

# QUOTATION FORM

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

QUOTATION FOR  
THE GRANT OF LICENCE TO OPERATE THE BUSINESS  
AT THE CATERING PREMISES OF THE KO SHAN THEATRE NEW WING

(Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01 )

## LODGING OF QUOTATION

To be acceptable as a quotation, this form, properly completed in triplicate and enclosed together with other documents of this quotation as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked “Quotation for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre New Wing” and addressed to the Chairman, Leisure and Cultural Services Department Quotation Opening Committee, must be deposited in or mailed to the Leisure and Cultural Services Department Quotation Box situated at Theatre Office, 4/F, Ko Shan Theatre New Wing, 77 Ko Shan Road, Hung Hom, Kowloon before 12:00 noon on 16 December 2021. Late quotations will not be accepted.

Dated this 23 November 2021

**Ms. Marianna HO**  
**Senior Manager (Kowloon West)**  
Government Representative

## Part I – Quotation Documents

These documents under the quotation reference LC/CS/Q/LRR/PVM/KST/2021/01 consist of three (3) complete sets of :

- (a) This Quotation Form (Parts I to II);
- (b) Quotation Label 1 (Price Submission), Quotation Label 2 (Technical Submission) and Quotation Label 3 (Complete Quotation Submission);

- (c) Interpretation (Sheets 1 to 7);
- (d) Part 1 – Terms of Quotation (Sheets 8 to 24) and Appendices to Terms of Quotation (Sheets 25 to 58);
- (e) Part 2 – Conditions of Contract (Sheets 59 to 85);
- (f) Part 3 – Contract Schedules (Sheets 86 to 122); and
- (g) Draft Articles of Agreement (Sheets 123 to 124).

**Part II – Offer to be Bound**

1. Having read the Quotation Documents, I/we agree to be bound by all of the terms and conditions as stipulated therein.
2. I/We do hereby agree to carry out the Business and pay the Monthly Licence Fee as quoted by me/us in Price Proposal, subject to and in accordance with the terms and conditions stipulated in the Contract.

Signed by the Bidder / Signed by an authorised signatory for and on behalf of the Bidder\* :

\_\_\_\_\_ (with firm/company chop, if applicable)

Name of the Bidder :

\_\_\_\_\_ (in block letters)

Name and title of the authorised signatory (where applicable) :

\_\_\_\_\_ (in block letters)

Address(es) of person(s) signing :

\_\_\_\_\_  
\_\_\_\_\_

Date :

\_\_\_\_\_

Note : All the particulars required above must be provided.

\* *Delete as appropriate*

<p style="text-align: center;"><b>QUOTATION LABEL (1)</b> <b>Price Submission</b></p>
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**CHAIRMAN,  
LEISURE AND CULTURAL SERVICES DEPARTMENT  
QUOTATION OPENING COMMITTEE**

**Leisure and Cultural Services Department Quotation Box  
Theatre Office, 4/F, Ko Shan Theatre New Wing,  
77 Ko Shan Road, Hung Hom, Kowloon**

**Quotation for the Grant of Licence to Operate the Business  
at the Catering Premises of the Ko Shan Theatre New Wing**

**Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01**

**Quotation Closing Date: 16 December 2021  
before 12:00 noon (Hong Kong Time)**

**Please remember to complete and submit the following document in triplicate for price submission :-**

- Appendix 3 to the Terms of Quotation ONLY

**QUOTATION LABEL (2)**  
**Technical Submission**  
**(without any indication on the Monthly Licence Fee)**

**CHAIRMAN,**  
**LEISURE AND CULTURAL SERVICES DEPARTMENT**  
**QUOTATION OPENING COMMITTEE**

**Leisure and Cultural Services Department Quotation Box**  
**Theatre Office, 4/F, Ko Shan Theatre New Wing,**  
**77 Ko Shan Road, Hung Hom, Kowloon**

**Quotation for the Grant of Licence to Operate the Business**  
**at the Catering Premises of the Ko Shan Theatre New Wing**

**Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01**

**Quotation Closing Date: 16 December 2021**  
**before 12:00 noon (Hong Kong Time)**

**Please remember to complete and submit the following documents in triplicate for technical submission :-**

- Quotation Form (Part II – Offer to be Bound)
- Appendix 1 to the Terms of Quotation
- Appendix 2 to the Terms of Quotation
- Appendix 5 to the Terms of Quotation
- Appendix 8 to the Terms of Quotation
- All remaining information and documents required in the Invitation to Quotation

**QUOTATION LABEL (3)**  
**Complete Quotation Submission**

**CHAIRMAN,  
LEISURE AND CULTURAL SERVICES DEPARTMENT  
QUOTATION OPENING COMMITTEE**

**Leisure and Cultural Services Department Quotation Box  
Theatre Office, 4/F, Ko Shan Theatre New Wing,  
77 Ko Shan Road, Hung Hom, Kowloon**

**Quotation for the Grant of Licence to Operate the Business  
at the Catering Premises of the Ko Shan Theatre New Wing**

**Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01**

**Quotation Closing Date: 16 December 2021  
before 12:00 noon (Hong Kong Time)**

Note: The “Price Submission” and the “Technical Submission” must be enclosed in sealed and separate envelopes with labels provided outside the envelopes and inserted into an envelope with this label outside.

- Price Submission in sealed envelope with QUOTATION LABEL (1)
- Technical Submission in sealed envelope with QUOTATION LABEL (2)

## INTERPRETATION

1. In the Quotation Documents, the following have the meaning hereby assigned to them except when the context otherwise requires:

“Bidder”	means the person or firm or company referred to in <b>Part II – Offer to be Bound</b> of the <b>Quotation Form</b> submitting this quotation.
“Business”	means the operation of a catering business in the Licence Area from which Prescribed Food and Beverages are to be sold and served under the Contract as stipulated in <b>Clause 3</b> of the <b>Conditions of Contract</b> .
“Catering Premises”	means the premises located on the First Floor of the Ko Shan Theatre New Wing as delineated in <b>Annex C</b> and <b>Annex D</b> to <b>Contract Schedule 3 – General Information on Ko Shan Theatre, Ko Shan Theatre New Wing and the Catering Premises</b> .
“Catering Services”	means provision of food and beverages in a reception setting within the Theatre such as provision of pre-performance reception or interval drinks for and at costs agreed with hirers of the hiring facilities of the Theatre.
“Conditional Acceptance of Quotation”	has the meaning given to it in <b>Paragraph 13.1</b> of the <b>Terms of Quotation</b> .
“Contract”	means the contract entered into between the Government and the Contractor comprising the following parts of the Quotation Documents and other items as specified below: <ul style="list-style-type: none"> <li>(i) Quotation Form (Parts I to II);</li> <li>(ii) Interpretation;</li> <li>(iii) Part 1 – Terms of Quotation and Appendices to Terms of Quotation;</li> <li>(iv) Part 2 – Conditions of Contract;</li> <li>(v) Part 3 – Contract Schedules 1 to 8;</li> <li>(vi) Articles of Agreement; and</li> <li>(vii) all other schedules, plans, drawings, specifications and other details and documents which form part of the Contractor’s Quotation or are incorporated by reference herein or in any of the above documents.</li> </ul>

Each of the above documents shall be referred to throughout the Quotation 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 provision of the Contract.
- “Contractor” means the Bidder whose quotation is accepted by the Government.
- “Contractor Electricity Consumption” means the amount of electricity consumed by the Contractor’s electricity equipment as measured by all Government meters over the same period to which the monthly electricity bill relates.
- “Contractor Electricity Share” means the amount of electricity consumed by the Contractor within the Licence Area payable by the Contractor to the Government in a particular month calculated in accordance with the formula specified in **Clause 4.2** of the **Contract Schedule 7 – Covenants in respect of Use of the Catering Premises**.
- “DFEH” means the Director of Food and Environmental Hygiene.
- “Electricity Deposit” has the meaning given to it in **Clause 4.3** of the **Contract Schedule 7 – Covenants in respect of Use of the Catering Premises**.
- “Free Decoration Period” means a period of up to thirty (30) days commencing from the first day of the Contract Period during which fitting out of the Licence Area is to be carried out and completed by the Contractor.
- “Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and includes the Chief Executive of Hong Kong.
- “Government Provisions” means all items belonging to the Government specified in **Contract Schedule 5 – Government Provisions Made Available to the Contractor at the Catering Premises** and such other Government property (moveable or immovable) which are from time to time made available to the Contractor for use in operating the Business under and in accordance with the Contract.
- “Government Representative” means the Director of Leisure and Cultural Services or any other officer of the Government authorised to act for and on its behalf for the purpose of the Contract.

“Gross Electricity Charge”	means the total cost of electricity consumed within the Theatre as shown and billed in the monthly bill issued by the power company.
“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 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, 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.
“Invitation to Quotation”	means the invitation issued by the Government Representative to invite quotations for the Contract on the terms set out in the Quotation Documents.
“Ko Shan Theatre”	means Ko Shan Theatre and Ko Shan Theatre New Wing located at 77 Ko Shan Road, Hung Hom, Kowloon, Hong Kong as indicated in <b>Annex A to Contract Schedule 3 – Location Map of Ko Shan Theatre and Ko Shan Theatre New Wing.</b>
“LCSD”	means the Leisure and Cultural Services Department.
“Licence”	means the licence to access, use and occupy the Licence Area referred to in <b>Clause 1 of the Conditions of Contract.</b>
“Licence Area”	means the area as more particularly described in <b>Annex B to Contract Schedule 3 – General Information on Ko Shan Theatre, Ko Shan Theatre New Wing and the Catering Premises</b> and as delineated in <b>Annex C and Annex D to Contract Schedule 3.</b>
“Monthly Licence Fee”	means the fixed amount payable by the Contractor on a monthly basis for the operation of the Business as stipulated in <b>Contract Schedule 1 – Price Schedule</b> subject to any adjustment in accordance with the applicable provisions of the Contract.



- “Non-collusive Quotation Certificate” means a document known as such and in the form attached to the Quotation Form for completion and submission by the Bidder as part of its Quotation under **Paragraph 23.2** of the **Terms of Quotation**;
- “Original Quotation Closing Date” means the latest date and time specified in the **Quotation Form** as the latest date and time before which Quotations must be deposited with the Government, regardless of whether the date and time has been extended subsequently.
- “Prescribed Food and Beverages” means (i) the list of items of food and beverages for sale in the Catering Premises as listed in **Contract Schedule 4 – List of Prescribed Food and Beverages for Sale in the Catering Premises**; (ii) the menu items for sale in the Licence Area as listed in **Contract Schedule 2 – Technical Schedule** and (iii) other items as may be approved in writing in advance by the Government pursuant to **Clause 6** of **Contract Schedule 8 – Service Specifications**.
- “Quotation (upper or lower case)” means a quotation submitted in response to this Invitation to Quotation.
- “Quotation Closing Date” means the latest date and time specified in the **Quotation Form** as the latest date and time before which Quotations must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Quotation Documents.
- “Quotation Documents” means: –
- (a) Quotation Form;
  - (b) Quotation Label 1 (Price Submission), Quotation Label 2 (Technical Submission) and Quotation Label 3 (Complete Quotation Submission);
  - (c) Interpretation;
  - (d) Part 1 – Terms of Quotation and Appendices to Terms of Quotation;
  - (e) Part 2 – Conditions of Contract;
  - (f) Part 3 – Contract Schedules; and
  - (g) Draft Articles of Agreement.
- and includes all schedules, appendices, annexes and any other documents attached thereto and any amendment or addendum issued prior to the Quotation Closing Date.

“Quotation Validity Period”	means the period of time as described in <b>Paragraph 7</b> of the <b>Terms of Quotation</b> during which the quotation is to remain open.
“Requisite Permits”	has the meaning given to it in <b>Clause 8.1</b> of the <b>Conditions of Contract</b> .
“Security Deposit”	means the deposit which the Contractor deposits with the Government in accordance with <b>Paragraph 14</b> of the <b>Terms of Quotation</b> for the due and proper performance of the Contract.
“Theatre”	means Ko Shan Theatre New Wing located at 77 Ko Shan Road, Hung Hom, Kowloon, Hong Kong as indicated in <b>Annex A to Contract Schedule 3 – Location Map of Ko Shan Theatre and Ko Shan Theatre New Wing</b> .
“Unit Rate”	means the Gross Electricity Charge divided by the total amount of electricity consumed within the Theatre as shown in the monthly bill issued by the power company.
“Venue”	means Ko Shan Theatre.
“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 Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, for any time during the normal business hours.

2. In the Contract, unless the content otherwise requires, 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 unincorporate (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 Quotation Documents or the Contract;
  - (d) references to a document shall:

- (i) include all schedules, appendices, annexures and other materials attached to such document; and
- (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Quotation Documents or the Contract;
- (e) references to “Bidder” 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 Quotation are to a paragraph in the Terms of Quotation; references 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 Quotation Documents shall bear such meaning whenever it appears in the same and other parts of the Quotation Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 9:00 a.m. to 6:00 p.m.;
- (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 Quotation 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 Quotation 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 Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong). 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.
3. 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.
  4. 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.
  5. Unless otherwise provided for in the Quotation Documents, all quotations and payments shall be made in Hong Kong dollars.
  6. References to **Contract Schedules 1 and 2** or any plan or proposal contained therein shall mean such Contract Schedule or such plan or proposal in the final form as approved by the Government before or after the award of the Contract.

**PART 1**  
**TERMS OF QUOTATION**

<b><u>Content</u></b>	<b><u>Sheet No.</u></b>
1. Quotation Documents .....	9
2. Invitation to Quotation .....	9
3. Quotation Briefing Session / Site Visit .....	10
4. Quotation Preparation .....	10
5. Quotation Submission .....	12
6. Quotation Closing Date.....	13
7. Quotations to Remain Open.....	14
8. Quotation Evaluation .....	14
9. Bidders' Responses to Government's Enquiries .....	14
10. Offer to be Binding .....	15
11. Basis of Acceptance .....	15
12. Negotiation.....	15
13. Award of Contract.....	16
14. Security Deposit.....	16
15. Cancellation of the Invitation to Quotation.....	16
16. Cost of Quotation Preparation.....	17
17. Quotation Addendum .....	17
18. Successful Bidder's Performance Monitoring .....	17
19. Documents of Bidders.....	17
20. Consent to Disclose.....	17
21. Personal Data Provided .....	18
22. Warranty against Bribery .....	18
23. Anti-collusion.....	19
24. Government Discretion .....	20
25. Enquiries .....	23
26. Disclaimer .....	24
27. Complaints about Quotation Process or Contract Award.....	24
Appendix 1 – Bidder's Profile .....	26
Appendix 2 – Technical Proposal .....	29
Appendix 3 – Price Proposal .....	36
Appendix 4 – Marking Scheme for Quotation Evaluation .....	37
Appendix 5 – Form of Security Deposit Election .....	47
Appendix 6 – Form of Bank Guarantee .....	48
Appendix 7 – Enrollment Form for the Quotation Briefing Session .....	53
Appendix 8 – Non-collusive Quotation Certificate .....	54
Appendix 9 – Checklist before Submitting Quotation .....	57

**PART 1**  
**TERMS OF QUOTATION**

ALL BIDDERS ARE ADVISED TO READ THE QUOTATION 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 QUOTATION DOCUMENTS ARE EXERCISABLE BY THE GOVERNMENT REPRESENTATIVE.

**1. Quotation Documents**

The Quotation Documents consist of a complete set of:

- (a) Quotation Form (Parts I to II);
- (b) Quotation Label 1 (Price Submission), Quotation Label 2 (Technical Submission) and Quotation Label 3 (Complete Quotation Submission);
- (c) Interpretation (Sheets 1 to 7);
- (d) Part 1 – Terms of Quotation (Sheets 8 to 24) and Appendices to Terms of Quotation (Sheets 25 to 58);
- (e) Part 2 – Conditions of Contract (Sheets 59 to 85);
- (f) Part 3 – Contract Schedules (Sheets 86 to 122); and
- (g) Draft Articles of Agreement (Sheets 123 to 124).

**2. Invitation to Quotation**

- 2.1 Quotations are invited from Bidders for the grant of licence to operate the Business at the Licence Area within the Theatre for a contract period of thirty-six (36) months, inclusive of the Free Decoration Period subject to and in accordance with the terms and conditions as set out in the Contract.
- 2.2 This quotation exercise is not covered by the Agreement on Government Procurement of the World Trade Organization.

### **3. Quotation Briefing Session / Site Visit**

3.1 (a) LCSD will arrange a site visit to the Theatre on a date and time to be set by the Government. Potential Bidders may attend the site visit during the appointed visit time. Bidders are strongly advised to visit the Licence Area before submitting the quotations and the successful Bidder 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).

(b) Bidders are invited to the following briefing session (conducted in Cantonese) on this Invitation to Quotation–

**Date – 1 December 2021 (Wednesday)**

**Time – 3:00 p.m.**

**Venue – New Wing Singing Practice Room (1), 4/F, Ko Shan Theatre New Wing,  
77 Ko Shan Road, Hung Hom, Kowloon**

3.2 Bidders who wish to attend the briefing session and/or site visit are invited to nominate representatives and send the completed **Appendix 7** hereto by fax to (+852) 2365 0295 by 5:00 p.m. of 30 November 2021 (Tuesday). Each Bidder may send no more than two (2) representatives to attend the briefing session and/or site visit.

