

# TENDER FORM

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

TENDER FOR  
THE GRANT OF LICENCE TO CONDUCT THE FAST FOOD BUSINESS AT  
CONCESSION NOS. 5 AND 17 IN HONG KONG STADIUM

(Tender Ref. : LC/LS/T/FFK/HKS/HKS/2021/01 )

## LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked **“Tender for the Grant of Licence to Conduct the Fast Food Business at Concession Nos. 5 and 17 in Hong Kong Stadium”** and addressed to the Chairman, Government Logistics Department Tender Opening Committee, must be deposited in the Government Logistics Department Tender Box situated on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon (time) on 9 September 2021 (date). Late tenders will not be accepted.

Dated this 3 August 2021

Ms WONG Sau-yin, M(HKS)  
Government Representative

## Part I — Tender Documents

These documents under the tender reference LC/LS/T/FFK/HKS/HKS/2021/01 consist of three (3) complete sets of :

- (a) This Tender Form (Sheets 1 to 2);
- (b) Tender Labels 1 and 2 (Sheet 3 to 6);
- (c) Interpretation (Sheets 7 to 10);
- (d) Terms of Tender (Sheets 11 to 33);
- (e) Conditions of Contract (Sheets 34 to 70);
- (f) Schedules (Sheets 71 to 100);

First Schedule            Marking Scheme and Assessment Criteria for Tender Evaluation

Second Schedule        Information of the Tenderer

|                  |   |
|------------------|---|
| Third Schedule   | Marketing, Menus and Service Packages Plans, Staff Training Plan, Hygiene Maintenance and Waste Maintenance Plan and Innovative Suggestion and Experience in providing catering services for event(s) |
| Fourth Schedule  | The Monthly Licence Fee and Minimum Annual Licence Percentage   |
| Fifth Schedule   | Form of Security Deposit Election   |
| Sixth Schedule   | List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the Fast Food Business at Hong Kong Stadium   |
| Seventh Schedule | The Non-collusive Tendering Certificate   |
| Eighth Schedule  | Form of Bank Guarantee  |

(g) Annexes (Sheets 101 to 104); and

|         |   |
|---------|---|
| Annex A | Location Plan of the Venue at Hong Kong Stadium                     |
| Annex B | Location Plan Showing Concession Nos. 5 and 17 at Hong Kong Stadium |
| Annex C | Layout Plan Showing Concessions Nos. 5 and 17 at Hong Kong Stadium  |

(h) Articles of Agreement (Sheets 105 to 107).

## Part II — Offer to be Bound

1. Having read the Tender Documents, I/we for and on behalf of the Tenderer named below, agree to be bound by the terms and conditions as stipulated therein.

2. I/We do agree to carry out the Fast Food Business mentioned in the Tender Documents and pay the Monthly Licence Fee and Minimum Annual Licence Fee as quoted by me/us in the Fourth Schedule, subject to and in accordance with the terms and conditions stipulated in the Tender Documents.

Name of Tenderer/Name and Title of Authorised Representative of the Tenderer\*

.....  
(Name in block letters)

Signature of Tenderer/Authorised Representative of the Tenderer \*

.....  
(Signature)

.....  
(with Tenderer's stamp, if applicable)

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

Date : .....

*NOTES :* (i) All the particulars required above must be provided.

\* Delete as appropriate.

# **TENDER LABEL 1**

## **Price Proposal**

THE CHAIRMAN, GOVERNMENT LOGISTICS  
DEPARTMENT TENDER OPENING COMMITTEE

Government Logistics Department Tender Box,  
Ground Floor, North Point Government Offices,  
333 Java Road, North Point, Hong Kong

**Tender for the Grant of**  
**Licence to Conduct the Fast Food Business**  
**at Concession Nos. 5 and 17 in Hong Kong Stadium**

**(Tender Ref. LC/LS/T/FFK/HKS/HKS/2021/01)**

Tender Closing Date: 9 September 2021 (before 12:00 noon)

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## **TENDER LABEL 2**

### **Technical Proposal**

THE CHAIRMAN, GOVERNMENT LOGISTICS

DEPARTMENT TENDER OPENING COMMITTEE

Government Logistics Department Tender Box,  
Ground Floor, North Point Government Offices,  
333 Java Road, North Point, Hong Kong

