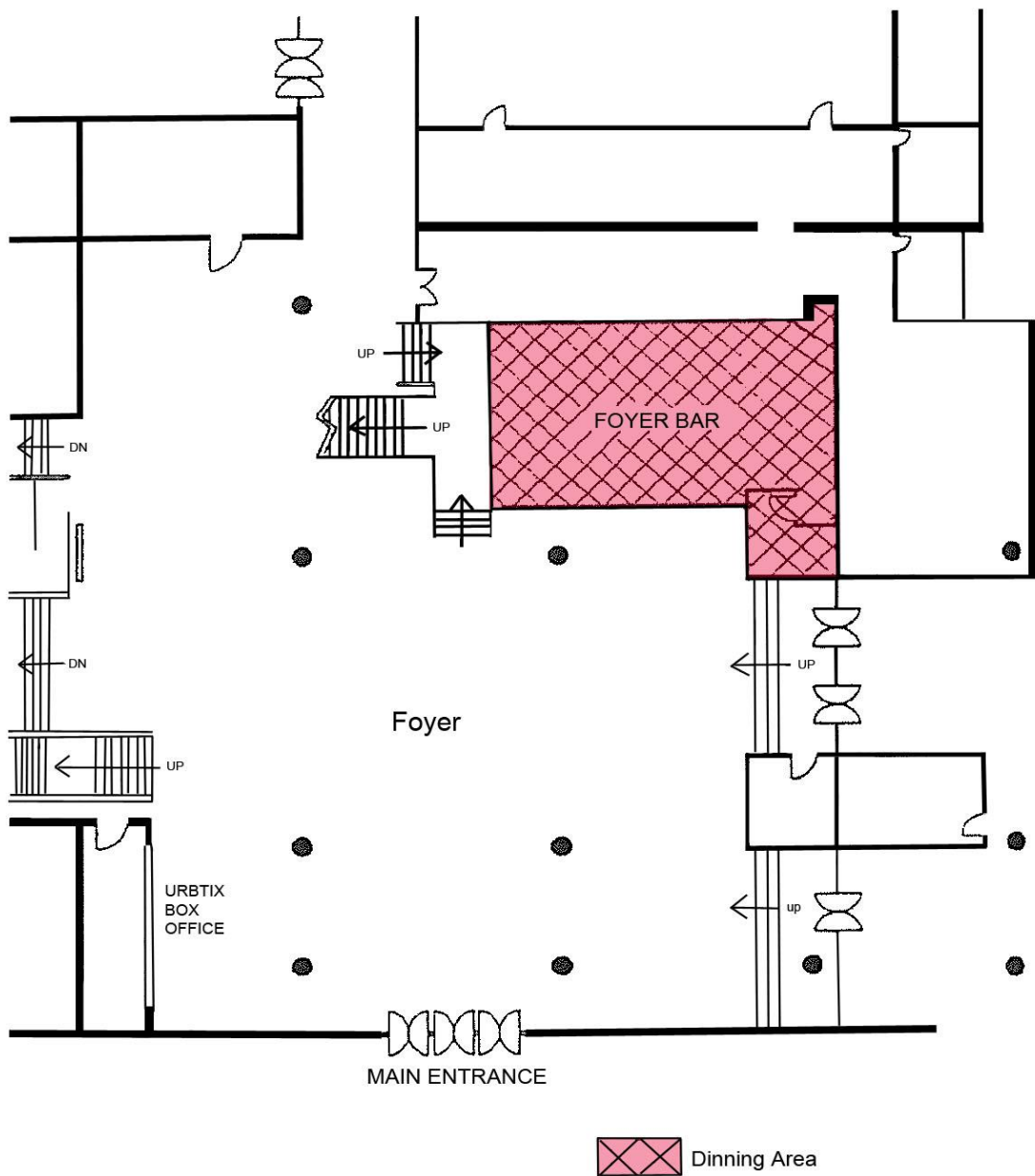
ANNEXES

Annex E

Floor Plan of Foyer Bar

(The area as delineated and shown shaped red in the attached plan)