### **4. Quotation Preparation**

4.1 All quotations shall be completed in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for quotation evaluation.

4.2 Bidders shall prepare and submit a technical proposal and a price proposal as follows –

#### **TECHNICAL PROPOSAL**

4.3 The technical proposal shall, without any indication of the prices, contain the following together with any documentary proof and other information as therein required for quotation evaluation–

(a) Offer to be Bound as set out in Part II of **Quotation Form**;

(b) Bidder's Profile in the form as set out in **Appendix 1**;

(c) Technical Proposal in the form as set out in **Appendix 2**;

(d) Form of Security Deposit Election in the form as set out in **Appendix 5**;

(e) Non-collusive Quotation Certificate in the form as set out in **Appendix 8**;

- (f) Certificate of Incorporation and (where applicable) Certificate of Change of Name of the Bidder;
- (g) Business Registration Certificate of the Bidder (if any) valid as at the Quotation Closing Date; and
- (h) A board resolution showing that the authorised person(s) who signed the Offer to be Bound has/have the authority to sign it for and on behalf of the Bidder.

4.4 The envelope containing the technical proposal shall be marked as follows –

**“Technical Submission – Quotation for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre New Wing**  
(Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01)” (**Quotation Label (2)** provided).

### **PRICE PROPOSAL**

- 4.5 Bidders must propose in the Price Proposal in **Appendix 3** a Monthly Licence Fee which is payable by the Contractor under the Contract in return for the grant of a licence to occupy and use the Licence Area to operate the Business. As stipulated in **Clause 4** of the **Conditions of Contract** the Monthly Licence Fee is payable by the Contractor during the Contract Period except for the Free Decoration Period during which fitting out works of the Licence Area is being carried out. Bidders’ proposed Monthly Licence Fee shall be denominated in Hong Kong dollars.
- 4.6 Under the Contract a fixed Monthly Licence Fee shall remain payable throughout the Contract Period. A Bidder who proposes any price variation mechanism may be disqualified and its Quotation will not be considered further.
- 4.7 The Monthly Licence Fee shall be net and shall not include rates, Government rent and taxes payable in respect of the Licence Area which are payable by the Contractor under the Contract.
- 4.8 Bidders should make certain the Monthly Licence Fee offered is accurate before submitting their Quotations. The Bidder shall be bound by the Quotation price quoted in its Quotation once the Quotation is accepted by the Government. Under no circumstances will the Government be obliged to accept any request for price adjustment on whatsoever ground including that a mistake has been made in the Monthly Licence Fee quoted.
- 4.9 The price proposal shall be contained in the form as set out in **Appendix 3**.



4.10 The envelope containing the price proposal shall be marked as follows –

**“Price Submission – Quotation for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre New Wing**

(Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01)” (**Quotation Label (1)** provided).

4.11 Figures shall not be altered or erased; any alteration shall be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments shall be initialed by the Bidder in ink.

4.12 Any counterproposal on any aspect of Part 1 – Terms of Quotation or Part 2 – Conditions of Contract may, at the option of the Government, render a Quotation not to be considered.

4.13 The Government reserves the right to disqualify a Bidder if –

- (a) false, inaccurate or incorrect information is given in the Quotation;
- (b) complete information (including descriptive literature, catalogues and any other document required under any provision of the Quotation Documents) is not given with the Quotation; or
- (c) any particulars or data requested for in the Invitation to Quotation is not furnished in full in the Quotation.

4.14 In the event of any calculation error on the part of a Bidder, the Government reserves the right to seek clarification from such Bidder and may bind the Bidder(s) to the offers made in the Quotation or as corrected. The scoring basis will be one that, in the opinion of the Quotation Assessment Panel, best serve the interests of the Government.

## **5. Quotation Submission**

5.1 A Quotation shall include both the technical proposal and the price proposal prepared in **TRIPLICATE (i.e. one (1) original and two (2) copies)** in accordance with **Paragraph 4** above and shall place the same in two (2) separate sealed plain envelopes (which shall not bear any distinguishing matter, mark or advertisement to indicate the identity of the Bidder).

5.2 Bidders must note that a conforming quotation must contain all the following documents and/or information and that failure to complete or submit any of the following on or before the Quotation Closing Date will **render its quotation invalid and will not be considered further**:–

- (a) a duly signed Part II of Quotation Form – Offer to be Bound;
- (b) Execution Plan of Appendix 2 – Technical Proposal; and
- (c) Appendix 3 – Price Proposal with the price information required therein duly completed.

5.3 Part II of Quotation Form “Offer to be Bound” shall be duly signed by

- (1) where the Bidder is a sole proprietorship, the Bidder;
- (2) where the Bidder is a partnership, a partner or partners of the Bidder who shall have the authority to sign and submit the Quotation for and on behalf of the Bidder; or
- (3) where the Bidder is a body corporate, one or more persons who are duly authorised by the Bidder to sign and submit the Quotation for and on behalf of the Bidder.

**A Quotation will not be further considered if Part II of Quotation Form “Offer to be Bound” is not signed in the manner described in this Paragraph.**

5.4 In the event of any discrepancy between the softcopy and the hard copy of any quotation submission, unless the Government wishes to seek clarification, the original hard copy will prevail.

5.5 Completed Quotation Documents, i.e., the two (2) sealed envelopes as described in **Paragraph 4** above, shall be enclosed in another sealed envelope and addressed to the **Chairman, Leisure and Cultural Services Department Quotation Opening Committee** by using the **Quotation Label (3)** as provided. They must be deposited in or mailed to the Leisure and Cultural Services Department Quotation Box situated at Theatre Office, 4/F, Ko Shan Theatre New Wing, 77 Ko Shan Road, Hung Hom, Kowloon before 12:00 noon (Hong Kong time) on the Quotation Closing Date specified in the **Lodging of Quotation** at the **Quotation Form**.

5.6 The Technical Proposal and the Price Proposal submitted by the Bidder will, subject to any modification as may be agreed with the Government, be incorporated into and form part of the Contract.

## **6. Quotation Closing Date**

6.1 All quotations MUST be submitted on or before the Quotation Closing Date. **Late quotations will NOT be considered.**

6.2 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 Quotation Closing Date, the latest date and time before which Quotations are to be deposited at the quotation box will be extended to 12:00 noon (Hong Kong time) on the next working day.

- 6.3 In case of blockage of the public access to the location of the specified quotation box at any time between 9:00 a.m. (Hong Kong time) to 12:00 noon (Hong Kong time) on the Quotation Closing Date, the Government will announce extension of the quotation closing time until further notice. Following removal of the blockage, the Government will announce the extended quotation closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- 6.4 The Government may at any time before the Original Quotation Closing Date and at its sole discretion extend or amend the Quotation Closing Date.
- 6.5 The Government Representative will not accept any quotation submitted by methods other than as indicated in **Paragraph 5.5** above.

## **7. Quotations to Remain Open**

- 7.1 All Quotations must remain valid and open for acceptance on these terms for a period of one hundred and eighty (180) days from the Quotation Closing Date (“Quotation Validity Period”).
- 7.2 Without prejudice to other rights and claims of the Government, if a quotation is withdrawn before the expiry of the period referred to in **Paragraph 7.1** above, the Government will take notice of such withdrawal, and this may prejudice the Bidder’s future standing as a Government service provider.

## **8. Quotation Evaluation**

All Quotations will be evaluated in accordance with the Marking Scheme as set out in **Appendix 4** hereto.

## **9. Bidders’ Responses to Government’s Enquiries**

In the event that the Government determines that –

- (a) clarification in relation to any part of a Quotation is necessary; or
- (b) a document or a piece of information other than (i) the original duly signed Offer to be Bound and (ii) a duly completed Price Proposal, is missing from any Quotation,

it may, but is not obliged to, request the Bidder concerned to make the necessary clarification, or submit the missing document or information. The Bidder concerned 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 Quotation will not be considered further 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. Without prejudice to the foregoing, any excess proposal or information supplied by a Bidder which goes beyond what has been requested by the Government will be ignored for the purposes of the evaluation or will entitle (but not oblige) the Government to disqualify the Bidder concerned. As an alternative to seeking clarification or further information or document, the Government may not consider the Quotation further or may proceed to evaluate the Quotation on an “as is” basis.

## **10. Offer to be Binding**

A Bidder is deemed to have satisfied itself as to the correctness of its quotation. No request for adjustment or variation whatsoever will be allowed or entertained after the Quotation Closing Date.

## **11. Basis of Acceptance**

11.1 The Government is not bound to accept the Quotation with the highest combined score or any Quotation or to give any reasons for doing so, and reserves the right to cancel this Invitation to Quotation in case the Monthly Licence Fee of the Quotation is unreasonably low with reference to the advice of the Commissioner of Rating and Valuation.

11.2 Bidders should note that their offers will be considered on an overall basis. Bidders with only partial offers (e.g. to operate a catering business to sell food only or beverages only) 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 Quotation Documents, the Contract will normally be awarded to the Bidder who submits the Quotation with the highest combined score as determined in accordance with **Paragraph 8**, or the Bidder 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 Bidder(s) about any terms or conditions in the Quotation and the terms and conditions of the Contract.

### **13. Award of Contract**

- 13.1 The successful Bidder will within the Quotation Validity Period receive a letter of conditional acceptance (such notification is referred to as “Conditional Acceptance of Quotation”), by fax or by post, from the Government notifying conditional acceptance of its quotation subject to its punctual performance of the following –
- (a) the provision of the Security Deposit as referred to in **Paragraph 14** below;
  - (b) the provision of the Electricity Deposit as required under **Clause 4.3** of the **Contract Schedule 7 – Covenants in respect of Use of the Catering Premises**; and
  - (c) any other condition as the Government may specify in the letter of Conditional Acceptance of Quotation.
- 13.2 The letter of Conditional Acceptance of Quotation will lapse and be of no effect where the Bidder fails to fulfil any of the conditions specified in **Paragraph 13.1** above.
- 13.3 Upon satisfactory completion of the conditions specified in **Paragraph 13.1** above, the Government will enter into the Contract with the successful Bidder by signing the Articles of Agreement, whereupon a legally binding Contract will be constituted between the Government and the successful Bidder.
- 13.4 Bidders who do not receive any notification within the Quotation Validity Period may assume that their quotations are not accepted.

### **14. Security Deposit**

The successful Bidder recommended for the award of the Contract will be required to, within seven (7) working days from the date of a letter of Conditional Acceptance of Quotation, furnish to the Government cash or a bank guarantee issued by a bank holding a valid banking licence under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) in the form as set out in **Appendix 6**, in the sum of equivalent to a maximum of two (2) months’ quoted Monthly Licence Fee hereto as security for the due and proper performance and observance by it of its obligations under the Contract.

### **15. Cancellation of the Invitation to Quotation**

- 15.1 The Government reserves the right to cancel this Invitation to Quotation and the Government is not bound to give any reasons therefor.
- 15.2 After cancellation pursuant to **Paragraph 15.1** above, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Quotation on such terms and conditions as the Government considers appropriate.

**16. Cost of Quotation Preparation**

All costs incurred by a Bidder in association with the preparation and submission of its Quotation shall be borne by that Bidder.

**17. Quotation Addendum**

The Government may issue addendum to the terms and conditions of the Quotation Documents. Bidders may be asked to confirm compliance with the terms and conditions issued under the Quotation Documents or those issued under any addendum thereto.

**18. Successful Bidder's Performance Monitoring**

A Bidder is advised that should it be awarded the Contract, its performance under the Contract will be monitored and shall be taken into account in the evaluation by the Government of quotations/tenders submitted by it for any goods or services procured by the Government in the future. An offer or a quotation submitted by a Bidder which has been in breach of any of its statutory obligations or contractual obligations under any catering outlet contracts with the Government (whether current or past) may not be considered having regard, including but not limited to, the seriousness and the number of breaches and its or their relevancy to the offer or quotation submitted. The decision of the Government whether or not to consider the Quotation submitted by a Bidder under the circumstances described in this provision shall be final.

**19. Documents of Bidders**

The Government is not obliged to return any quotation submissions to the Bidders and documents submitted by unsuccessful Bidders may be destroyed not less than three (3) months after the commencement of the Contract Period.

**20. Consent to Disclose**

20.1 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 Bidder) without any further reference to or consent from the successful Bidder, particulars of the Business to be provided by the successful Bidder, the date of the award, the name and address of the successful Bidder, and the Monthly Licence Fee.

20.2 Nothing herein shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified herein) if the disclosure is made under any one of the following circumstances –

- (a) the disclosure of any information to any public officer or public body (as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong)) or any other person employed, used or engaged by the Government (including advisers 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) without prejudice to the power of the Government under **Paragraph 20.1**, to the extent the information relates to a Bidder, with the prior consent of the Bidder.

## **21. Personal Data Provided**

- 21.1 A Bidder must be responsible for procuring all requisite consents from all relevant individuals for the disclosure of their personal data in the quotation submitted by that Bidder, and acknowledgements from these individuals that their personal data may be disclosed by the Government for the purposes of evaluation of quotations, resolution of any dispute arising from this Invitation to Quotation, administration and enforcement of the Contract. The persons to whom the personal data may be disclosed include officers within the Government, any professional advisers, consultants or contractors of the Government and tribunals or courts having jurisdiction to resolve any dispute.
- 21.2 Bidders or the relevant individuals to whom such personal data belong shall have the right of access and correction with respect to personal data provided in sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the personal data provided in the Quotation. Enquiries concerning the personal data collected by means of the Quotation, including the making of access and correction, shall be addressed to the Personal Data Privacy Officer of the LCSD.

## **22. Warranty against Bribery**

- 22.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Bidder or any of its officers (including directors), employees or agents will render its Quotation null and void.

22.2 The successful Bidder must inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Bidder must also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

### **23. Anti-collusion**

23.1 The Bidder must ensure that the Quotation 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 Quotation Certificate referred to in **Paragraph 23.2** below), regarding, amongst other things, price, quotation submission procedure or any terms of the Quotation. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Bidders who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

23.2 The Bidder shall complete and submit to the Government a Non-collusive Quotation Certificate (in the form set out in **Appendix 8** titled as such) as part of its Quotation.

23.3 In the event that the Bidder is in breach of any of the representations, warranties and/or undertakings in **Paragraph 23.1** above or in the Non-collusive Quotation Certificate submitted by it under **Paragraph 23.2** above, the Government shall be entitled to, without compensation or liability whatsoever to the Bidder or to any person on the part of the Government:

- (a) reject the Bidder's Quotation;
- (b) if the Government has accepted the Quotation, withdraw its acceptance of the Bidder's Quotation; and
- (c) if the Government has entered into the Contract with the Bidder, terminate the Contract.

23.4 By submitting a quotation, a Bidder is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses whatsoever arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in **Paragraph 23.1** above or in the Non-collusive Quotation Certificate submitted by it under **Paragraph 23.2** above.



- 23.5 A breach by a Bidder of any of the representations, warranties and/or undertakings in **Paragraph 23.1** above or in the Non-collusive Quotation Certificate submitted by it under **Paragraph 23.2** above may prejudice the Bidder's future standing as a Government contractor or service provider.
- 23.6 The rights of the Government under **Paragraphs 23.3 to 23.5** above are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

#### **24. Government Discretion**

- 24.1 Notwithstanding anything to the contrary in the Quotation Documents, the Government reserves the right to disqualify a Bidder 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 Bidder or its related person;
  - (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Quotation or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Quotation;
  - (c) in the event of a claim or allegation made any time during a period of five (5) years preceding the Quotation 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 Bidder 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 Quotation Closing Date or between the Quotation Closing Date and the award of the Contract, the Bidder or a related person of the Bidder 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 Bidder or a related person or a director or management staff of the Bidder 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 Quotation 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 Quotation 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 Bidder or a related person or a director or management staff of the Bidder; or
- (g) any failure of the Bidder or its related person to pay taxes to the Government during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of the award of the Contract.

The grounds specified in **Paragraphs 24.1(a) to 24.1(g)** above are separate and independent, and shall not be limited by reference to or inference from the other of them.

24.2 For the purposes of **Paragraph 24.1**, each Bidder shall provide in **Appendix 1** at the time of submission of its Quotation (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 award) 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 24.1(a)**;
- (b) details of all infringement claims or allegations and/or settlement agreement as mentioned in **Paragraph 24.1(c)**;
- (c) details of all Contract Defaults as mentioned in **Paragraph 24.1(d)**;
- (d) details of conviction as mentioned in **Paragraph 24.1(e)** in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission that adversely reflects or casts doubt on the commercial integrity of the Bidder or a related person as mentioned in **Paragraph 24.1(f)**; and
- (f) details of any failure to pay taxes as mentioned in **Paragraph 24.1(g)**.

If none of the events as mentioned in **Paragraphs 24.2(a) to 24.2(f)** above has ever occurred within the applicable period as mentioned in the relevant sub-clause in **Paragraph 24.1** above, the Bidder shall provide a statement to that effect by completing the relevant part of **Appendix 1** at the time of submission of its Quotation. If found missing, the Government reserves the right to seek clarification.

24.3 In addition to the information mentioned in **Paragraph 24.2** above, the Government reserves the right to request from a Bidder or from other sources and take into account all information about:

- (a) the Bidder itself (viz in relation to any information relevant to any of the events mentioned in **Paragraph 24.1** above);
- (b) any of the directors or management staff of the Bidder (viz information relevant to the event mentioned in any of **Paragraphs 24.1(e) and 24.1(f)** applicable to any such person);
- (c) any of the related persons of the Bidder (viz information relevant to any of the events mentioned in any of **Paragraphs 24.1(a) to 24.1(g)** applicable to any 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 24.1** above.

24.4 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 24.1(c)**; details of any Contract Default referred to in **Paragraph 24.1(d)**; details of any conviction of serious offences referred to in **Paragraph 24.1(e)**; details of any professional misconduct, acts or omissions referred to in **Paragraph 24.1(f)** and of any failure to pay taxes to the Government referred to in **Paragraph 24.1(g)** above.