**Tender for the Grant of**

**Licence to Conduct the Fast Food Business**

**at Concession Nos. 5 and 17 in Hong Kong Stadium**

**(Tender Ref. LC/LS/T/FFK/HKS/HKS/2021/01)**

Tender Closing Date: 9 September 2021 (before 12:00 noon)

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**INTERPRETATION**

1. The interpretation of the following terms applies to the Tender Documents and the Contract unless the context provides otherwise —

|                                    |   |
|------------------------------------|---|
| “Accepted Innovative Suggestion”   | means an Innovative Suggestion and its specifications, subject to negotiations if any, accepted by the Government.  |
| “Cap.”                             | means a Chapter of the Laws of Hong Kong  |
| “Commencement Date”                | means the date on which the period commences as specified in Clause 2 of the Conditions of Contract (including any advancement or deferment pursuant to Clause 8 of the Conditions of Contract).  |
| “Conditional Acceptance of Tender” | has the meaning given to the term in Clause 15(b) of the Terms of Tender.   |
| “Contract”                         | means the contract made between the Government and the Licensee for the use of the Licence Areas and subject to the terms and conditions set out in the Tender Documents and the tender submitted by the Licensee (to the extent accepted by the Government). |
| “Estimated Total Contract Value”   | means an amount equal to 2 years x Minimum Annual Licence Fee.  |
| “Contract Year”                    | means every successive twelve (12) months’ period within the Licence period or the remainder of the Licence Period after the last complete twelve (12) months’ period (as the case may be).   |
| “Event”                            | means any form of entertainment or function which takes place at the Venue, where attendance of spectators is expected.   |
| “Event Day”                        | means a day on which there is Event.  |
| “Execution Plans and Suggestions”  | means the execution plans and suggestions required in the Third Schedule, viz., the plans known as “Marketing, Menus and Service Packages Plans”, “Hygiene Maintenance Plan” and “Waste Management Plan”, and suggestions known as “Innovative Suggestions”.  |
| “Fast Food Business”               | has the meaning given to the term in Clause 3(a) of the Conditions of Contract.   |
| “Fast Food Kiosk”                  | has the meaning given to the term in Clause 3(a) of the Conditions of Contract  |
| “General Holiday”                  | means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).   |

|                              |   |
|------------------------------|---|
| “Government”                 | means the Government of Hong Kong.  |
| “Government Representative”  | means the Director of Leisure and Cultural Services or any duly authorised officer for the purpose of this Contract.  |
| “Hong Kong”                  | means the Hong Kong Special Administrative Region of the People’s Republic of China.  |
| “Innovative Suggestion”      | means an innovative suggestion that can bring positive values to the society of Hong Kong proposed by the Tenderer in its Tender to be assessed under Assessment Criteria No. 4 of the Marking Scheme.  |
| “Invitation to Tender”       | means the invitation issued by the Government to invite tender for the Contract on the terms set out in the Tender Documents.   |
| “Licence”                    | means the permission to conduct the Fast Food Business.   |
| “Licence Area(s)”            | has the meaning given to the term in Clause 3(b) of the Conditions of Contract.   |
| “Licence Percentage”         | means the Licence Percentage quoted by the successful Tenderer in the Fourth Schedule.  |
| “Licence Period”             | means the period as specified in Clause 2 of the Conditions of Contract (including any extensions pursuant to Clause 2(b) of the Conditions of Contract).   |
| “Licensee”                   | means the Tenderer whose Tender is accepted by the Government.  |
| “Minimum Annual Licence Fee” | means the Minimum Annual Licence Fee quoted by the successful Tenderer in the Fourth Schedule and accepted by the Government.   |
| “Monthly Gross Receipts”     | means all gross proceeds or receipts as received or receivable by the Licensee for any commodities including but not limited to food and/or drinks, sold or consumed provided by or through the Licensee within or through or out of the Licence Areas plus all other incomes (except profits arising from the sale of capital assets) deriving from or in respect of the Fast Food Business and shall be free and clear of any deduction. For the avoidance of doubt, it is hereby declared that any payment by electronic money, shall be deemed to have been received in full by the Licensee at the time it is made and gross receipts shall be free and clear of deduction whatsoever. |
| “Monthly Licence Fee”        | has the meanings given to the term in Clause 6 of the Conditions of Contract.   |