Ground Floor, City Hall Low Block
(not to scale)



ANNEXES

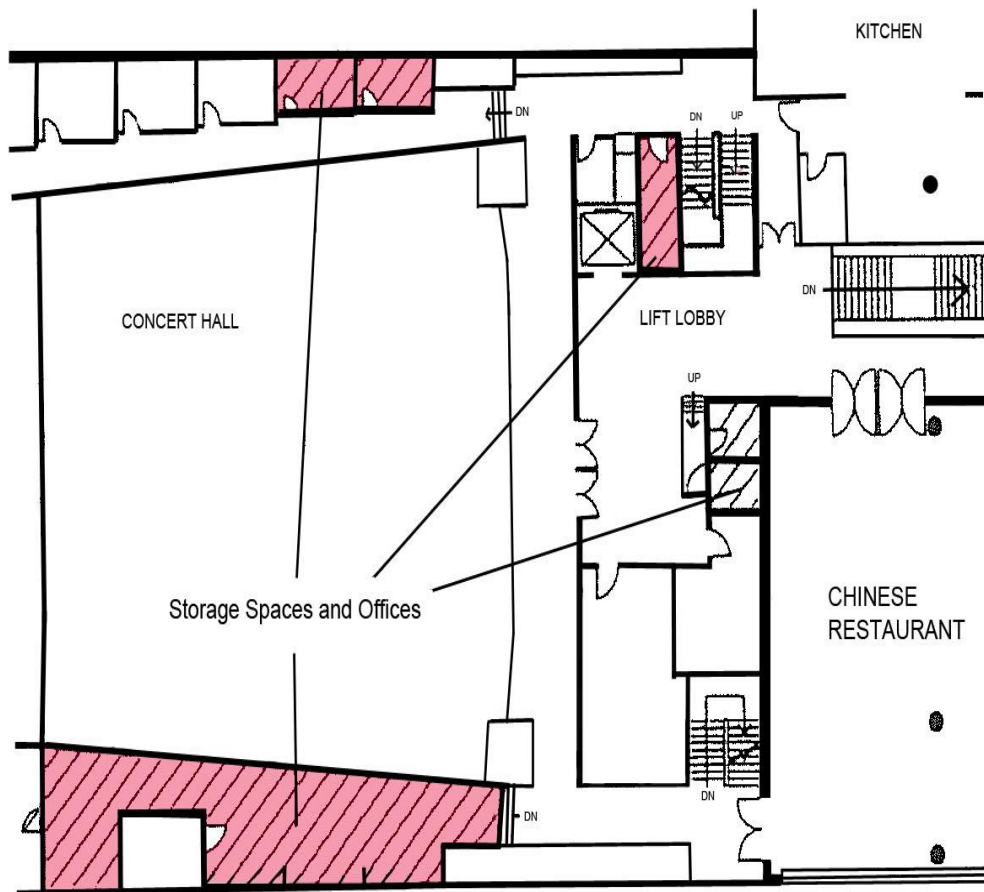
Annex F

Floor Plan of Back Office

(The area as delineated and shown shaped red in the attached plan)

(page 1 of 2 pages)

Second Floor, City Hall Low Block
(not to scale)