24.5 If the Bidder fails to comply with the request made by the Government pursuant to **Paragraph 24.3** above within such time as required by the Government, the Government may disqualify the Bidder pursuant to **Paragraph 9** above. If the Bidder has submitted false, inaccurate or incomplete information, the Government may disqualify the Bidder pursuant to **Paragraph 24.1(b)** above.

24.6 In providing the information required under **Paragraphs 24.2 and 24.3** above, the Bidder 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 Bidder to perform the Contract to be awarded in this Invitation to Quotation.

24.7 If the Bidder is a company, the expression "**related person**" of the Bidder 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 Bidder ("**majority shareholder**");  
or
- (b) a holding company or a subsidiary of the Bidder; or

- (c) a holding company or a subsidiary of a majority shareholder of the Bidder; or
- (d) a company in which a majority shareholder (being an individual) of the Bidder 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 (Chapter 622 of the Laws of Hong Kong).

24.8 If the Bidder is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:

- (a) any partner of the Bidder (if it is a partnership); or
- (b) the spouse, parent, child, brother or sister of the Bidder, 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 Bidder or any partner of the Bidder beneficially directly or indirectly owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.

24.9 References to related persons, directors and management staff of the Bidder or of a related person include persons who were in such capacity at such time of the incident referred to in any of **Paragraph 24.1(c), 24.1(d), 24.1(e), 24.1(f), or 24.1(g)**.

## **25. Enquiries**

25.1 Any enquiries concerning the submission of quotations prior to the Quotation Closing Date can be directed to the Manager (Ko Shan Theatre) Building and Licence Management, Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon or fax to facsimile number (+852) 2264 2872.

25.2 After lodging their Quotations with the Government, Bidders shall not attempt to initiate any contact, whether direct or indirect, with the Government on their Quotations. The Government shall have the sole right to initiate any such further contact and all such contacts, and any reply of the Bidder thereto shall normally be in writing.

25.3 Unless otherwise expressly stated by the Government, no statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Bidder or Bidder shall be deemed to negate, waive or otherwise limit any of the terms or conditions as set out in the Quotation Documents.

**26. Disclaimer**

All information, statistics, forecasts and projections provided by the Government in connection with this Invitation to Quotation (including those set out in the Quotation Documents) (collectively “Information”) are for reference only. The Government gives no warranty, representation or undertaking as to their accuracy, reliability or completeness. The Government accepts no liability whatsoever for (a) the accuracy, completeness or reliability or otherwise of any such Information; and (b) any claim, legal proceeding, liability, loss (including any direct or indirect loss, and any loss of revenue, profit, business, contract or anticipated savings) or damage (including any direct, special, indirect or consequential damage of any nature whatsoever); and (c) any increased costs and expenses, which any Bidder or any other person may sustain or incur, arising from its reliance on any Information.

**27. Complaints about Quotation Process or Contract Award**

The quotation exercise is subject to internal monitoring to ensure that the process is proper and fair. Any Bidder who feels that its Quotation 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 quotation boards for consideration if the complaint relates to the quotation system or procedures followed. The Bidder should lodge the complaint within three (3) months after the award of Contract.

**PART 1**  
**APPENDICES TO TERMS OF QUOTATION**

<b><u>Content</u></b>	<b><u>Sheet No.</u></b>
Appendix 1 – Bidder’s Profile .....	26
Appendix 2 – Technical Proposal .....	29
Appendix 3 – Price Proposal .....	36
Appendix 4 – Marking Scheme for Quotation Evaluation .....	37
Appendix 5 – Form of Security Deposit Election .....	47
Appendix 6 – Form of Bank Guarantee .....	48
Appendix 7 – Enrollment Form for the Quotation Briefing Session .....	53
Appendix 8 – Non-collusive Quotation Certificate .....	54
Appendix 9 – Checklist before Submitting Quotation .....	57

**APPENDICES TO TERMS OF QUOTATION**

**APPENDIX 1**

**Bidder's Profile**

**(Please put in the "Technical Submission" envelope)**

(Information provided can be written in English, Chinese or both)

The Bidder is required to provide the following information:

1. (a) Name of Bidder : \_\_\_\_\_ (in English)

\_\_\_\_\_ (in Chinese)

Registered address : \_\_\_\_\_

\_\_\_\_\_

Telephone number : \_\_\_\_\_

Fax number : \_\_\_\_\_ E-mail address : \_\_\_\_\_

(b) Length of catering business experience : \_\_\_\_\_

(c) Shareholders / partners / proprietor of the Bidder and their percentages of shareholding / equity interest :

\_\_\_\_\_  
\_\_\_\_\_

(d) Names and residential addresses of the following, where appropriate  
- directors / partners / sole proprietor of the Bidder :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* :

\_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**APPENDIX 1**

**Bidder’s Profile**

**(Please put in the “Technical Submission” envelope)**

(Information provided can be written in English, Chinese or both)

(e) where the Bidder 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 Bidder is not a limited company incorporated under the laws of Hong Kong :

(Please specify document copy attached)

\_\_\_\_\_

(f) where the Bidder is a partnership, a copy of the partnership agreement.

\_\_\_\_\_

(g) A photocopy of the current Business Registration Certificate. The Certificate should bear a machine printed line to show that full registration fee has been effected, if appropriate.

\_\_\_\_\_

(h) A letter certifying the person who signs this quotation is an authorised person to sign contracts/agreements on behalf of the Bidder.

\_\_\_\_\_

2. Present Business : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(\*Please use separate sheet if required)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate



**APPENDIX 1****Bidder's Profile****(Please put in the "Technical Submission" envelope)**

(Information provided can be written in English, Chinese or both)

## 3. Particulars of the Bidder

(Please attach copies of the latest audited or certified financial statements of the Bidder) :

Year of establishment : \_\_\_\_\_

(i) Ownership : \_\_\_\_\_

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

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

Name and Post : \_\_\_\_\_

Telephone number : \_\_\_\_\_

Fax number : \_\_\_\_\_

Email address : \_\_\_\_\_

5. I/We confirm that none of the events as mentioned in **Paragraphs 24.2(a) to 24.2(f)** of the **Terms of Quotation** has ever occurred within the applicable period as mentioned in the relevant sub-clause of **Paragraph 24.1 OR**I/We hereby provide the details as required in **Paragraphs 24.2(a) to 24.2(f)** where applicable.\_\_\_\_\_  
\_\_\_\_\_  
(Note: If there is not enough space, please use additional sheets.)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* : \_\_\_\_\_

(with firm/company chop)

\* *Delete as appropriate*

**APPENDIX 2****Technical Proposal****(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

Bidders are required to submit the following information for evaluation according to the marking scheme in **Appendix 4**. Information provided by the Bidders hereunder will be binding on the successful Bidder upon award of the Licence to the extent as accepted by the Government. Bidders should note the marking scheme in **Appendix 4** and that zero (0) quality mark will be given for a plan if the Bidders fail to provide information on any one of the required items under the relevant plan. An offer will not be considered further if a Bidder fails to obtain the passing mark stipulated therein.

**APPENDIX 2****Technical Proposal****(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

**1. Menus, Service Packages, Marketing and Customer Service Plan (Maximum 32 marks)**

- (a) The Menus, Service Packages, Marketing and Customer Service Plan shall cover the following items :
- (i) a list of types of cuisine, regular and special festive menus including proposed lists of foods, drinks and beverages which are preferably harmonised with the style of Cantonese heritage and retro local culture that coincide with other facilities and theme of the Theatre;
  - (ii) details of joining “EatSmart Restaurant Star+” Campaign run by the Department of Health;
  - (iii) details of the key elements of the proposed menus and service packages which attract customers;
  - (iv) details of the marketing strategies to promote revenue;
  - (v) details of other activities which will support the promotion of the programmes/activities of the Theatre (e.g. displaying posters and pamphlets at the prominent locations of the catering premises, free Internet access available for use by patrons, etc.); and
  - (vi) details of the customer services initiatives (e.g. membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Theatre and encouraging repeated visits of the customers.

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* :\_\_\_\_\_  
(with firm/company chop)\* *Delete as appropriate*

**APPENDIX 2**

**Technical Proposal**

**(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

- (b) Bidders may also include other information as appropriate to facilitate consideration of their offer by the Government.

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(Note: If there is not enough space, please use additional sheets.)

Note :

List of Prescribed Food and Beverages for Sale in the Catering Premises is stipulated in **Contract Schedule 4**. The list of proposed menu items and services, once accepted and approved by the Government Representative, shall become the Prescribed Food and Beverages which are allowed to be supplied and sold at the Licence Area. The Contractor shall seek the Government Representative’s prior approval on any subsequent deletion or addition of items. The Contractor shall only sell the food and beverages consistent with the style of the Licence Area. Subject to the observation and compliance with all other requirements in the Contract, the Contractor will nonetheless be allowed, according to market demand, to introduce extra items of food or beverages apart from the existing items of Prescribed Food and Beverages which are consistent with the style of the Licence Area, with prior written approval of the Government Representative. Despite the above, the sale of any food/drink in the Licence Area is subject to the stipulations as stated in the restaurant/food licences to be issued by the Food and Environmental Hygiene Department.

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* : \_\_\_\_\_

(with firm/company chop)

\* *Delete as appropriate*

**APPENDIX 2**

**Technical Proposal**

**(Please put in the "Technical Submission" envelope)**

(The list can be written in English or Chinese or both)

**2. Facilities and Decoration Plan (Maximum 16 marks)**

- (a) The Facilities and Decoration Plan shall cover the following items :
  - (i) details on the proposed overall design theme for the decoration, shop front design of the Licence Area to blend with the service, image, functions and activities of the Theatre;
  - (ii) details of the seating/standing layout, furniture and facilities to be provided at the Licence Area to blend with the service, image, functions and activities of the Theatre;
  - (iii) sketch drawing of design layout and colour scheme to tie in with the architectural design and artistic identity of the Theatre; and
  - (iv) details of the proposed timetable and estimated cost of the fitting out required.
  
- (b) Bidders may also include other information as appropriate to facilitate consideration of their offer by the Government.

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(Note: If there is not enough space, please use additional sheets.)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
 for and on behalf of the Bidder \* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**APPENDIX 2**

**Technical Proposal**

**(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

**3. Hygiene Maintenance, Waste and Green Management Plan (Maximum 24 marks)**

- (a) The Hygiene Maintenance, Waste and Green Management Plan shall cover the following items :
  - (i) guidelines to staff on food hygiene including food handling, food safety, kitchen hygiene and seating area hygiene;
  - (ii) guidelines to staff on environmental protection to prevent pollution from greasy fume, wastewater, waste and noise;
  - (iii) details of the monitoring system to ensure the staff’s compliance with the proposed guidelines and performance standards on hygiene maintenance, waste and green management; and
  - (iv) details of training/refresher programmes for staff on hygiene maintenance, waste and green management.
  
- (b) Bidders may also include other information as appropriate to facilitate consideration of their offer by the Government.

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(Note: If there is not enough space, please use additional sheets.)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**APPENDIX 2**

**Technical Proposal**

**(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

**4. Innovative Suggestions that can Bring Positive Values or Benefits to Government or the Public (Maximum 20 marks)**

- (a) Please list out any proposed innovative suggestions which can bring about positive values or benefits to the Government or public at large for promoting arts and culture.
- (b) Please list out innovative suggestions which shall bring immediate benefits to the operation of the Theatre for promoting arts and culture and contributing to any positive values including, inter alia, but not limited to the following –
  - (i) Technological development  
Application of new technology or innovative application of existing technology for contributing to the audience building of the Theatre or promotion of arts appreciation (e.g. to equip with multi-media equipment for displaying trailers of cultural activities) and the development of Smart City;
  - (ii) Social well-being  
Fostering a caring society (e.g. to provide job opportunity / on-the-job training for elderly, youth, or people with disabilities and/or rehabilitators);
  - (iii) Environment protection  
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling (e.g. to adopt green tableware); and/or
  - (iv) Local arts development  
Offering special packages or initiate joint collaborations with arts organisations to explore or enrich new visitors’ experiences and possibilities with a view to extending arts and culture to more people.
- (c) Bidders may also include other information as appropriate to facilitate consideration of their offer by the Government.

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(Note: If there is not enough space, please use additional sheets.)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* :

\_\_\_\_\_

(with firm/company chop)

\* *Delete as appropriate*

**APPENDIX 2****Technical Proposal****(Please put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

**5. Years of Experience in Operating Catering Outlet(s) (Maximum 8 marks)**

Assessment will be based on the aggregate number of years of experience within the past ten (10) years immediately preceding the original Quotation Closing Date in running **catering outlet(s) each with seating accommodation of at least twenty (20) numbers of seats per catering outlet** as specified in **Appendix 4**. Bidder must state clearly in its quotation its relevant years of experience.

Note:

- (i) The original Quotation Closing Date will be the cut-off date for calculation of years of experience, irrespective of any extension of the Quotation Closing Date that may be made pursuant to **Paragraphs 6.2 and 6.3** of the **Terms of Quotation**.
- (ii) The overlapping periods of the claimed experience will only be counted once when counting the length of cumulative years of experience. Experience obtained by a holding company or subsidiary or shareholder of the Bidder will not be taken into account.
- (iii) Only the experience gained in the name of the Bidder will be counted. For example, if the Bidder is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the partners will be counted. Further, for the avoidance of doubt, a Bidder’s experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Bidder shall not be considered. The meanings of “parent company” and “subsidiary” follow the meanings under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- (iv) A Bidder is required to submit documentary proof, such as copies of contract to substantiate its claim of experience. Failure to do so will result in the claimed experience not being taken into consideration.

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(Note: If there is not enough space, please use additional sheets.)

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
for and on behalf of the Bidder \* :\_\_\_\_\_  
(with firm/company chop)\* *Delete as appropriate*



**APPENDIX 3**  
**Price Proposal**  
**(Please put in the “Price Submission” envelope)**

**Failure to fill in the amount of Monthly Licence Fee below or submit this Appendix 3 before 12:00 noon on the Quotation Closing Date will result in the Quotation not being considered further.**

In the event that I am / we are\* awarded with the Contract, we shall pay the Monthly Licence Fee to the Government in consideration of the grant of the right to operate the Business at the Licence Area on and subject to the terms and conditions of the Contract.

I/We\* read all terms and conditions of the Contract including without limitation to the following:

- (a) 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 the individual provisions of the Contract; and
- (b) the Business shall be operated by the Contractor as 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; and
- (c) all rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs and deposits of utilities incurred in the operation of the Business including telephone line, electricity, and necessary cleansing and servicing work for the Licence Area shall be borne by the Contractor and will not be covered by or deducted from the Monthly Licence Fee.

<b>Monthly Licence Fee</b>	Amount (in figure)
	HK\$ _____ per month

Note:

The Monthly Licence Fee submission must be enclosed in a sealed envelope clearly marked “**Price Submission** – Quotation for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre New Wing (Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01)” (**Quotation Label (1)** provided).

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
 for and on behalf of the Bidder \* : \_\_\_\_\_  
(with firm/company chop)

\* *Delete as appropriate*

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

**Marking Scheme and Assessment Criteria for Quotation Evaluation  
for the Grant of Licence to Operate the Business at the Catering Premises  
of the Ko Shan Theatre New Wing**

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

**Stage 1 – Completeness Check on the Quotation Offers Submitted**

2. All quotations received will be checked on whether all the documents and information required in **Paragraph 5** in the **Terms of Quotation** have been submitted. Failure to submit any of the following documents **on or before the Quotation Closing Date will render a quotation invalid and will not be considered further:**

- (a) a duly signed Part II of Quotation Form – Offer to be Bound;
- (b) Execution Plan of Appendix 2 – Technical Proposal; and
- (c) Appendix 3 – Price Proposal with the price information required therein duly completed.

**Stage 2 – Technical Assessment**

3. The maximum total technical marks are 100 and are divided into five (5) criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. Passing marks of 8, 4 and 6 are set for Assessment Criteria 1, 2 and 3 respectively, which are 25% of the maximum mark of the respective Assessment Criteria. **Quotations that do not attain any of the above said passing marks for Assessment Criteria 1, 2 and 3 will not be considered further.**

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

Assessment Criteria	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)					Marks Scored (M x S)	Passing Mark
			4	3	2	1	0		
<b>(A) Execution Plan</b>									
(1) Menus, Service Packages, Marketing and Customer Service Plan (See Notes 2 and 5)	32	8							<b>8</b>
(2) Facilities and Decoration Plan (See Notes 3 and 5)	16	4							<b>4</b>
(3) Hygiene Maintenance, Waste and Green Management Plan (See Notes 4 and 5)	24	6							<b>6</b>
(4) Innovative Suggestions that can Bring Positive Values or Benefits to Government or the Public (See Note 6)	20	5							–
<b>Sub-total for (A)</b>	<b>92</b>								–
<b>(B) Experience</b>									
(5) Years of Experience in Operating Catering Outlet(s) (See Note 7)	8	2							–
<b>Sub-total for (B)</b>	<b>8</b>								–
<b>Total Technical Mark = (A)+(B)</b>	<b>100</b>								–

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

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

[Note: The weighted technical score of each quotation 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.]

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

**Explanatory Notes for Stage 2 – Technical Assessment**

**Note 1: for Assessment Criteria (1) to (5)**

Bidder's execution plan and experience will be rated as follows:

For Assessment Criteria (1) to (5)

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

**Note 2: for Assessment Criterion (1) – Menus, Service Packages, Marketing and Customer Service Plan**

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

- (i) a list of types of cuisine, regular and special festive menus including proposed lists of foods, drinks and beverages which are preferably harmonised with the style of Cantonese heritage and retro local culture that coincide with other facilities and theme of the Theatre;
- (ii) details of joining “EatSmart Restaurant Star+” Campaign run by the Department of Health;
- (iii) details of the key elements of the proposed menus and service packages which attract customers;
- (iv) details of the marketing strategies to promote revenue;
- (v) details of other activities which will support the promotion of the programmes/activities of the Theatre (e.g. displaying posters and pamphlets at the prominent locations of the catering premises, free Internet access available for use by patrons, etc.); and
- (vi) details of the customer services initiatives (e.g. membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Theatre and encouraging repeated visits of the customers.