|                                |  |
|--------------------------------|--|
| “Original Tender Closing Date” | means the date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently.   |
| “Price Proposal”               | means the proposal known as “Price Proposal” to be submitted under Clause 5(a)(i) of the Terms of Tender.  |
| “Security Deposit”             | means the sum of money deposited by the Licensee by cash, cheque or cashier’s order or in form of bank guarantee referred to in Clause 12 of the Terms of Tender and Clause 7 of the Conditions of Contract.   |
| “Technical Proposal”           | means the proposal known as “Technical Proposal” to be submitted under Clause 5(a)(ii) of the Terms of Tender.   |
| “Tender” (upper or lower case) | means a tender submitted in response to this Invitation to Tender.   |
| “Tender Closing Date”          | means the date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Tender Documents.   |
| “Tender Documents”             | means the documents as specified in Clause 1 of the Terms of Tender.   |
| “Tender Submission Date”       | means the date of the Offer to be Bound.   |
| “Tender Validity Period”       | means the period during which the Tender is to remain open and as specified in Clause 16 of the Terms of Tender.   |
| “Tenderer”                     | means the Person submitting a tender.  |
| “Venue”                        | means the premises as delineated and shown coloured pink in Annex A.   |
| “working day”                  | means Monday to Friday, other than a General Holiday or a day on which Tropical Cyclone Warning Signal No. 8 or above is issued, or a 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 Tender Documents and the Contract, unless the content otherwise requires, the following rules of interpretation shall apply —

- (a) “month” and “monthly” refer to a calendar month;
- (b) a time of a day shall be construed as a reference to Hong Kong time;

- (c) the masculine gender includes the feminine and the neuter genders and vice versa;
- (d) the singular includes the plural and vice versa;
- (e) the “Person” includes any individual, company, corporation, partnership and firm;
- (f) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument. Reference to a statute or enactment shall include all subsidiary legislation made thereunder;
- (g) the heading to individual clauses of the Contract and individual terms of the Terms of Tender are for ease of reference only and shall not affect the interpretation or construction of the Terms of Tender or the Contract; and
- (h) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Annex, 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.

**TERMS OF TENDER**

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

**TERMS OF TENDER**

1. Tender Documents

These Tender documents identified as **LC/LS/T/FFK/HKS/HKS/2021/01** consist of THREE (3) complete sets of –

- (a) This Tender Form (Sheets 1 to 2);
- (b) Tender Labels 1 and 2 (Sheet 3 to 6);
- (c) Interpretation (Sheets 7 to 10);
- (d) Terms of Tender (Sheets 11 to 33);
- (e) Conditions of Contract (Sheets 34 to 70);
- (f) Schedules (Sheets 71 to 100);

First Schedule            Marking Scheme and Assessment Criteria for Tender Evaluation

Second Schedule        Information of the Tenderer

Third Schedule           Marketing, Menus and Service Packages Plans, Staff Training Plan, Hygiene Maintenance and Waste Management Plan and Innovative Suggestions and Experience in providing catering services for event(s)

Fourth Schedule        The Monthly Licence Fee and Minimum Annual Licence Fee

Fifth Schedule           Form of Security Deposit Election

Sixth Schedule           List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the Fast Food Business at Hong Kong Stadium

Seventh Schedule       The Non-collusive Tendering Certificate

Eighth Schedule        Form of Bank Guarantee

- (g) Annexes (Sheets 101 to 104); and

Annex A                    Location Plan of the Venue at Hong Kong Stadium

Annex B                    Location Plan Showing Concession Nos. 5 and 17 at Hong Kong Stadium

Annex C                      Layout Plan Showing Concession Nos. 5 and 17 at Hong Kong Stadium

- (h) Articles of Agreement (Sheets 105 to 107).

2. Invitation to Tender

Tenders are invited for the grant of licence to conduct the Fast Food Business within the Licence Areas at the Hong Kong Stadium for the Licence Period on such terms and conditions as set out in the Tender Documents.