ANNEXES

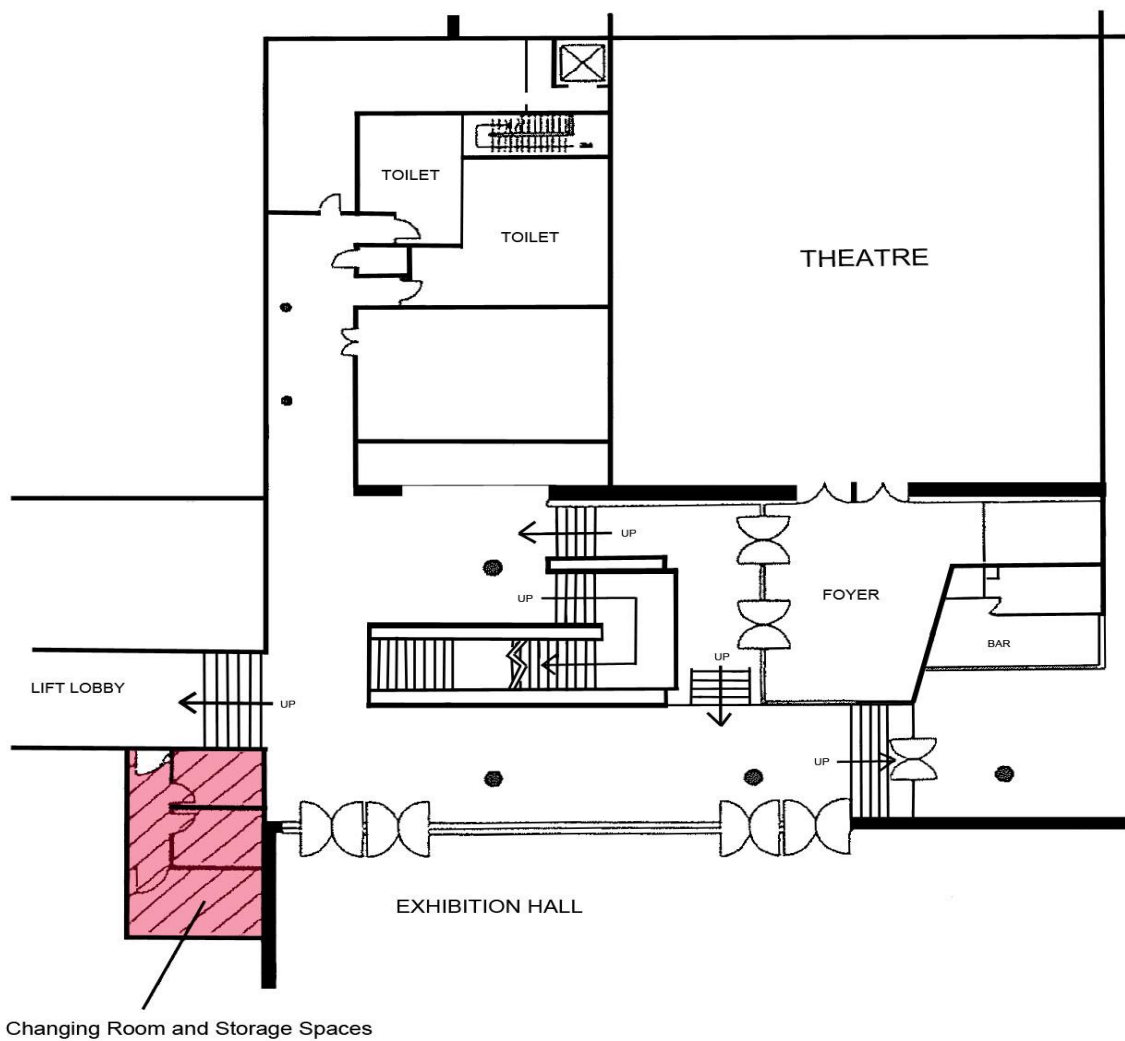
Annex F

Floor Plan of Back Office

(The area as delineated and shown shaped red in the attached plan)

(page 2 of 2 pages)

First Floor, City Hall Low Block
(not to scale)



ANNEXES

Annex G

To: Assistant Manager (Building Management)
Hong Kong City Hall
Fax: 2877 0353

**ENROLMENT FORM FOR THE TENDER BRIEFING SESSION ON
9 September 2022 (Friday) at 3 pm**

**Tender for the Grant of Licence to Operate
the Catering Outlets at Low Block of Hong Kong City Hall**

(please return this form by fax on or before **7 September 2022**)

Name of Company : _____ (Chinese)
_____ (English)

Name & Title of Representatives attending the Briefing Session (maximum of 3)

1. _____
2. _____
3. _____

Details of the Organization/Company :

Contact Person : _____

Post : _____

Address : _____

Telephone : _____

Fax : _____

E-mail : _____

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer or
Authorised Representative* : _____

(with firm/company chop)

* Delete as appropriate