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

**Note 3: for Assessment Criterion (2) – Facilities and Decoration Plan**

The Facilities and Decoration Plan shall cover the following items:

- (i) details on the proposed overall design theme for the decoration, shop front design of the Licence Area to blend with the service, image, functions and activities of the Theatre;
- (ii) details of the seating/standing layout, furniture and facilities to be provided at the Licence Area to blend with the service, image, functions and activities of the Theatre;
- (iii) sketch drawing of design layout and colour scheme to tie in with the architectural design and artistic identity of the Theatre; and
- (iv) details of the proposed timetable and estimated cost of the fitting out required.

**Note 4: for Assessment Criterion (3) – Hygiene Maintenance, Waste and Green Management Plan**

The Hygiene Maintenance, Waste and Green Management Plan shall cover the following items:

- (i) guidelines to staff on food hygiene including food handling, food safety, kitchen hygiene and seating area hygiene;
- (ii) guidelines to staff on environmental protection to prevent pollution from greasy fume, wastewater, waste and noise;
- (iii) details of the monitoring system to ensure the staff's compliance with the proposed guidelines and performance standards on hygiene maintenance, waste and green management; and
- (iv) details of training/refresher programmes for staff on hygiene maintenance, waste and green management.

**Note 5: for Assessment Criteria (1) to (3)**

- (a) Standard scores will be given to Assessment Criterion (1) in accordance with the following five-grade approach –
  - 4 – The proposed plan is **practical** with **detailed information** on **all six (6)** items of the respective plan as required in Note 2 above.

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

- 3 – The proposed plan is **practical** with **detailed information** on **any five (5) or four (4) items** and brief information covering the remaining item(s) of the respective plan as required in Note 2 above.
- 2 – The proposed plan is **practical** with **detailed information** on **any one (1)** of the items and brief information covering the remaining items of the respective plan as required in Note 2 above.
- 1 – The proposed plan is **practical** with **brief information** on **all six (6)** items of the respective plan as required in Note 2 above.
- 0 – The proposed plan is **impractical** or **fails** to provide information on **any** of the items of the respective plan as required in Note 2 above.
- (b) Standard scores will be given to Assessment Criteria (2) to (3) in accordance with the following five-grade approach –
- 4 – The proposed plan is **practical** with **detailed information** on **all four (4)** items of the respective plan as required in Notes 3 and 4 above.
- 3 – The proposed plan is **practical** with **detailed information** on **three (3)** items and brief information covering the remaining item of the respective plan as required in Notes 3 and 4 above.
- 2 – The proposed plan is **practical** with **detailed information** on **any one (1)** of the items and brief information covering the remaining items of the respective plan as required in Notes 3 and 4 above.
- 1 – The proposed plan is **practical** with **brief information** on **all (4)** items of the respective plan as required in Notes 3 and 4 above.
- 0 – The proposed plan is **impractical** or **fails** to provide information on **any** of the items of the respective plan as required in Notes 3 and 4 above.
- (c) All practical information included in the proposed plans submitted by the successful Bidder under Assessment Criteria (1) to (3) shall form part of the Contract.

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

**Note 6: for Assessment Criterion (4) – Innovative Suggestions that can Bring Positive Values or Benefits to Government or the Public**

- (a) Marks will be given if the proposed innovative suggestions can bring about positive values or benefits to the Government or public at large for promoting arts and culture.
- (b) Innovative suggestions shall bring immediate benefits to the operation of the Theatre for promoting arts and culture and contributing to any positive values including, inter alia, but not limited to the following –
- (i) Technological development  
Application of new technology or innovative application of existing technology for contributing to the audience building of the Theatre or promotion of arts appreciation (e.g. to equip with multi-media equipment for displaying trailers of cultural activities) and the development of Smart City;
  - (ii) Social well-being  
Fostering a caring society (e.g. to provide job opportunity / on-the-job training for elderly, youth, people with disabilities and/or rehabilitators);
  - (iii) Environmental protection  
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling (e.g. to adopt green tableware); and/or
  - (iv) Local arts development  
Offering special packages or initiate joint collaborations with arts organisations to explore or enrich new visitors' experiences and possibilities with a view to extending arts and culture to more people.
- (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.

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

- (d) Marks will not be given to any innovative suggestion which a Bidder 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) Bidders shall highlight the proposed innovative suggestions and explain clearly with sufficient details on what positive values/benefits to which their proposed innovative suggestions can bring about as well as how they are to be implemented in their submissions to facilitate quotation evaluation.
- (g) Bidders shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions. Marks will not be given if the Bidders only propose a concept without sufficient details. The information that shall be provided by the Bidders includes the following –
- 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;
  - 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
  - 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) Bidders 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 quotation submissions and factual supporting documents (e.g. test reports / certificates) provided by the Bidders 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 Quotation Assessment Panel to have a better understanding of the innovative suggestions proposed by the Bidders. During the demonstration, Bidders are also not allowed to provide additional information not contained in their original quotation submissions.



**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

- (i) All practicable innovative suggestions accepted by the Government shall form part of the Contract.

**Note 7: for Assessment Criterion (5) – Years of Experience in Operating Catering Outlet(s)**

- (a) Assessment will be based on the aggregate number of years of experience in running catering outlet(s) each with a seating accommodation of at least twenty (20) numbers of seats per catering outlet in the past ten (10) years immediately preceding the original Quotation Closing Date.
- (b) Standard scores will be given to Assessment Criterion (5) 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.
- (c) A Bidder shall submit documentary evidence (e.g. a copy of agreement) to substantiate its claim of the experience. Experience not substantiated will not be taken into account.
- (d) Catering outlet(s) refer to licensed restaurant(s), e.g. general restaurant(s) and light refreshment restaurant(s).
- (e) Local and/or outside Hong Kong experience will be counted.
- (f) Only the experience gained in the name of the Bidder will be counted. For example, if the Bidder is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the partners will be counted. Further, for the avoidance of doubt, a Bidder's experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Bidder shall not be considered. The meanings of "parent company" and "subsidiary" follow the meanings under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

- (g) If the Bidder 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.
- (h) The aggregate years of experience will be counted in calendar days. For the purpose of quotation evaluation, “an aggregate of two (2) years’ experience” is equivalent to have accumulated 730 days (i.e. 365 days x 2) of experience under different catering outlets.
- (i) It is not necessary for a Bidder to have continuous experience in operating catering outlet(s) in the past ten (10)-year period immediately preceding the original Quotation Closing Date.
- (j) For the purpose of quotation assessment, the relevant experience in operating catering outlet(s) could be gained under the same catering outlet or different catering outlets. However, a Bidder’s experience under different catering outlets will not be double-counted for those overlapping periods. A Bidder’s experience under different catering outlets with overlapping periods is to be counted in accordance with the following example:

**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

**APPENDIX 4**  
**Marking Scheme for Quotation Evaluation**

**Stage 3 – Price Assessment**

5. Failure to submit a Price Proposal in the form of **Appendix 3** with price information duly completed will render a quotation invalid and will not be considered further. The price assessment is based on the quoted Monthly Licence Fee of the quotations which have passed Stage 2 assessment.

6. A maximum weighted price score of 50 will be allocated to the conforming quotation with the highest fixed monthly fee, while the weighted price score for other conforming quotations will be calculated by the following formula –

$$\text{Weighted Price Score} = 50 \times \frac{\text{Fixed Monthly Fee of the conforming quotation being assessed}}{\text{The highest Fixed Monthly Fee among the conforming quotations}}$$

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

**Stage 4 – Calculation of Combined Score**

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

$$\text{Weighted Technical Score} + \text{Weighted Price Score}$$

8. Normally, the quotation with the highest combined score will be recommended for acceptance subject to the requirement that the Government is satisfied that the recommended quotation is fully (including technically, commercially and financially) capable of undertaking the Contract, and that the recommended quotation is the most advantageous to the Government in accordance with the quotation provisions.

**APPENDIX 5**

**Form of Security Deposit Election**  
**(Please put in the “Technical Submission” envelope**  
**without any indication on the Monthly Licence Fee)**

**Bidders are advised to read carefully the Quotation Documents before completing this Form.**

To : Chairman,  
 Leisure and Cultural Services Department Quotation Opening Committee

If my/our quotation is accepted, I/we shall elect, pursuant to **Paragraph 14** of the **Terms of Quotation**, to deposit with the Government within seven (7) working days from the date of the letter of Conditional Acceptance of Quotation, or any other date as required by the Government Representative, a sum equivalent to two (2) months' quoted Monthly Licence Fee, as security for the due and faithful performance of the Contract –

# (a) In cash, or

# (b) In a bank guarantee issued by a bank that holds a valid banking licence under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) in the form set out in **Appendix 6**.

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

Name of Bidder : \_\_\_\_\_ Date : \_\_\_\_\_

Name of Authorised Representative : \_\_\_\_\_

Signature of Bidder or Authorised Representative  
 for and on behalf of the Bidder \* :

\_\_\_\_\_

(with firm/company chop)

\* *Delete as appropriate*

**APPENDIX 6**  
**Form of Bank Guarantee**

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, Chapter 155 of the Laws of Hong Kong (“Guarantor”)

IN FAVOUR OF

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, N. T., Hong Kong 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. .... of .....), the Contractor agrees and undertakes to operate the  
 business at the Licence Area in the Ko Shan Theatre New Wing 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 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 primary 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, any change in the partners.
- (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 by, and the Guarantor hereby waives notice of:
- (a) any suspension of, variation or amendment 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 for any reason;
  - (d) any forbearance or waiver 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 or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment 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 an 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 three (3) 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, 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.

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, to the Leisure and Cultural Services Department marked for the attention of Manager (Ko Shan Theatre) Building and Licence Management, Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon, facsimile number (+852) 2264 2872;
  - (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 dispatched 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 \_\_\_\_\_.



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 the Powers of Attorney Ordinance (Chapter 31 of the Laws of Hong Kong)

Note: When bank’s 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.

**APPENDIX 7**

**Enrolment Form for the Quotation Briefing Session  
on 1 December 2021 (Wednesday) at 3:00 p.m.  
at New Wing Singing Practice Room (1), 4/F, Ko Shan Theatre New Wing,  
77 Ko Shan Road, Hung Hom, Kowloon**

To: Assistant Manager (Ko Shan Theatre) Building Management 1  
(Fax: (+852) 2365 0295)

**Quotation for the Grant of Licence to Operate the Business  
at the Catering Premises of the Ko Shan Theatre New Wing**

(Please return this form by fax on or before 30 November 2021 5:00 p.m.)

In accordance with Paragraph 3 of the Terms of Quotation, I/we would like to attend the Quotation Briefing Session:

Name of Organisation/ Company : \_\_\_\_\_ (in English)  
\_\_\_\_\_ (in Chinese)

Name and Title of Representatives Attending the Quotation Briefing Session (maximum of 2) :  
1. \_\_\_\_\_  
2. \_\_\_\_\_

Details of the Organisation/Company –

Contact Person :

Post Title :

Address :

Telephone Number :

Fax Number :

E-mail Address :

**The Bidder is advised to bring along the Quotation Documents to the Quotation Briefing Session.**

**APPENDIX 8**  
**Non-collusive Quotation Certificate**  
**(Please put in the “Technical Submission” envelope)**

To: The Government

Dear Sir/Madam,

Non-collusive Quotation Certificate

1. I/We, (name of the Bidder) \_\_\_\_\_ of  
(address(es) of the Bidder(s)) \_\_\_\_\_  
\_\_\_\_\_ refer to the Government’s invitation to quotation for the Contract  
 (“Invitation to Quotation”) and my/our Quotation in response to the Invitation to Quotation.

Non-collusion

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

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.

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 Quotation, and such joint venture arrangement has already been notified to the Government in my/our Quotation;
  - (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 Quotation;
  - (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 Quotation 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 Quotation, 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 23.1 of the Terms of Quotation, the Government may exercise any of the rights under Paragraphs 23.3 to 23.5 of the Terms of Quotation in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Chapter 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 Quotation and my/our personal information.

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

---

Name of the authorised signatory  
(where applicable) :

---

Title of the authorised signatory  
(where applicable) :

---

Date :

---

**APPENDIX 9**  
**Checklist before Submitting Quotation**

(The checklist serves to assist in completing the Quotation Documents. Please complete as appropriate.)

**Please ✓ if  
completed**

**Completion of Part II of Quotation Form – “Offer to be Bound”**

- |  |                          |
|--|--------------------------|
| 1. Have you completed <b>Part II</b> of the <b>Quotation Form – “Offer to be Bound”</b> with all the required information (i.e. name of bidder, address, name of authorised representative (if applicable), etc.)? | <input type="checkbox"/> |
| 2. Have you / your authorised representative <b><u>signed on Part II of the Quotation Form</u></b> ?   | <input type="checkbox"/> |

**Completion of Appendix 1 – Bidder’s Profile**

- |   |                          |
|---|--------------------------|
| 3. Have you filled in the required information in <b>Appendix 1</b> ?   | <input type="checkbox"/> |
| 4. If you are an authorised representative of the bidder, have you attached documentary proof showing that you have been authorised by the bidder to act on its behalf? | <input type="checkbox"/> |
| 5. Have you / your authorised representative <b><u>signed on the Appendix 1</u></b> ?   | <input type="checkbox"/> |

**Completion of Appendix 2 – Technical Proposal**

- |  |                          |
|--|--------------------------|
| 6. Have you submitted with the quotation the plans as described in <b>Appendix 2</b> , including (1) Menus, Service Packages, Marketing and Customer Service Plan; (2) Facilities and Decoration Plan; (3) Hygiene Maintenance, Waste and Green Management Plan; and (4) Innovative Suggestions? | <input type="checkbox"/> |
| 7. Have you provided information about your experience in operating catering outlet(s) as required in <b>Appendix 2</b> ?  | <input type="checkbox"/> |
| 8. Have you attached <b><u>documentary proofs</u></b> to substantiate the claimed experience?  | <input type="checkbox"/> |
| 9. Have you / your authorised representative <b><u>signed on the Appendix 2</u></b> ?  | <input type="checkbox"/> |

**Completion of Appendix 3 – Price Proposal**

- |   |                          |
|---|--------------------------|
| 10. Have you completed the <b>Appendix 3</b> of the Quotation Documents with all the required information (i.e. the Monthly Licence Fee you offered, name of bidder / authorised representative (if applicable), etc.)? | <input type="checkbox"/> |
| 11. Have you / your authorised representative <b><u>signed on the Appendix 3</u></b> ?  | <input type="checkbox"/> |

**APPENDIX 9****Checklist before Submitting Quotation****Please ✓ if  
completed****Completion of Appendix 5 – Form of Security Deposit Election**

12. Have you / your authorised representative **elected** and then **signed the Form of Security Deposit Election**?

**Completion of Appendix 8 – Non-collusive Quotation Certificate**

13. Have you / your authorised representative **signed the Non-collusive Quotation Certificate**?

**Final Check**

14. Have you initialed against any marked amendments on the Quotation Documents to be submitted?
15. Have you / your authorised representative **signed** on all required documents in particular:
- (a) a duly signed Part II of Quotation Form – Offer to be Bound;
  - (b) Execution Plan of Appendix 2 – Technical Proposal; and
  - (c) Appendix 3 – Price Proposal with the price information required therein duly completed.

**PART 2**  
**CONDITIONS OF CONTRACT**

<b><u>Content</u></b>	<b><u>Sheet No.</u></b>
1. The Licence .....	60
2. Contract Period .....	60
3. The Obligation to Carry on the Business.....	60
4. Payment of Monthly Licence Fee.....	61
5. Non-exclusive Right of the Contractor.....	63
6. Security Deposit .....	63
7. Restriction on Assignment and Sub-contracting .....	64
8. Licence, Permit and/or Certificate.....	65
9. Warranties, Representations and Undertakings .....	66
10. Fitting Out.....	68
11. Suspension of the Business for Default .....	68
12. Government May Require Temporary Closure .....	69
13. Contractor's Act and Default .....	71
14. Liability and Indemnity .....	71
15. Public Liability Insurance.....	73
16. Government to Recover Cost .....	75
17. Recovery of Amounts from the Contractor .....	75
18. Set-off .....	75
19. Termination.....	75
20. Effect of Termination or Expiry.....	78
21. Corrupt Gifts.....	80
22. Disclosure of Information.....	80
23. Applicability of the Public Health and Municipal Services Ordinance.....	80
24. Compliance with Law and Government Requirements.....	80
25. Mediation.....	81
26. Service of Notice .....	81
27. Waiver of Remedies.....	82
28. Severability.....	82
29. Entire Agreement.....	83
30. Amendment .....	83
31. Further Assurance .....	83
32. Relationship of the Parties.....	83
33. Governing Law and Jurisdiction.....	84
34. Contracts (Rights of Third Parties) Ordinance .....	84



**PART 2**  
**CONDITIONS OF CONTRACT**

**1. The Licence**

- 1.1 The Government grants the Contractor, during the Contract Period, the non-exclusive, non-transferable, non-assignable right and licence to access, use and occupy the Licence Area for the operation of the Business in accordance with the Contract.
- 1.2 The Contractor acknowledges that the Government, as the owner of the Licence Area, has all rights and powers to access, use and occupy the Licence Area in common with the Contractor for any purpose whatsoever without any notice or reference or consent from the Contractor.
- 1.3 For the avoidance of doubt, neither the Licence nor any of the provisions of the Contract confers on the Contractor any tenancy, lease or any other right, estate or interest in the Licence Area.