3. Composition of the Tender

- (a) A Tenderer **MUST** submit—

- (i) a duly signed “Offer to be Bound” in the Tender Form;
- (ii) the Execution Plans and Suggestions in the Third Schedule with at least some information for all Proposal (as defined in Notes 2(i), 3(i), 4(i) and 5 in the explanatory notes in the First Schedule) for Stage 2 evaluation under Assessment Criteria (1), (2), (3) and (4) respectively; and
- (iii) the Price Proposal in the form of the Fourth Schedule with all price information duly completed.

- (b) **A Tenderer who fails to submit all or any of the above items specified in Clause 3(a)(i) to (iii) at the time when it submits its tender shall render its tender invalid and the tender will not be considered further.**

- (c) The Tenderer shall complete, stamp with the Tenderer’s stamp if applicable and submit the following parts of the Tender Documents and provide all information and documents requested therein—

- (i) Tender Form -            The Tender Form with Part II “Offer to be Bound” duly signed and completed

Tenderers should print a softcopy of the Tender Form obtained from the Government or photocopy the Tender Form, but not reproduce a copy by other means (e.g. by retyping)

- (ii) Second Schedule - Information of the Tenderer

- (iii) Third Schedule -    Marketing, Menus and Services Packages Plans, Staff Training Plan, Hygiene Maintenance Plan and Waste Management Plan and Innovative Suggestions and Experience in providing catering services for event(s)

- (iv) Fourth Schedule -    The Monthly Licence Fee and Minimum Annual Licence Fee

- (v) Fifth Schedule - Form of Security Deposit Election
  - (vi) Seventh Schedule - The Non-collusive Tendering Certificate
  - (vii) Eighth Schedule - Form of Bank Guarantee
- (d) The Tenderer shall include the following in its Tender:
- (i) if the Tenderer is a partnership, and there is a written partnership agreement, a copy of the partnership agreement.
  - (ii) if the Tenderer is a company incorporated under the Companies Ordinance (Cap. 622), a copy of its Articles of Association.
  - (iii) if the Tenderer is a company incorporated under the former Companies Ordinance (Cap. 32) as was in force from time to time before the commencement of the new Companies Ordinance (Cap. 622), a copy of each of its Memorandum of Association and Articles of Association.
  - (iv) if the Tenderer is a sole proprietor or currently running a firm or company, a copy of the valid Business Registration Certificate which shall bear a machine-printed line to show the full registration fee has been paid or documentary evidence showing the Tenderer is exempted from Business Registration Certificate under Business Registration Ordinance (Cap.310).
- (e) A Tenderer must submit all Tender Documents in TRIPLICATE in the manner stipulated under “Lodging of Tender” on the front page of the Tender Form.
- (f) Each Tenderer shall submit ONE tender only. The Government may, as its absolute discretion, disqualify all the tender(s) from a Tenderer who has submitted two or more tenders.
- (g) When completing the Tender Documents, any alteration in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the original ones. All such amendments shall be initialed by the Tenderer in ink. Any unauthorised alteration or erasure to the text of the Tender Documents may cause the tender to be rejected.
- (h) Whilst the Tenderer is expected to sign each Schedule to be submitted where indicated, where any signature is found missing in any of the Schedules, the Government reserves the power to evaluate the Tender on an “as is” basis.

#### 4. Tenderer's Status

- (a) If the Tenderer is a sole proprietor, the Tenderer shall answer queries and sign the Tender Documents personally and shall not authorise any other person to act for the Tenderer. If the Tenderer is a firm, the Tenderer may authorise a partner(s) of the firm to answer queries and sign the Tender Documents.

- (b) If the Tenderer is a firm, a company or other body corporate, it shall provide a copy of the relevant document (e.g. board resolutions of the Tenderer if it is a company) showing that the authorised person(s) who sign(s) the Offer to be Bound has / have the authority to sign it for and on behalf of the Tenderer.