**2. Contract Period**

- 2.1 Subject to all rights and powers of the Government under the Contract, and any early termination or extension pursuant to any applicable provision of the Contract, the Contract Period shall be for a term of thirty-six (36) months to commence from a date specified in **Clause 2.2** below inclusive of a Free Decoration Period not exceeding thirty (30) days 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 April 2022** unless a different date is specified in the Articles of Agreement (which may be any date earlier or later than the aforesaid date as determined by the Government Representative at her sole and absolute discretion) and subject to prior termination as provided in this Contract, shall expire upon the end of thirty-six (36) months from the commencement date, both dates inclusive. The Government and the Government Representative shall not be liable for any losses suffered or expenses incurred whatsoever by the Contractor due to such variation.
- 2.3 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 12** hereof exceeds thirty (30) days, notwithstanding **Clauses 2.1 and 2.2**, 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, or any part of the Theatre will not lead to any extension of the Contract Period.

**3. The Obligation to Carry on the Business**

- 3.1 The Contractor shall operate the Business in accordance with stipulations in the Technical Schedule subject to all terms and conditions of the Contract.

- 3.2 The Contractor shall, from time to time during the Contract Period, provide Catering Services at such time and in such manner as may be required by the Government.
- 3.3 The Contractor shall carry on the Business at the Licence Area at all times when the Theatre is open to the public as set out in **Contract Schedule 3** except with prior authorisation of 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. The Catering Premises shall remain open throughout the aforesaid time and period whilst some parts of the Theatre may be under renovation or temporary closure.
- 3.4 The Contractor shall start the Business forthwith upon the earlier of completion of fitting out works or the expiry of the Free Decoration Period. The Contractor shall as soon as practicable advise the Government Representative of the date of commencement of the Business.
- 3.5 The Contractor should conduct its Business only in the Licence Area.
- 3.6 The Contractor shall use the Licence Area only for the purpose of operating the Business and shall not use or cause, suffer or permit to be used the Licence Area or any part thereof for any other purposes save with the written consent of the Government.
- 3.7 The name of the Catering Premises 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.

#### **4. Payment of Monthly Licence Fee**

- 4.1 Subject to **Clause 4.3**, in consideration of the Government's grant of the Licence, the Contractor shall pay to the Government in advance on or before the first day of each calendar month the Monthly Licence Fee in respect of each month during the Contract Period, without any deduction or set-off whatsoever provided that no such Fee shall be payable for any part of the Free Decoration Period during which no Business is being conducted by the Contractor.
- 4.2 In respect of the Free Decoration Period:
- (a) notwithstanding anything to the contrary herein, the Monthly Licence Fee shall be immediately payable during the Free Decoration Period on a pro rata basis upon the Contractor's commencement of operation of the Business, whether in whole or in part.
  - (b) without prejudice to the obligation of the Contractor to start the Business no later than thirty (30) days after the commencement of the Contract Period, the Monthly Licence Fee shall remain payable beyond the Free Decoration Period even if the fitting out work continues beyond the Free Decoration Period.

## 4.3 In the event that:

- (a) the second month of the Contract Period starts otherwise than on the first day of a calendar month;
- (b) the last month of the Contract Period ends otherwise than on the last day of a calendar month; or
- (c) there is any temporary closure of the entire Licence Area under **Clause 12** for consecutive seven (7) days or more

the Monthly Licence Fee for the calendar month(s) shall be adjusted on a pro rata basis as follows:

$$A \times \frac{B}{\text{No. of days in that calendar month}}$$

where

“A” is the Monthly Licence Fee; and

“B” is the actual number of days in that calendar month which

- (a) fall within the second month of the Contract Period;
- (b) fall within the last month of the Contract Period; or
- (c) are unaffected by the temporary closure (as the case may be).

4.4 The Contractor shall perform, comply with and observe all provisions of 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. No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract.

4.5 If the Contractor fails to pay the Monthly Licence Fee in accordance with **Clause 4.1**, the Contractor shall pay a surcharge on the Monthly Licence Fee calculated at a rate equivalent to the average of the best lending rates of the three (3) 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. For the avoidance of doubt, the surcharge shall apply to the Monthly Licence Fee payable pursuant to **Clause 4.2**.

4.6 During the Contract Period (including the Free Decoration Period), the Contractor shall pay and bear all outgoings and charges, including but not limited to water charges, electricity charges and rates, in respect of the Licence Area.

**5. Non-exclusive Right of the Contractor**

- 5.1 Nothing in this Contract shall preclude the Government from authorising any other person to supply any food or drink or other catering or hosting services at the Theatre other than the Licence Area.
- 5.2 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.
- 5.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Theatre.
- 5.4 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 for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorisations.

**6. Security Deposit**

- 6.1 Prior to the commencement of this Contract, the Contractor has paid to the Government the Security Deposit as security for the due and proper performance of the Contract.
- 6.2 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 come into effect on the date of commencement of the Contract Period and remain in force until the date specified in (a) or (b) below, whichever is applicable:
- (a) the date falling three (3) months after the expiry or early termination of the Contract Period; or
- (b) if at the time of 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 and right of the Government, the date on which all such obligations and liabilities have actually been carried out, completed and discharged or such claim or right having been wholly satisfied or exercised (as confirmed by the Government 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 (as the case may be) is hereinafter referred to as the “Guarantee Period”.

- 6.3 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.
- 6.4 The Government 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.
- 6.5 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 fourteen (14) 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. If the Contractor is required to provide a further bank guarantee under this **Clause 6.5**, the further bank guarantee must comply with the requirements in **Paragraph 14** of the **Terms of Quotation**, and shall come into operation on the date of its execution and remain in force until the date specified in **Clause 6.2(a) or 6.2(b)**, whichever is applicable.
- 6.6 In the event that this Contract is early terminated under **Clause 19**, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government upon such termination without prejudice to the Government's claims and demands under the Contract which cannot be satisfied by the Security Deposit.

## **7. Restriction on Assignment and Sub-contracting**

- 7.1 Save 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.

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

## **8. Licence, Permit and/or Certificate**

8.1 The Contract shall comply with all applicable laws and regulations in the operation of the Business and shall obtain and maintain throughout the Contract Period all licence, permit, certificate, waiver or exemption which are required for the operation of the Business under all applicable laws and regulations of Hong Kong (“Requisite Permits”). Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.

8.2 The Contractor shall obtain a provisional licence to operate the Business under section 33C of the Food Business Regulation (Chapter 132X of the Laws of Hong Kong) (“Cap. 132X”) (“Provisional Licence”) before commencement of the Business.

8.3 After having obtained such Provisional Licence, the Contractor shall:

- (a) obtain a full licence under section 31 of Cap. 132X to operate that Business before the first Provisional Licence expires (“Full Licence”); or
- (b) renew the Provisional Licence once more under section 33C(4) of Cap. 132X and then 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 19** or suspend the Business under **Clause 11.1**.

8.4 Notwithstanding **Clauses 8.2 and 8.3**, if the Contractor so chooses, it may apply directly for a Full Licence instead of a Provisional Licence before commencement of the Business. 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 before the commencement of the Business, the Government shall be at liberty to terminate the Contract under **Clause 19** or suspend the Business under **Clause 11.1**.

8.5 In addition to the Provisional Licence and/or Full Licence, the Contractor shall apply for and obtain all other Requisite Permits including without limitation the necessary licences or permits as required under the Dutiable Commodities Ordinance (Chapter 109 of the Laws of Hong Kong) for the sale of alcoholic liquor, if permission for sale of such has been given by the Government Representative.

- 8.6 The Contractor shall ensure that all Requisite Permits remain valid and in force throughout the Contract Period and the Contractor shall comply 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 Business.
- 8.7 Without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business no later than thirty (30) days after the commencement 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 relevant licences, permits and/or certificates. The non-issuance of any of the relevant licences, permits and/or certificates by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 8.8 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.

**9. Warranties, Representations and Undertakings**

- 9.1 The Contractor warrants, represents and undertakes to the Government that: –
- (a) it shall comply with all reasonable instructions and directions on all matters relating to the Business and the Catering Services as the Government Representative may from time to time issue to the Contractor;
  - (b) it has and shall ensure that its officers, employees, agents, sub-contractors have the necessary skill, experience and expertise to operate the Business and provide the Catering Services in accordance with the stipulations set out in the Contract;
  - (c) it shall operate the Business and provide the Catering Services with all due diligence and in a proper, skilful and professional manner;
  - (d) it shall, through the Government Representative, keep the Government informed of all matters relating to the Business and the Catering Services and shall answer all reasonable enquiries made by the Government Representative;
  - (e) it has the full power, capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;

- (f) the entry into this Contract, the performance of the Contractor's obligations under the Contract, and the Contractor's operation of the Business will not conflict with or result in 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;
- (g) 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, including the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong), the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong) and the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legislation pertaining to the health and safety of its own staff, the employees or agents of the Government and any other parties who may be affected by the Contractor's operation of its Business; and
- (h) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Quotation and the Contract are true, accurate and complete.
- 9.2 (a) The Contractor shall, within fifteen (15) days after the expiry of each calendar month during the continuance of the Contract Period and within fifteen (15) days after the termination or expiry of the Contract, howsoever caused, submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the gross monthly turnover generated from the Business in the Licence Area.
- (b) The Contractor shall keep and maintain proper books and records in respect of the Business including inter alia records of gross monthly turnover and cause all such books and records to be made up on a monthly basis and retain the same throughout the Contract Period plus three (3) 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 such books and records of the Contractor, and if required, to make copies of the same.



- (c) 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 gross monthly turnover and other financial information relating to the Business obtained from the Contractor including disclosure to prospective bidders for the contract following this Contract or any other contract.

## **10. Fitting Out**

- 10.1 The Government gives and the Contractor takes possession of the Licence Area and the Government Provisions on an “as is” basis.
- 10.2 The Contractor may at its option and during the Free Decoration Period fit out the Licence Area before commencement of the Business at the Contractor’s own cost and expense provided that the Contractor shall before carrying out such fitting out: –
- (a) submit for the approval of the Government plans, drawings and specifications of the fitting out works compliant with relevant stipulations in **Contract Schedule 2 – Technical Schedule**;
- (b) install proper sound insulation at the Licence Area to minimise disturbance caused by fitting out works to activities held at the Theatre;
- (c) carry out in a good and proper workmanlike fashion fitting out works in accordance with the Government approved plans, drawings and specification and stipulations in **Contract Schedule 6 – Fitting-out Schedule**.

## **11. Suspension of the Business for Default**

- 11.1 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 by notice in writing to the Contractor for a period as specified in such notice and the suspension 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 (“Suspension for Default”). Without prejudice to the generality of the foregoing, the Government may suspend the Contractor’s right to carry on the Business at the Licence Area upon the default of the Contractor as mentioned in **Clause 5.1** or **Clause 12.2** of **Contract Schedule 7 – Covenants in respect of Use of the Catering Premises** or the failure of the Contractor to obtain the Requisite Permits as mentioned in **Clause 8.3** or **8.4** where applicable.

- 11.2 Upon a Suspension for Default under **Clause 11.1**, the Contractor shall have no right to operate the Business at the Licence Area during the period of such Suspension for Default. The Contractor shall still remain liable to pay the Monthly Licence Fee in respect of the period of Suspension for Default and remain liable to perform and observe all other obligations under the Contract.
- 11.3 In the event that any default leading to the Suspension for Default under **Clause 11.1** has been remedied to the satisfaction of the Government, the Government Representative 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 Business at the Licence of 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 11.1**.
- 11.4 Without prejudice to other rights and powers of the Government including the power to early terminate the Contract under **Clauses 19.1 and 19.2**, during the Suspension for Default, the Government shall be entitled to engage another contractor or its provide the catering business at the Licence Area and the Contractor shall pay the Government on demand all costs incurred thereby.
- 11.5 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 11.1**.

## **12. Government May Require Temporary Closure**

- 12.1 Without prejudice to the rights and powers of the Government (including under **Clause 11** to effect a Suspension for Default), the Government may require a temporary closure of the Licence Area for any operational or other reason (including any of the reasons as specified in **Clause 12.2**) 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. Upon such temporary closure of the whole of the Licence Area (including a temporary closure due to any ground specified in **Clause 12.2**) for more than seven (7) days (on a single occasion basis but not on an accumulative basis), the Monthly Licence Fee shall not be payable for so long as such closure continues and the Contract Period may be correspondingly extended after the temporary closure. Where the temporary closure of any part of the Theatre does not cover the Licence Area, the Contractor shall be required to continue to operate the Business at the Licence Area and the Monthly Licence Fee shall continue to be payable notwithstanding any such temporary closure.

- 12.2 Without prejudice to the generality of **Clause 12.1**, 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 12** (not being the result of willful default or misconduct or negligence of the Contractor, his 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.
- 12.3 Upon any temporary closure of the whole of the Licence Area or such part thereof pursuant to this **Clause 12**, the Contractor shall cease carrying on the Business at the Licence Area or such part thereof (as the case may be) for so long as the temporary closure continues.
- 12.4 The Monthly Licence Fee shall be partially adjusted due to any partial temporary closure of the Licence Area for seven (7) days or more on a pro rata basis based on the total area of the Licence Area and the area to be subject to the temporary closure.
- 12.5 The Contractor may request to suspend its Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government shall be obtained as far as it is practicable in the circumstances and the Government's decision on the duration of such period of suspension shall prevail. The Contractor shall remain liable to pay the Monthly Licence Fee in full and all fees and charges in respect of the Licence Area and the Business during such approved period of suspension of Business.
- 12.6 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 12**.
- 12.7 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.
- 12.8 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof arising from one single event (but not on an aggregate basis) for a period of less seven (7) days' will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

**13. 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 visitor or patron of the Licence Area (all of the aforesaid persons 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 them as if it is its own.

**14. Liability and Indemnity**

14.1 Neither the Government, the Government Representative nor any of 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 any member of the Contractor Responsible Group however caused (whether by any Negligence of the Government or the Government Representative or any of employees or agents of the Government); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any member of the Contractor Responsible Group, save and except any such injury or death caused by the Negligence of the Government or the Government Representative or any of employees of the Government (in the course of employment).

14.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, the Government Representative, their respective assigns, successors in title and public officers (each an "Indemnified Person") from and against:

- (a) all and any allegations, 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"); and
- (b) all Third Party Claims in respect of any Intellectual Property Rights of any person in connection with the Contractor's performance of this Contract or the Contractor's operation of the Business at the Licence Area or any activity conducted by any member of the Contractor Responsible Group at the Licence Area; and
- (c) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses; and

(d) 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; and

which an Indemnified Party 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 member of the Contractor Responsible Group; or
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, or by any member of the Contractor Responsible Group; or
- (iii) any warranty or representation made by the Contractor in the Contract or in the quotation submitted for the Contract or from time to time in the course the Contract which is incorrect, inaccurate, incomplete or misleading; or
- (iv) the non-compliance by the Contractor, or by any member of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority; or
- (v) any death or injury or loss or damage of property as mentioned in **Clause 14.1** except for any death or injury caused by the Negligence of the Government or the Government Representative or any of employees of the Government (in the course of employment).

14.3 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 (Chapter 71 of the Laws of Hong Kong).

14.4 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 Representative 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, his employees and agents.

14.5 The Contractor shall notify the Government in writing of any injury to or death of any of the Contractor's employees or agents arising from any work done in pursuance of the Contract or of any patron or visitor of the Licence Area; 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 its employees or agents or of any patron or visitor of the Licence Area within forty-eight (48) hours of the occurrence of such injury, death, loss or damage or after such injury, death, loss or damage comes 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.

**15. Public Liability Insurance**

15.1 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 policy ("Product Liability Insurance Policy"), in each case with an insurance company authorised by the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) on such terms and conditions to be approved by the Government in writing in advance.

15.2 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.

15.3 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 in 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.

15.4 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.

- 15.5 Where the terms of the Public Liability Insurance Policy or 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 Representative). Under no circumstances whatsoever shall the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 15.6 The Policy shall include a cross liability clause so it shall be treated that a separate policy has been issued to each of the Contractor and the Government. Under no circumstances whatsoever shall the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 15.7 The Contractor shall take out and maintain the employees' compensation insurance as required under the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong).
- 15.8 The Contractor is responsible for lodging all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage, provided that the Government shall have the right to liaise with the insurance company on any matter of such claims.
- 15.9 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 6** or may recover the same as a debt due from the Contractor.
- 15.10 The Contractor shall conform to the terms and conditions of the Public Liability Insurance Policy and 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 in full from and against everything stated in **Clauses 15.2(a) and 15.2(b)** which may arise from any failure of the Contractor to observe and comply with this Clause.

**16. 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.

**17. Recovery of Amounts from the Contractor**

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 6** 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.

**18. Set-off**

Where the Contractor has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the Government to the Contractor under the Contract or any other contract made between the Government and the Contractor.

**19. Termination**

19.1 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 or in the case of a breach capable of being remedied, the Contractor fails within fourteen (14) days (or such longer period as the Government Representative may allow) to remedy the breach following from the issue of a notice from the Government Representative 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 (Chapter 6 of the Laws of Hong Kong) 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 entitled 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 or officer of the Contractor is convicted of any offence under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong), the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong), or an offence under the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong) for employing a person who is not lawfully employable in Hong Kong or for aiding and abetting another person to breach his condition of stay, whether or not such conviction relates to this Contract; or
- (f) if the Contractor unilaterally ceases its Business at the Licence Area and/or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period otherwise than in accordance with **Clause 19.4**; or
- (g) 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, merchandise or any other things and materials supplied or used or to be supplied or used by the Contractor, has infringed or may infringe the Intellectual Property Rights or any other rights of any person or persons; or
- (h) any event or circumstance occurs which enables the Government to terminate the Contract under any provision of the Contract.

19.2 If the Government is at any time prevented from performing the Contract by force majeure, the Government Representative shall serve a notice on the Contractor to this effect whereupon the Contract shall be terminated immediately.

- 19.3 For the purpose of **Clause 19.2**, “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.
- 19.4 Notwithstanding anything herein to the contrary, either party may terminate this Contract after the expiry of the eighteenth (18<sup>th</sup>) month during the Contract Period by giving to the other party not less than six (6) months’ prior notice in writing of termination.
- 19.5 If the Contractor has terminated the Contract early by serving prior written notice pursuant to **Clause 19.4**, and the Government conducts a new procurement exercise to award a contract to grant the licence to operate the business at the Catering Premises, any tender/quotation offer from the same Contractor or a related person of the Contractor (as defined as below) for the contract to be awarded in that new procurement exercise will be rejected.
- 19.6 For the purpose of **Clause 19.5**:
- (a) If the Contractor is a company, the expression “**related person**” of the Contractor includes any one of the following:
- (i) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Contractor (“**majority shareholder**”); or
  - (ii) a holding company or a subsidiary of the Contractor; or
  - (iii) a holding company or a subsidiary of a majority shareholder of the Contractor; or
  - (iv) a company in which a majority shareholder (being an individual) of the Contractor directly or indirectly beneficially owns fifty (50) percent 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 (Chapter 622 of the Laws of Hong Kong).
- (b) If the Contractor is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
- (i) any partner of the Contractor (if it is a partnership); or

- (ii) the spouse, parent, child, brother or sister of the Contractor, and in deducing such a relationship, an adopting 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
- (iii) a company in which the Contractor or any partner of the Contractor beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

19.7 The grounds for termination specified in this **Clause 19** are separate and independent, and shall not be limited by reference to or inference from the other of them.

## **20. Effect of Termination or Expiry**

20.1 Any termination or expiry of the Contract shall be without prejudice to the antecedent rights or obligations of either party.

20.2 In the event that the Contract is terminated under **Clause 19**, the Security Deposit shall be forfeited in its entirety absolutely to the Government without prejudice to the Government's other remedies and claims.

20.3 In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in **Clause 19** hereof or otherwise ("**Termination**"):

(a) the Contract 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 (including any breach(es) which entitles the Government to terminate the Contract);
- (ii) the rights and claims which have accrued to a party prior to the Termination; and
- (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (howsoever occasioned) (including without limitation **Clauses 4, 7, 9, 10, 13 to 21, 23, 25 to 33** hereof and **Clauses 2 to 4 and 13 to 16** of the **Contract Schedule 7 – Covenants in respect of Use of the Catering Premises**);

(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 15** hereof, in the event that this Contract is terminated under **Clause 19.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government arising from the Termination including without limitation:
- (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 terminating the Contract; and
  - (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 4.5** hereof;
- (e) the Contractor shall immediately deliver up vacant possession of the Licence Area and all Government Property 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 Representative (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;
- (f) 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;
- (g) all employees and agents of the Contractor shall vacate the Licence Area and deliver up all keys and access cards to the Licence Area;

- (h) if the Contractor fails to comply with any of **Clauses 20(e) to 20(g)** above, the Government Representative 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 good repair and a clean and serviceable condition. The Government Representative 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; and
- (i) submit all outstanding statements and information as specified in **Clause 9.2** and any interest at the rate specified in **Clause 4.5** hereof for any late payment.

**21. Corrupt Gifts**

If the Contractor or any employee or agent of the Contractor is found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government may terminate the Contract under **Clause 19.1(h)**.

**22. Disclosure of Information**

The Government may 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 financial information relating to the Business obtained from the Contractor. Without prejudice to the generality of the foregoing, the Government may disclose such information to prospective bidders for the operation of the Business, or any other contract.

**23. Applicability of the Public Health and Municipal Services Ordinance**

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

**24. Compliance with Law and Government Requirements**

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

**25. Mediation**

- 25.1 Any dispute or difference arising out of or in connection with the Contract shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then each of the parties hereto submits to the exclusive jurisdiction of the courts of Hong Kong for resolving such dispute or difference.
- 25.2 The Contractor shall be obliged to carry on the Business in accordance with the Contract irrespective of a notice of mediation having been served by either party or whether mediation is in progress.

**26. Service of Notice**

- 26.1 Any notice or communication to be given herein shall be in writing and shall be sent to the address, fax number or email address of the Government Representative set out below (in the case the Government Representative or the Government is the recipient) or the address, fax number or email address of the Contractor set out in the Contractor's quotation (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.

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

Address: Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon  
Attention: Manager (Ko Shan Theatre) Building and Licence Management  
Fax number: (+852) 2264 2872  
Email address: mkstblm@lcsd.gov.hk

- 26.3 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.
  - (e) if sent by email, when actually received in a form readable by an individual.

**27. Waiver of Remedies**

- 27.1 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.
- 27.2 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 the Contract on the Contractor's part to be observed and performed.
- 27.3 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.
- 27.4 Without prejudice to the generality of **Clause 27.1**, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

**28. Severability**

- 28.1 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, 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.
- 28.2 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.
- 28.3 Where, however, the provisions of any such applicable law of Hong Kong may be waived, they are hereby waived by the parties hereto to 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.

**29. Entire Agreement**

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

**30. Amendment**

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

30.2 In addition to its other powers, the Government may at any time review the plans in **Contract Schedule 2 – Technical Schedule** even after approval by the Government. Where the Government finds on reasonable grounds that any of these plans should be revised, the Contractor shall, upon request by the Government, make such revisions to these plans to ensure compliance and observance of the Contract to the satisfaction of the Government. The Contractor shall not implement the revised plans unless and until it has obtained the Government's approval to do so. Where the Government has given approval for the revised plans, the Contractor shall implement the revised plans forthwith or on such date specified by the Government.

30.3 The Contractor may not initiate any revision to the plans set out in **Contract Schedule 2 – Technical Schedule** without seeking the prior written approval of the Government.

**31. Further Assurance**

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

**32. Relationship of the Parties**

32.1 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.

32.2 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.



**33. Governing Law and Jurisdiction**

The Contract shall be governed by and construed according to the laws of Hong Kong and, subject to **Clause 22**, 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.

**34. Contracts (Rights of Third Parties) Ordinance**

34.1 It is noted that there is no provision in the 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.

34.2 Notwithstanding **Clause 34.1**, 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.

34.3 Nothing in **Clause 34.2** 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 7** 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.

**PART 3**  
**CONTRACT SCHEDULES**

<b><u>Content</u></b>	<b><u>Sheet No.</u></b>
Contract Schedule 1 – Price Schedule .....	87
Contract Schedule 2 – Technical Schedule .....	88
Contract Schedule 3 – General Information on Ko Shan Theatre, Ko Shan Theatre New Wing and the Catering Premises .....	89
Annex A – Location Map of Ko Shan Theatre and Ko Shan Theatre New Wing .....	92
Annex B – Introduction of the Catering Premises .....	93
Annex C – Operation Area of the Catering Premises .....	94
Annex D – Dimensions of the Catering Premises .....	95
Contract Schedule 4 – List of Prescribed Food and Beverages for Sale in the Catering Premises .....	96
Contract Schedule 5 – Government Provisions Made Available to the Contractor at the Catering Premises .....	97
Contract Schedule 6 – Fitting-out Schedule .....	98
Contract Schedule 7 – Covenants in respect of Use of the Catering Premises .....	102
Contract Schedule 8 – Service Specifications .....	115

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 1**

**Price Schedule**

**(to contain the successful Bidder's price proposal set out in Appendix 3 to Part 1 –  
Terms of Quotation subject to such modification as may be agreed with the Government)**

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 2**

**Technical Schedule**

**(to contain the successful Bidder's technical proposal set out in Appendix 2 to Part 1 – Terms of Quotation subject to such modification as may be agreed with the Government)**

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 3**

**General Information on Ko Shan Theatre, Ko Shan Theatre New Wing  
and the Catering Premises**

**1. Introduction**

The Ko Shan Theatre is located at 77 Ko Shan Road, Hung Hom, Kowloon and is a cross-district arts centre which offers facilities for performance, rehearsal, lecture, school functions and community arts activities. It comprises a 1 031-seat Theatre, two Rehearsal Rooms, a Committee Room and a catering premises. The Ko Shan Theatre is a popular venue for performances of traditional Cantonese Opera, excerpts and operatic songs concerts.

The Ko Shan Theatre New Wing is built to complement the existing facilities at the Ko Shan Theatre as a dedicated venue for Cantonese Opera performances, rehearsals, training and research. The Ko Shan Theatre New Wing accommodates a 596-seat Auditorium, an Exhibition Gallery, three Rehearsal Rooms, three Singing Practice Rooms, a Function Room, the Cantonese Opera Education and Information Centre, a Catering Premises, a gift shop, a Roof-top Garden and other supporting and ancillary facilities.

A location plan of the Ko Shan Theatre and the Ko Shan Theatre New Wing is at **Annex A**. More details are available at [www.lcsd.gov.hk/kst](http://www.lcsd.gov.hk/kst).

**2. Catering Premises at Ko Shan Theatre New Wing**

- 2.1 The Catering Premises with a greenery view is situated on the first floor of the Ko Shan Theatre New Wing with an area of about 110 m<sup>2</sup>. An introduction, a plan of operation area and dimensions of the Catering Premises are at **Annex B**, **Annex C** and **Annex D** respectively.
- 2.2 The Catering Premises is intended to serve patrons of the Theatre and the general public with a range of light food and beverages of western and fusion style. The standard of the Catering Service should be in keeping with the Theatre's status as a performing arts venue of Cantonese Opera and operatic songs and other art forms and geared to serve patrons comprise mainly senior citizens and other ages. The Bidder should offer reasonably priced food, drinks and meal sets of style and quality of service should be commensurate with the unique image, ambience and operation of the Theatre, and for promotion of performing arts in particular Cantonese Opera and Chinese operas.

### **3. Opening Hours of the Catering Premises**

- 3.1 The opening hours of the Catering Premises, although negotiable, should be compatible with that of the Theatre's opening hours which may be changed as and when required. The opening hours of the Theatre are from 1:00 p.m. to 11:00 p.m. daily throughout the year, subject to change at Government's sole discretion, or from 9:00 a.m. to 11:00 p.m. when there is performance in the morning. The Catering Premises shall be open on all days when the Theatre is open. The opening hours shall not be less than 52.5 hours per week and the Catering Premises should stay open an hour before and after commencement time of the performances in the major performance venue, i.e. the Auditorium.
- 3.2 Programmes and activities will be presented at the hiring facilities including but not limited to the 1 031-seat Theatre, the 596-seat Auditorium and other ancillary facilities. The Government Representative may request the Contractor to conduct Business (may be outside the normal opening hours of the Theatre) to the users, presenters, hirers, performers, audiences and participants of the programmes and activities by giving notice to the Contractor two (2) weeks in advance for such arrangement.
- 3.3 When Typhoon Signal No. 8 or above is hoisted, the Theatre will be closed until the Signal is cancelled or lowered. The Theatre will remain closed if Typhoon Signal No. 8 is cancelled/lowered less than two (2) hours before the normal closing hours.
- 3.4 The Theatre will open as usual when Amber Rainstorm Warning or Red Rainstorm Warning is issued. If Black Rainstorm Warning is issued during the Theatre's opening hours, the Theatre will remain open to provide shelters to the visitors and staff. If the Black Rainstorm Warning is issued before the Theatre's opening hours, the Theatre will be closed until the warning is cancelled. The Theatre will remain closed if the Black Rainstorm Warning is cancelled less than two (2) hours before the normal closing hours.

### **4. Usage Rates and Audiences**

Statistical information on the daily usage rates, number of performances and audience numbers of the Theatre at Ko Shan Theatre and the Auditorium at Ko Shan Theatre New Wing in 2018/19, 2019/20 and 2020/21 are listed below for reference.

#### **Ko Shan Theatre (Theatre)**

<b>Year</b>	<b>Daily usage rate</b>	<b>Number of performance</b>	<b>Number of audience</b>
2018/19	100%	351	227 587
2019/20	100%	255	145 073
2020/21	100%	78	28 333

**Ko Shan Theatre New Wing (Auditorium)**

<b>Year</b>	<b>Daily usage rate</b>	<b>Number of performance</b>	<b>Number of audience</b>
2018/19	100%	298	112 508
2019/20	100%	258	89 525
2020/21	100%	74	14 533

Note:

Bidder should note that the above information is for reference only and the Government gives no warranty as to the accuracy, completeness or future change of such information. Bidder should conduct his own independent assessment for preparation of his Quotation submission.



### PART 3 CONTRACT SCHEDULES

#### Annex A to Contract Schedule 3

#### Location Map of Ko Shan Theatre and Ko Shan Theatre New Wing



**PART 3**  
**CONTRACT SCHEDULES**

**Annex B to Contract Schedule 3**

**Introduction of the Catering Premises**

**1. Gross Floor Area and Location of the Catering Premises**

Location and gross floor area of approximate 110 m<sup>2</sup> is as delineated in **Annex C** and **Annex D**. Estimated seating capacity is about 40 persons.

**2. Toilet Provision outside Catering Premises**

There are no toilets inside the Catering Premises. Staff and customers of the Catering Premises can use the public toilets in the vicinity inside the Theatre.

**3. Provisions given by the Government for the Catering Premises are listed on **Contract Schedule 5 – Government Provisions Made Available to the Contractor at the Catering Premises.****

Note:

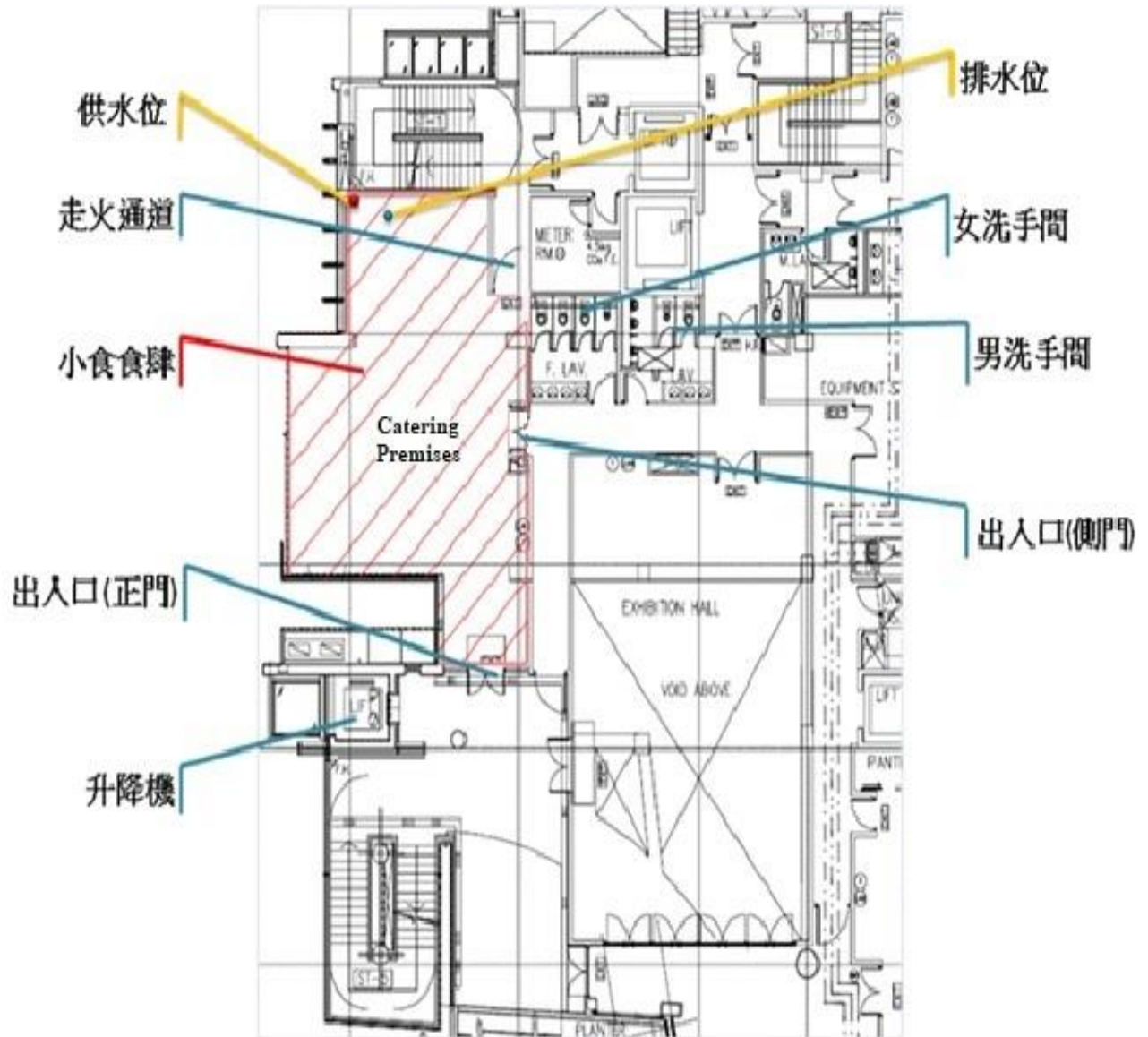
All plans in this Contract Schedule are for the purpose of identification only and all figures are approximate and subject to final measurement.