5. System in Submission of Tender

- (a) A two-envelope system will be adopted for this tender. Completed Tender Documents should be submitted separately in two sealed envelopes (i.e. “**Price Proposal**” and “**Technical Proposal**”), the outside of which should not bear any indication which may relate the tender to the Tenderer as follows –
- (i) “**The Price Proposal**” consisting of the Fourth Schedule fully completed, stamped with the Tenderer’s stamp and dated, must be enclosed in a sealed envelope clearly marked as “Tender Ref.: LC/LS/T/FFK/HKS/HKS/2021/01 – Tender for the Grant of Licence to Conduct the Fast Food Business at Concession Nos. 5 and 17 in Hong Kong Stadium – Price Proposal”; and
- (ii) “**The Technical Proposal**” consisting of all information and documents other than the Fourth Schedule (including those specified in Clause 3(a)(i) to (ii)) above, **MUST** be enclosed together in another sealed envelope clearly marked as “Tender Ref.: LC/LS/T/FFK/HKS/HKS/2021/01 – Tender for the Grant of Licence to Conduct the Fast Food Business at Concession Nos. 5 and 17 in Hong Kong Stadium – Technical Proposal”.
- (b) The Tender comprising both envelopes at Clause 5(a)(i) and (ii) above should be affixed with the tender labels as provided with the Tender Documents in TRIPLICATE, **SHALL** be deposited in the **Government Logistics Department Tender Box** in the manner stipulated under ‘Lodging of Tender’ on the front page of the Tender Form.
- (c) In case Tropical Cyclone Warning Signal No. 8 or above is issued, 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 am and 12:00 noon on the Tender Closing Date, the latest date and time before which Tenders are to be deposited at the tender box will be extended to 12:00 noon on the next working day.
- (d) In case of blockage of the public access to the location of the tender box at any time between 0900 and 1200 hours on the Tender Closing Date, the Government will announce extension of the Tender Closing Date until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- (e) The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the tender submission submitted and/or deposited by Tenderers in the tender box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following

any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning Tender submission 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>).

- (f) The Government Representative shall not be responsible for any mislaid tender or any tender submitted by methods other than as indicated under this Clause.

## 6. Anti-collusion

- (a) The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in Clause 6(b) below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- (b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in the Seventh Schedule) as part of its Tender.
- (c) In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 6(b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
  - (i) reject the Tenderer's tender;
  - (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
  - (iii) if the Government has entered into the Contract with the Tenderer, terminate the contract under Clause 40(a) of the Conditions of Contract.
- (d) By submitting a tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 6(b) above.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 6(b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government Representative under Clauses 6(a) to (e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.



7. Tender Documents of the Unsuccessful Tenderer

The Government may destroy all Tender Documents submitted by unsuccessful Tenderers three (3) months after the date the successful Tenderer and the Government have executed the Articles of Agreement as mentioned in Clause 15 hereof.

8. Undisclosed Agency

The Person who signs a tender as Tenderer shall be deemed to be acting as a principal unless it discloses therein that it is acting as an agent only, in which case it shall also disclose therein the name and address of its principal.

9. Request for information

(a) In the event that the Government determines that:

- (i) clarification in relation to any tender is necessary; or
- (ii) a document or a piece of information, other than the document or information set out in Clause 9(b), is missing from any tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. Each Tenderer shall thereafter within seven (7) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A Tender 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. As an alternative to seeking clarification or further information or document, the Government may not consider the Tender further or may proceed to evaluate the Tender on an “as is” basis.

(b) The document and information not covered by Clause 9(a)(ii) are:

- (i) price information or quotes required in the Tender Documents except where it appears to the Government that such price information or quotes contain an apparent arithmetical or typo mistake or inconsistency in a Tender, in which case, without prejudice to Clause 10(d), the Government may seek clarification pursuant to this Clause 9;
- (ii) a signed Offer to be Bound; and
- (iii) any other document or information in respect of which it is specified in the Tender Documents that a failure to provide to the Government in a Tender at the time of submission of the Tender or by the Tender Closing Date will result in the Tender not being considered.

(c) Tenderers should also note that the Government will not consider any clarification or information submitted by a Tenderer after the Tender Closing Date irrespective of whether

or not the clarification or information is submitted at the invitation of the Government if the Government considers that such clarification or information would alter the Tenderer's tender in substance or give the Tenderer an advantage over the other Tenderers.