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.

**PART 3**  
**CONTRACT SCHEDULES**

**Annex C to Contract Schedule 3**

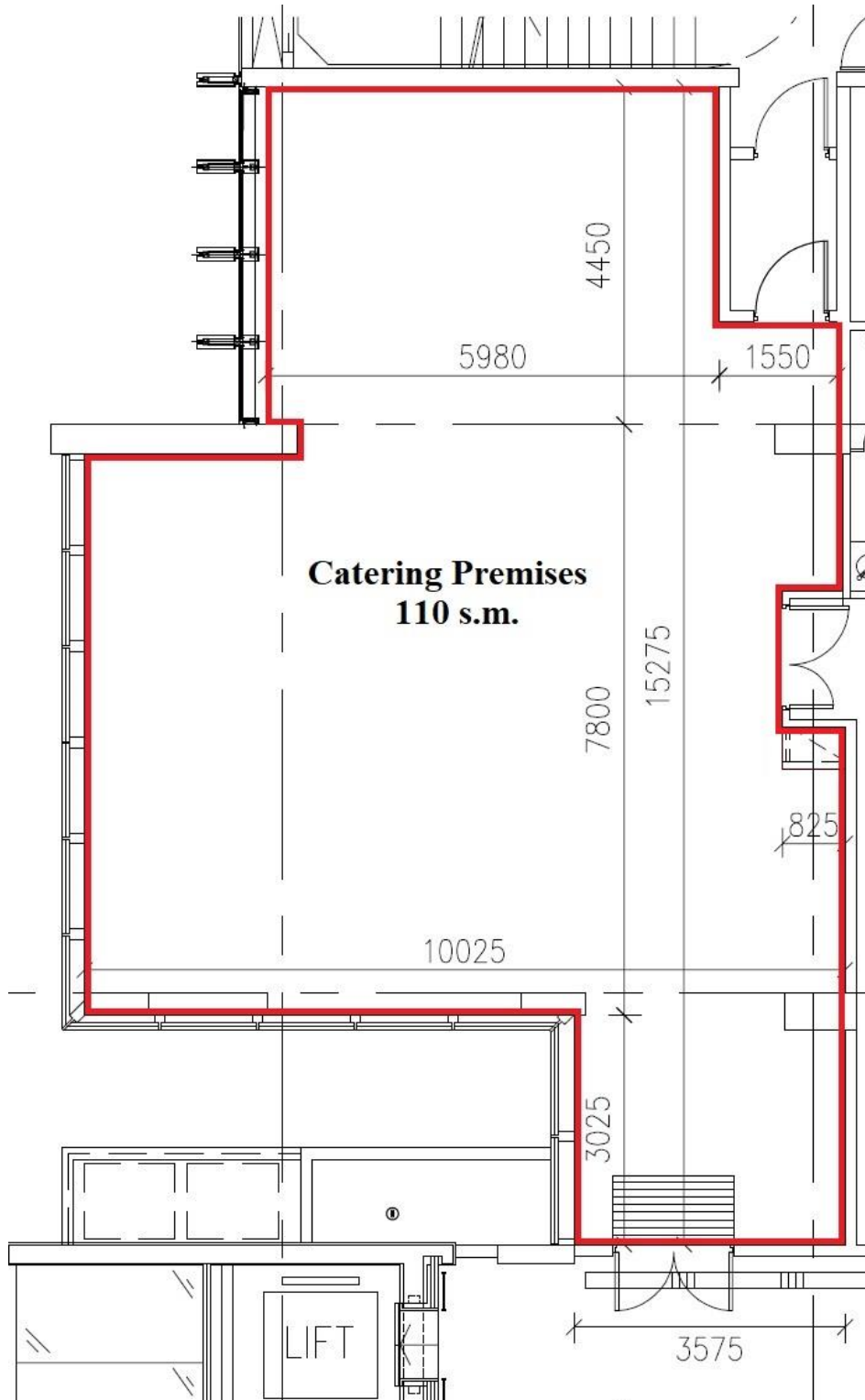
**Operation Area of the Catering Premises**  
(First floor of Ko Shan Theatre New Wing)



**PART 3**  
**CONTRACT SCHEDULES**

**Annex D to Contract Schedule 3**

**Dimensions of the Catering Premises**



(1:100 and the measurement indicated above is for reference only)

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 4**

**List of Prescribed Food and Beverages for Sale in the Catering Premises**

1. Bread, cakes and biscuits;
2. Toast including French toast;
3. Sandwiches;
4. Hot cakes, pancakes and waffles;
5. Oatmeal porridge and instant cereals;
6. Pastries, e.g. butterfly pastry (an electric warmer may be used to keep pastries warm);
7. Eggs (boiled, poached, fried or scrambled);
8. Ham, bacon, western sausages, tinned meat and tinned fish;
9. Soup (prepared from tinned soup or powdered soup);
10. Macaroni/spaghetti in soup prepared from tinned soup or powdered soup;
11. Tea, coffee, cocoa, any non-alcoholic drink or beverage made by adding water to prepared liquid or powder;
12. Hot dogs;
13. Cold cuts (from pre-cooked meat and served cold on the premises) and vegetable/fruit salads;
14. Hamburgers (made from ready-to-cook hamburger meat from a licensed food factory or from a lawful source);
15. Jelly, tinned or prepared from jelly powder;
16. Instant noodles/vermicelli in soup from pre-prepared ingredients enclosed in the packet; and
17. Five (5) self-specified snack items [pre-prepared and supplied from approved/licensed sources, ready to eat after warming/reheating by electricity (excluding deep-frying and stir-frying)].

- Notes:
- (i) Sale of these items of food and beverages is subject to the grant of all Requisite Permits required under all applicable laws and regulations.
  - (ii) All items for sale and their respective prices must be prominently displayed in the Catering Premises.
  - (iii) Bidder may offer for sale any commodity which is compatible with the requirements of all Requisite Permits.
  - (iv) Except for the service charge, it is not the intention of the Government Representative to exercise control over prices of food and beverages for sale in the Catering Premises.

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 5**

**Government Provisions Made Available to the Contractor at the Catering Premises**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>
<b><u>General</u></b>		
1.	Glass door with concealed door locks	1 pair
2.	Cable containment for telephone outlet	1
3.	Cable containment for IT outlet	1
4.	Floor drain	1 lot
5.	Vertical blind at glazed areas	1 lot
<b><u>Electricity and Lighting</u></b>		
6.	300A Triple Pole and Neutral (TPN) isolator for light and power	1
7.	1 x 28W fluorescent tube	13
<b><u>Fire Services</u></b>		
8.	Sprinkler provision for fire services installation with sprinkler heads, alarm bell, emergency lighting, hose reel and audio/visual advisory system	1 lot

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 6**

**Fitting-out Schedule**

**1. Ceiling**

No false ceiling is provided in the Catering Premises. If false ceiling is required, the Contractor shall be responsible for any alteration works and getting the approval for such alteration work from the Government Representative, and reinstate the original ceilings at the end of the Contract Period or sooner termination of the Contract.

**2. Shop Front, Doors, Floor and Walls**

2.1 No fixing on the glass panels and structural frames will be permitted.

2.2 No coating or painting on the glass panels will be permitted.

2.3 Internal wall of the Catering Premises shall be finished with plaster and emulsion paint. It may be covered up with plasterboard or plywood with decoration, which shall be removed at the end of the Contract Period or sooner termination of the Contract.

2.4 Vertical blinds are provided at glazed areas.

**3. Electricity Supply**

3.1 300 A three-phase power supply is available for the Catering Premises. The Contractor will be responsible for the wiring from the main power point to the desired locations within the Catering Premises and making application to the power company for the installation of his own meter and the cost thereof.

3.2 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.

3.3 The Catering Premises must be lit in such a way that other building users will not be adversely affected by any glare or reflection.

- 3.4 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 Catering Premises at the end of the Contract Period or sooner termination of the Contract.

**4. Water Supply**

Separate meter for fresh water supply to the Catering Premises is provided. The Contractor will be responsible for making application to the Water Authority for the water supply to the Catering Premises. Any alteration work for operational needs shall be approved by the Water Authority with the prior permission of the Government Representative.

**5. Drainage**

Floor drain is provided in the Catering Premises. The Contractor is responsible for submission to 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 Catering Premises. All alteration works including but not limited to raised flooring and surface channel shall be removed at the end of the Contract Period or sooner termination of the Contract.

**6. Air-conditioning System**

A pair of 65mm diameter chilled water pipes will be provided. The Contractor is responsible, at his own cost, for the installation of an independent cooling system subject to the prior approval from the Government Representative. The Contractor shall comply with the directions and instructions of the Government Representative regarding installation and shall at his 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 further that in the event of undue noise, vibration, heat or dripping of water being caused or generated by any air-conditioning 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 to the Catering Premises or the Theatre caused thereby.

**7. Fire Services Installations**

If addition and alteration to the existing sprinkler layout is required, the new pipes must be fed from the existing sprinkler system in the Catering Premises subject to the prior approval from the Government Representative.



**8. 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) / Registered Electrical Worker (REW). No moving signs or flashing lights will be permitted.

**9. Photo Record**

A photo record, capturing the state and condition of the Catering Premises and the Government Provisions in which possession is given, will be provided to the Contractor upon commencement of the Contract Period. Any subsequent modification or alteration to the Government Provisions at the Catering Premises by the Contractor shall be reinstated to the original state and condition as captured in the photo record prior to delivering up the vacant possession of the Catering Premises to the Government Representative upon the expiry of the Contract Period or early termination of the Contract, as the case may be.

**10. Fitting Out Methods**

- 10.1 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 Theatre are protected from excessive risks, noise and dirt.
- 10.2 The works area is to be completely sealed off from the remaining first floor area of the Theatre by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 10.3 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.
- 10.4 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative.
- 10.5 The Contractor shall, at its own cost, pay all required cost for the fitting-out works.
- 10.6 The fitting-out works should comply with the updated Barrier Free Access Design Manual.

**11. Working Hours for Fitting Out**

- 11.1 Provided that the noise level of the fitting-out works emitted is acceptable to the Director of Environmental Protection, the works will **NOT** be permitted during the following hours:

Monday to Friday	5:00 p.m. to 8:30 a.m. on next day
Saturday	1:00 p.m. to 8:30 a.m. on next Monday
Public Holiday and Sunday	All day

- 11.2 The Contractor is responsible to apply for permission from Director of Environmental Protection if special arrangement is deemed necessary.
- 11.3 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 Theatre or the activities of the users of the Theatre.
- 11.4 During the period of the fitting-out works, the Contractor shall keep a registrar of daily attendance of all the workmen working on site for periodic inspection by the Government Representative.

## **12. General**

- 12.1 The Contractor should appoint an Authorized 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 bear the full responsibility of his/her design, planning and supervision of the construction works. No part of the works may have any adverse effect, structurally or in any other ways, on the existing building.
- 12.2 The Contractor should undertake to implement all necessary improvement works in the Licence Area 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.
- 12.3 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.
- 12.4 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.
- 12.5 The maintenance of the internal building elements inside the Licence Area except the structure of the building should be undertaken by the Contractor.

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 7**

**Covenants in respect of Use of the Catering Premises**

**The Contractor covenants with the Government that, with respect to the Contractor's access to and use or occupation of the Licence Area (including the Government Provisions therein), it shall:**

**1. Seating Accommodation, Maintenance and Repair**

- 1.1 The Contractor shall keep and maintain at all times all 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.
- 1.2 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 and all fixtures and fittings therein including all interior doors, windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatus in good repair, clean and serviceable condition (fair wear and tear excepted) and to this end shall, if appropriate, from time to time paint and decorate the Licence Area.
- 1.3 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, outside the Licence Area if so required by the Government and/or the relevant authority.
- 1.4 The Contractor shall keep and maintain at all times to the satisfaction of the Government Representative all water apparatus 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.
- 1.5 The Contractor shall provide seating accommodation at the Licence Area not in excess the number as stipulated in **Annex B to Contract Schedule 3** 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.

- 1.6 The Contractor shall keep and maintain at all times all the equipment and furniture used in the course of operating 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 Representative reasonably demands.
- 1.7 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 Representative and shall not carry out the repairs to the same without first obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government Representative and of a standard to the Government's satisfaction.
- 1.8 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 safety equipment and 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.
- 1.9 If the Licence Area is damaged or any Government Provisions is found damaged or lost from whatsoever cause whilst in the occupation, possession or control of the Contractor, the Government shall be entitled to recover from the Contractor as a debt due to the Government all losses, liabilities, costs and expenses that it has incurred in the execution of any repair or replacement (including costs and expenses for procuring or monitoring such repair or replacement service) and in taking all other necessary actions as a result of any such damage or loss.
- 1.10 All Government Provisions shall remain the property of the Government and the Government Representative shall be entitled to conduct stocktaking of the same at any time and the Contractor shall provide every assistance to the Government Representative for this purpose.
- 1.11 For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Licence Area under the Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong) ("Cap. 314") during the Contract Period. The Contractor shall indemnify the Government from and against everything stated in **Clause 14 of Conditions of Contract** 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, the Government shall not 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.

1.12 The Contractor shall keep proper record showing the details of the maintenance and repair and shall provide such record to the Government within the time frame specified by the Government upon request.

## **2. Other Covenants**

In addition to other undertakings, 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 activities by:
  - (i) patrons in the Licence Area; or
  - (ii) officers, employees, agents or sub-contractors of the Contractor in the Licence Area or non-smoking area of the Theatre;
- (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 Licence 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 the preparation, cooking, heating or re-heating of food in the Licence Area which are not approved by the Government Representative;
- (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 including but not limited to “mahjong” and “tin kau” whether for gambling purposes or otherwise; 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 organisation or for any other purpose or function, save and except where the Government at its absolute discretion may permit or require.

### **3. Outgoings for Licence Area**

- 3.1 The Contractor shall pay all the costs (such as installation costs) and deposits for electricity, sewage services, telephone line installed in and water consumed on or in the Licence Area (including but not limited to electricity charges for electricity consumed by air-conditioning equipment and any other equipment, machinery and installation whatsoever installed in the Licence Area or otherwise but excluding air-condition ventilation made available to the Licence Area). The Contractor must at its 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.
- 3.2 The Contractor shall pay all Government rates and rent, taxes, fees, charges and outgoings whatsoever now or hereafter payable in respect of the Licence Area throughout the Contract Period including the Free Decoration Period or any period of suspension of the Business for whatsoever reasons.
- 3.3 The Contractor shall pay and discharge all outgoings and expenditure whatsoever which may be incurred by the Contractor arising from or in response of or otherwise however in connection with the Business.

### **4. Air-conditioning**

- 4.1 As more particularly stipulated in **Contract Schedule 6 – Fitting-out Schedule**, only a pair of 65mm diameter chilled water pipes will be provided. The Contractor is responsible, at his own cost, for the installation of an independent cooling system with an independent electricity meter subject to the prior approval from the Government Representative. The Contractor shall comply with the directions and instructions of the Government Representative regarding installation and shall at his 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 further that in the event of undue noise, vibration, heat or dripping of water being caused or generated by any air-conditioning 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 Catering Premises or the overall premises.

- 4.2 Due to technical reasons, the Contractor may not apply for separate meters from the power company for the metering of electricity consumed by the Government supplied chilled water and that 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 Theatre (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 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 Government supplied chilled water 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.

- 4.3 In addition to the Contractor Electricity Share payable under **Clause 4.2**, the Contractor shall pay a deposit to the Government Representative as security for its obligation under **Clause 4.2** in the amount of Hong Kong Dollars Twelve Thousand only (HK\$12,000) ("Electricity Deposit"). The Electricity Deposit shall be payable within seven (7) working days from the date of the letter of Conditional Acceptance of Quotation in cash or cashier order under **Paragraph 13.1** of the **Terms of Quotation**.
- 4.4 In the event that the Contractor shall fail to pay a Contractor Electricity Share under **Clause 4.2**, 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 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.

- 4.5 If any deduction is made by the Government from the Electricity Deposit, the Contractor shall, within fourteen (14) 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.
- 4.6 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 4.2** in respect of all Contractor Electricity Shares payable throughout the Contract Period.
- 4.7 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 may require. Alternatively, the Government may not require any top up depending on the excess amount.

## **5. Cleansing, Collection and Disposal of Refuse and Litter**

- 5.1 The Contractor shall maintain to the reasonable 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 and its immediate vicinity or any part thereof, the Government may give a written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government Representative in its reasonable opinion may allow the necessary cleaning and servicing works in the Licence Area and its immediate vicinity. 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 under **Clause 11.1** of **Conditions of Contract** 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.
- 5.2 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.



- 5.3 The Contractor shall comply with the Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) and the latest Municipal Solid Waste Charging Scheme (information of which can be found at the Government website at <https://www.mswcharging.gov.hk/>) as replaced, amended, modified or re-enacted from time to time. The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government Representative 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 and shall be properly disposed of at least once every day to such 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.
- 5.4 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 a daily basis or at a frequency as prescribed by the Government.
- 5.5 The Contractor shall carry out cleansing and clearing of all grease traps in the Licence Area used in the operation of the Business on, at least, a daily basis and of all the drainage and sewerage pipes in the Licence Area used in the operation of the Business at frequent intervals to the Government Representative's reasonable satisfaction to prevent choking and blockage of the installations. 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 Representative undertake at its own expense either an emulsifying or a neutralizing effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government Representative.
- 5.6 The Contractor shall thoroughly clean the food preparation room and other permitted food preparation areas, at least, on a daily basis. The Contractor shall at least twice a year employ a specialist cleaning contractor as may be approved or prescribed by the Government Representative to deep clean the exhaust and ventilation systems in the Licence Area to the satisfaction of the Government Representative.
- 5.7 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 Theatre 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 Representative undertake the cleaning of such parts to the satisfaction of the Government Representative using a contractor approved or prescribed by the Government Representative. The Contractor shall ensure that the waste water that comes out from the Licence Area is free of grease and shall not cause, suffer or permit waste water to be discharged into areas surrounding the Licence Area or the Theatre.