10. Monthly Licence Fee and Minimum Annual Licence Fee

- (a) Each Tenderer must quote all the price information in the Fourth Schedule. Tenderers should read carefully the provisions in Clause 6 of the Conditions of Contract on the Monthly Licence Fee and the Minimum Annual Licence Fee and the First Schedule in quoting the prices.
- (b) Each Tenderer must quote a fixed percentage of the Monthly Gross Receipts for the determination of the Monthly Licence Fee and a fixed amount for Minimum Annual Licence Fee, such fixed percentage and fixed amount to be applicable for the whole of the Licence Period.
- (c) The Minimum Annual Licence Fee must be quoted in Hong Kong dollars and net of air-conditioning charges, electricity charge, gas charge, Government rent, pest control fee, rates, telephone charge, taxes, water charge and outgoings payable in respect of the Licence Area, otherwise the Tender will not be considered further.
- (d) A Tender with any price variation clause, including one based on foreign exchange market fluctuation, or any offer of different percentages of the Monthly Gross Receipts and/or different amounts of Minimum Annual Licence Fee to apply in different periods of the Licence Period will not be considered.
- (e) Each Tenderer shall ensure that all prices offered in its tender are accurate and complete before it submits the tender. The Tenderer shall be bound by all prices offered in its tender if the tender is accepted by the Government. No request for amendment of the Price Proposal or any price information thereof after the Tender Closing Date will be considered.

11. Financial Vetting

- (a) If the Estimated Total Contract Value of a Tender exceeds HK\$10 million, the Tenderer has to demonstrate its financial capability before it can be considered for the award of the Contract. For this purpose, the Tenderer is required to submit the following documents for financial vetting upon request of the Government –
  - (i) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
    - (1) The audited accounts must be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

- (2) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Submission Date.
- (3) The audited accounts must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income statement), statement of changes in equity, statement of cash flows and notes to the accounts.
- (4) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by its local law.
- (5) If any such accounts are in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided.
- (6) If the Tenderer is a partnership, audited accounts for each member of the partnership must be submitted if the members are incorporated bodies.

Remarks: Unaudited accounts are acceptable only if the Tenderer is a newly established business where the first accounts are not yet available. The unaudited accounts and tax records must be certified by the sole proprietor, partners or directors of the Tenderer, certified public accountants or other accountants acceptable to the Government.

- (ii) Management accounts with a period ending not more than three (3) months before the Tender Submission Date if this has not been covered by the latest audited accounts. The accounts shall be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (a) the sole proprietor, partners or directors of the Tenderer, or (b) certified public accountants (practising) or other accountants acceptable to the Government;
- (iii) Projected statement of profit or loss and other comprehensive income and statements of cash flows of the Contract for each contract year and the pre-operating period (if applicable) and, if possible, those of the company during the Term, setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the sources of finance, and other particulars showing how the Tenderer will deal with the Contract. The projected accounts and statements must comply with the following requirements:
  - (1) They should be certified by the company's chief executive. For a partnership, separate certification from each member of the partnership is required.
  - (2) The assumptions used in preparing the projections should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided.
  - (3) The assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections.

- (iv) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
  - (v) Copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable; and
  - (vi) Written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable.
- (b) Tenderers shall upon the request in writing by the Government provide the documents mentioned in Clause 11(a) and any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract within the time stipulated in the written request by the Government.

## 12. Security Deposit

- (a) The successful Tenderer shall, within fourteen (14) days from the date of the Conditional Acceptance of Tender, deposit with the Government Representative a deposit (hereinafter referred to as '**Security Deposit**') as security for the due and faithful performance of the Contract either in cash, cheque or cashier's order or in the form of a bank guarantee as required under Clause 12(e) hereof and both form and the bank guarantor shall be approved by the Government Representative and in accordance with Clause 8 of the Conditions of Contract. Tenderers are required to state their option in the Fifth Schedule.
- (b) In the event that a Tenderer fails to elect the method of paying a Security Deposit in the Form of Security Deposit Election, it will be assumed that the Tenderer will pay the Security Deposit by way of cash, cheque or cashier's order in accordance with Clause 8 of the Conditions of Contract.
- (c) If the successful Tenderer has passed the financial assessment as mentioned in Clause 11 hereof, it shall submit to the Government a Security Deposit either in cash, cheque or cashier's order or in the form of a bank guarantee in Hong Kong Dollars in an amount equivalent to **one-sixth (1/6)** of the Minimum Annual Licence Fee in accordance with Clause 12(a) above.
- (d) If the successful Tenderer fails in the financial assessment as mentioned in Clause 11 hereof, or it is a newly established company, or it is unable to submit adequate information for conducting a meaningful financial assessment, the Tenderer shall submit to the Government a Security Deposit either in cash, cheque or cashier's order or in the form of a bank guarantee in Hong Kong Dollars in an additional amount equivalent to **five percent (5%)** of the total Minimum Annual Licence Fee for the whole Licence Period of this Contract or **one-sixth (1/6)** the Minimum Annual Licence Fee, whichever is lower, for the whole Licence Period of this Contract in accordance with Clause 12(a) above.