- 5.8 In the event of failure to comply with this **Clause 5**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government in the removal and disposal of such refuse and litter or in cleansing and clearing any of the drains, sewers, grease traps, exhaust and ventilation systems choked or blocked or otherwise due to the act, default or negligence of the Contractor.
- 5.9 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.

## **6. Water Supply and Electricity Supply**

- 6.1 The Contractor shall at its own expense install and provide all necessary water supply equipment or facilities required for its Business and pay all fees and charges in connection herewith.
- 6.2 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.
- 6.3 The Contractor shall ensure all water pipe installation of the cooking equipment will interface with the approved water supply plan by the 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.
- 6.4 The Contractor, if so permitted by the Government, may consume electricity from supply points which are available in the Licence Area to operate its Business as more particularly specified in **Contract Schedule 6 – Fitting-out Schedule**. All consumption of electricity from such supply points must be separately metered by meter(s) arranged by the Contractor with 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 (Chapter 406 of the Laws of Hong Kong) and its subsidiary legislations and/or the Government Representative’s reasonable instructions with respect to the utilities.

6.5 Without prejudice to the generality of **Clause 10 of Conditions of Contract**, 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 Representative 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 (Chapter 406D of the Laws of Hong Kong) and to the satisfaction of the Government Representative. The Contractor shall be responsible for maintaining and repairing such fittings at its own expense as well as removing the same should the Government Representative so direct. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to Government Representative for retention.

## **7. Erection of Structure**

7.1 Subject to other terms of the Contract, 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 7.1 of Contract Schedule 8 – Service Specifications** or signboard(s) bearing the trade name for the Business, which shall be in both Chinese and English and have been approved in writing by the Government.

7.2 The number, size and location of, and the ways of erecting, the signboards stipulated in **Clause 7.1** shall be approved or prescribed by the Government in writing.

## **8. Store of Dangerous Goods and Prohibited Goods**

Except a reasonable quantity to be stored in the Licence Area is 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 (Chapter 295 of the Laws of Hong Kong) or any arms, ammunition, explosives or combustible substances.

## **9. Fire Precautions**

9.1 The Contractor shall provide and maintain in proper and serviceable condition fire-fighting equipment to the satisfaction of the Government Representative and comply with any directions issued by the Government Representative or the Director of Fire Services in connection with the Licence Area.

9.2 The Contractor shall only use electricity as fuel to heat or cook food or boil water in the Licence Area. No naked flame is permitted in the Licence Area.

**10. Watchman**

- 10.1 No watchman deployed by the Contractor shall be permitted to remain in the Licence Area or other part of the Theatre outside the opening hours of the Licence Area. The Contractor shall not allow any person including but not limited to any person purportedly serving as watchman to remain in the Licence Area outside such opening hours without the prior permission in writing by the Government. The Contractor shall immediately remove such person from the Licence Area if the Government Representative notifies the Contractor in writing of the withdrawal of its approval for such person to stay overnight in the Licence Area.
- 10.2 The Contractor shall ensure that each of the watchmen possesses a valid security personnel permit issued under the Security and Guarding Services Ordinance (Chapter 460 of the Laws of Hong Kong) and submit to the Government for prior written approval the name and Hong Kong Identity Card number of such watchmen.

**11. Access by the Government for Repair**

The Government or any of its servants or agents (with or without workmen) may, at all reasonable times, 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 the Government and to view the condition and state of repair thereof.

**12. Inconvenience or Annoyance Caused at the Theatre**

- 12.1 The Contractor shall ensure that On-site Personnel, suppliers, and permitted sub-contractors perform their duties in the Licence Area 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.
- 12.2 The Contractor shall not do anything in or upon the Licence Area or any part of the Theatre 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 Theatre, the Government, its employees or agents working in the Theatre. The Government shall be entitled to suspend the Contractor's right to carry on the Business under **Clause 11.1 of Conditions of Contract** for non-compliance with this **Clause 12.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.

12.3 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.

**13. 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 shall be obtained therefrom.

**14. Publicity and Advertisement**

14.1 The Contractor shall not exhibit, display, publish or use any advertising or other publicity materials or perform any act with an advertising nature in the Theatre except with the prior written consent of the Government.

14.2 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, including but not limited to any such materials relating to any tobacco or tobacco related products.

14.3 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 form the language used a connection with the Government can reasonably be inferred or implied.

**15. 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 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 Chinese and English.

**16. Intellectual Property Rights**

16.1 The Contractor warrants to the Government that:

- (a) The Contractor or any member of the Contractor Responsible Group will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person by reason of possession, stocking, display or sale of any item of whatsoever nature 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 food, beverage, service and other items and materials of whatsoever nature to be stocked, displayed for sale, or for use by the Contractor, 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 food, beverage, service, or other items or materials of whatsoever nature to be stocked, displayed for sale or for use by the Contractor, in or from the Licence Area, and in respect of which any Intellectual Property Rights are vested in a third party, prior to any such stocking, display sale or use, the Contractor shall have obtained from such third party the grant of all necessary licences for itself and the Government (if and to the extent legally necessary), the Contractor's and the Government's (if and to the extent legally necessary) authorised uses, assigns and successors in title to do such stocking, display, sale or use. The costs of the above licences shall be borne by the Contractor;
- (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 or use of any food, beverage, service or other item or material of whatsoever nature 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 this 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;
- (f) if and to the extent any item or material in which Intellectual Property Right subsists is required for performing the Contract, it is either the owner of the Intellectual Property Rights or has a valid and continuing licence under which it is entitled to use or sub-license such item or material and the Intellectual Property Rights for itself and for the Government and its authorised users to use such item or material;
- (g) all and any items and materials to be supplied or provided by the Contractor to the Government under the Contract including the plans submitted and form part of the Contract Schedules (collectively, “Materials”) are not eligible for and does not enjoy any Intellectual Property Rights including copyright protection and moral right protection or confidentiality or non-disclosure protection. Without prejudice to the generality of the foregoing, the Materials do not possess the degree of originality to warrant copyright protection. The Government shall not be subject to any restriction and does not require any licence or consent or clearance from the Contractor or any other person in the use or disclosure of any such Materials; and
- (h) the Contractor will do, and will procure all other necessary parties to do, all things and sign all documents necessary to ensure consummation of the transactions contemplated in **Clauses 16.2 and 16.3**.

16.2 Notwithstanding the warranty in **Clause 16.1(g)**, in the event and to the extent that any part of the Materials are treated as original materials created by the Contractor or any other person (“original materials”), the Contractor hereby agrees that, and shall ensure the creator of such original materials will agree, that the copyright and all other Intellectual Property Rights in such original materials (if any, and whether existing as at the date of the Contract or any time thereafter) shall vest in the Government absolutely immediately upon creation.

16.3 Notwithstanding the warranty in **Clause 16.1(g)**, in the event that any moral right does subsist in the Materials or any part thereof, the Contractor hereby irrevocably waives and undertakes to procure at its own cost and expense all relevant authors of the Materials or any part thereof to irrevocably waive all moral rights (whether past, present or future) in the respective items. The waiver shall operate in favour of the Government, its authorised users assigns and successors in title and shall take effect upon creation of such items or upon delivery of such items to the Government (as the case may be).

**PART 3**  
**CONTRACT SCHEDULES**

**Contract Schedule 8**

**Service Specifications**

**The Contractor shall throughout the Contract Period: –**

**1. Services**

- 1.1 The Contractor shall ensure that during the continuance of this Contract and during the opening hours of the Licence Area, an efficient and adequate supply of Prescribed Food and Beverages of a style, type and quality to the satisfaction of the Government is provided and maintained in the Licence Area.
- 1.2 The Contractor shall operate the Business in a way which is commensurate with the services, image, functions and activities of the Theatre and satisfies the needs of the Theatre's core clients including but not limited to patrons of various ages and characteristics, users of hiring facilities, visitors and the general public.
- 1.3 The Contractor shall not solicit or receive any charges for admission to the Licence Area or its surroundings, nor solicit or receive any other additional charges whatsoever on top of the menu price of Prescribed Food and Beverages except that the Contractor may solicit and receive service charges and/or tips, if any, levied up to ten percent (10%) of the menu price (or such increased rate as the Government may from time to time approve in writing).
- 1.4 The Contractor shall accept payment for all items sold in the Licence Area by cash in Hong Kong Dollar, all internationally recognised credit cards (such as Visa and Mastercard) and such mobile payment as the Government and the Contractor may from time to time agree.
- 1.5 In operating the Business, the Contractor shall observe and comply with the plans as set out in **Contract Schedule 2 – Technical Schedule** and in the final form as approved by the Government.
- 1.6 The Contractor shall become an EatSmart restaurant under the "EatSmart Restaurant Star+" Campaign run by the Department of Health within six (6) months of commencement and for the remaining part of the Contract.

**2. Green Measures relating to Disposable Tableware**

- 2.1 (a) The Contractor shall not provide plastic straws for any customers.



- (b) 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.
- (c) 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.
- (d) 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.
- (e) **Clauses 2.1(c) and 2.1(d)** 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.
- (f) 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.
- (g) The Contractor shall comply with the requirements and conditions as stipulated in **Clauses 2.1(a) to 2.1(f)** 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.
- (h) In the event that the Contractor fails to comply with the requirements and conditions as stipulated in **Clauses 2.1(a) to 2.1(f)** 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, or barring applications for, renewal of existing contract, and/or quotation for new contract by the Contractor; and/or terminate the contract.

- 2.2 (a) 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, rescue missions, emergency responses) and special operational requirements (e.g. special hygiene measures required during disease outbreaks, prolonged outdoor work).
- (b) 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.
- (c) The Contractor may provide plastic lids for cups and bowls for take-away food or drinks.
- (d) 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.
- (e) The decision of the Government as to whether **Clauses 2.2(a) to 2.2(c)** apply shall be final, conclusive and binding on the Contractor.

### **3. Premises Hygiene, Food Hygiene and Safety**

- 3.1 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 with any pests or vermin.
- 3.2 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.

- 3.3 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 removing the same should the Government so direct.
- 3.4 The Contractor shall assume full responsibility for the safety of all operations and methods of operations.
- 3.5 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 the Government from and against everything specified in **Clause 14 of Conditions of Contract** arising from the use of such vehicles.
- 3.6 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.
- 3.7 The Contractor shall keep all articles of food and beverages stored or offered for sale in the Licence Area effectively protected against flies, cockroaches, vermin, dust and dirt.
- 3.8 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.
- 3.9 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 (1) 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.
- 4. On-site Personnel**
- 4.1 In deploying staff for operating the Business, the Contractor shall comply with the details of staffing structure and staff training as stipulated in **Contract Schedule 2 – Technical Schedule** to the extent as accepted by the Government.

- 4.2 The Contractor shall require all persons employed or appointed to work in 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 and shall cease to employ in the Licence Area any person found by the medical practitioner to be likely to spread a communicable disease.
- 4.3 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance in the Licence Area at all times to supervise On-site Personnel.
- 4.4 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 Theatre and shall ensure that they will behave accordingly.
- 4.5 The Contractor should establish strategies, including but not limited to provision of customer services training to staff engaged for the Business, for enhancing customer services to encourage repeat visits to the Theatre.
- 4.6 The Contractor should set up policies on refund/exchange of substandard goods and handling of customers’ complaints, etc.
- 4.7 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.
- 4.8 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.
- 4.9 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of its Business and of a type approved by the Government for the use of all On-site Personnel. 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.
- 4.10 The Contractor shall provide lockers for On-site Personnel to store their clothing and personal effects 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.
- 4.11 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.
- 4.12 The Contractor shall ensure that a high standard of customer service is maintained and all On-site Personnel conduct themselves in a courteous manner to the satisfaction of the Government.

4.13 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for operating 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 Representative on request. All personal data submitted by the Contractor will be used by the Government for the purpose of this Contract only.

## **5. 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 with a view to stamping out the same. 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.

## **6. Stock and Sale of Food Commodities**

6.1 The Contractor may not sell or offer to sell any items in the Licence Area other than the Prescribed Food and Beverages as stipulated in **Contract Schedule 4 – List of Prescribed Food and Beverages for Sale in the Catering Premises** and/or **Contract Schedule 2 – Technical Schedule** and such other food and beverages from time to time approved by the Government Representative of a standard to the satisfaction.

6.2 Any addition or deduction of items to or from the Prescribed Food and Beverages as stipulated in **Contract Schedule 4** may only be made after obtaining the prior written approval of the Government Representative.

6.3 The Contractor shall only sell the food and beverages consistent with the style of the Business as stipulated in **Contract Schedule 4**. Subject to the foregoing, and observation and compliance with all other requirements in the Contract, the Contractor will nonetheless be allowed, according to market demand, to introduce new items of food or beverages which are consistent with the style of the Business without the need for obtaining the prior written approval of the Government Representative.

6.4 The Contractor shall provide to customers upon request receipts for any food and beverage sold in the Licence Area.

6.5 Notwithstanding any prior approval by the Government Representative, the Contractor shall remove forthwith from display and not sell or continue to sell, stock or display in the Licence Area any food, beverage, services or any other items whatsoever used 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 Theatre 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.

6.6 The Contractor shall not stock, sell or provide in the Licence Area any cigarettes, cigars or tobacco products whatsoever.

6.7 The Contractor shall submit to the Government for information the menu containing a list of all items sold in the Licence Area together with their prices to be supplied and sold in the Licence Area not less than seven (7) days prior to the coming into force of the prices.

6.8 The Contractor shall not sell drinking water in plastic bottles measuring 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.

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

## **7. Display of Commodity Prices**

7.1 The Contractor shall prominently display at all times the prices of all authorised food and beverage and services in respect of the Business in the Licence Area. 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.

7.2 (a) In the case of items which have a wholesaler or manufacturer recommended Hong Kong retail price, the Contractor shall sell the goods at a price not higher than the recommended price; and where such recommended prices are stated in foreign currencies, the Contractor shall adopt such prices after applying the Hong Kong Dollar exchange rates for the foreign currencies. The Contractor shall make available for inspection the exchange rates applied by the Contractor to the Government Representative and any customer who so requests, and notify the Government Representative of any changes to the said exchange rates.

(b) Where no recommended Hong Kong retail price is available, the items shall be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlet, or in the case where such goods are not sold by the Contractor at its other retail outlet, within the range of prices charged in similar types of retail outlet in Hong Kong.

7.3 The Government Representative reserves the right to question the price of any item for sale in the Licence Area at any time and the Contractor shall provide justification for the price being charged.

**DRAFT ARTICLES OF AGREEMENT**

THESE ARTICLES OF AGREEMENT are 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, N.T., Hong Kong acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (hereafter referred to as “Government”) of the one part,

AND \_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as “Contractor”) of the other part.

**WHEREAS:**

- (A) By an Invitation to Quotation (Quotation Ref.: LC/CS/Q/LRR/PVM/KST/2021/01), the Government has invited quotations for the grant of licence to operate the Business at the Catering Premises of the Ko Shan Theatre New Wing.
- (B) The Contractor’s quotation for the Contract was accepted in principle by the Government by a letter of Conditional Acceptance of Quotation to the Contractor pursuant to Paragraph 13 of the Terms of Quotation.
- (C) The Contractor has apparently fulfilled all conditions specified in the letter of Conditional Acceptance of Quotation.
- (D) Pursuant to Paragraph 13 of the Terms of Quotation, the parties hereto enter into these Articles of Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. All terms and expressions defined in the Quotation Documents published by the Government in connection with the Invitation to Quotation 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) Quotation Form (Parts I to II)
  - (ii) Interpretation
  - (iii) Part 1 – Terms of Quotation and Appendices to Terms of Quotation
  - (iv) Part 2 – Conditions of Contract
  - (v) Part 3 – Contract Schedules 1 to 8
  - (vi) These Articles of Agreement



- 3. The commencement date of the Contract Period shall be: \_\_\_\_\_.  
The Contract shall only come into effect upon commencement of the Term notwithstanding that these Articles of Agreement may be signed and dated earlier than the aforesaid Commencement Date.
- 4. For the purposes of Clause 26 of the Conditions of Contract, the address and facsimile number of the Contractor are as follows:

Name of the Contractor : \_\_\_\_\_  
 Address : \_\_\_\_\_  
 \_\_\_\_\_  
 Facsimile number : \_\_\_\_\_  
 Email address : \_\_\_\_\_  
 Attention (Post Title) : \_\_\_\_\_

IN WITNESS whereof the parties hereto have entered into these Articles of Agreement 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 : \_\_\_\_\_  
 Title of the Contractor / Authorised Representative : \_\_\_\_\_

in the presence of  
 Name of witness : \_\_\_\_\_  
 Title of witness : \_\_\_\_\_  
 Signature of witness : \_\_\_\_\_

SIGNED BY THE ASSISTANT DIRECTOR )  
 (PERFORMING ARTS) OF LEISURE AND CULTURAL )  
 SERVICES DEPARTMENT for and on behalf of THE )  
 GOVERNMENT OF THE HONG KONG SPECIAL )  
 ADMINISTRATIVE REGION OF THE PEOPLE’S )  
 REPUBLIC OF CHINA )

in the presence of \_\_\_\_\_  
 Name of witness : \_\_\_\_\_  
 Title of witness : \_\_\_\_\_  
 Signature of witness : \_\_\_\_\_