- (e) If the successful Tenderer elects to pay the Security Deposit by way of a bank guarantee, the bank guarantee must comply with the following:
  - (i) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the Government;
  - (ii) unless otherwise agreed by the Government, it must be on the terms set out in the Eighth Schedule; and
  - (iii) the bank guarantee shall come into effect on the date of commencement of the Licence Period unless another date is specified in the Conditional Acceptance of Tender as the date on which the bank guarantee is to take effect. In the event that another date is so specified, the bank guarantee shall take effect no later than such date.

### 13. Assessment of Tenders

- (a) Tenders that are submitted in accordance with the Terms of Tender will be assessed in the manner set out in the **First Schedule**.
- (b) Subject to Clause 17 hereof, the Tenderer whose tender is awarded the highest combined scores will normally be selected to conduct the Fast Food Business.

### 14. Basis of Acceptance

- (a) The Government Representative is not bound to accept the tender(s) with highest combined scores or to give any reasons for doing so, and reserves the right to accept all or any part of a tender at any time within the Tender Validity Period (including without limitation any of the proposals set out in the Execution Plans and Suggestions).
- (b) Tenderers shall note that their offer will be considered on a complete overall basis. Tender with only partial offers shall be rejected.

### 15. Award of the Contract

- (a) Unless and until the Articles of Agreement has been signed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government and any Tenderer. References to the award of the Contract mean the signing of these Articles of Agreement.
- (b) The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “**Conditional Acceptance of Tender**”). Upon receipt of the Conditional Acceptance of Tender, the successful Tenderer shall be obliged to fulfil all of the following conditions to the satisfaction of the Government Representative within fourteen (14) days from the date of the notification (or such later date as the Government Representative may allow) –

- (i) the provision of the Security Deposit as required under Clause 12; and
  - (ii) such other conditions as the Government Representative may stipulate in the Conditional Acceptance of Tender.
- (c) Unless and to the extent waived by the Government Representative in writing, upon fulfilment of the conditions by the Tenderer specified in Clause 15(b) above to the satisfaction of the Government Representative, the Government will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government Representative, the tender submitted by the successful Tenderer (subject to such other changed as the Government Representative may stipulate in exercise of its powers under the Tender Documents and such changed as the parties may agree (if any)). If a Tenderer fails to fulfil all or any of the conditions mentioned in Clause 15(b) above (unless and save to the extent they are waived by the Government Representative in writing, if any), or fails to sign the Articles of Agreement upon notification by the Government Representative (“**defaulting Tenderer**”), the Conditional Acceptance of Tender will become void and be of no further force.
- (d) The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and remedies of the Government, the defaulting Tenderer shall be responsible for the difference in the total Minimum Annual Licence Fee of the whole Licence Period submitted by that defaulting Tenderer and the eventual Licensee who will be granted the Contract in replacement of the defaulting Tenderer whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise as well as all administrative costs incurred by the Government in finding a replacement licensee and implementing any stop-gap measures during the time when no replacement licensee can be appointed. On the other hand, notwithstanding anything in the Tender Documents or in the Conditional Acceptance of Tender to the contrary, in the event that the Government exercises any of its discretion under Clause 32 of Terms of Tender, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a Conditional Acceptance of Tender and fulfilled all the conditions specified in Clause 15(b).
- (e) A Tenderer who does not receive any notification of acceptance within one hundred and fifty (150) days or any other period specified by the Government Representative from the Tender Closing Date shall assume that its tender has not been accepted.

16. Tenders to Remain Open

- (a) A tender submitted shall remain valid and open for acceptance on these terms for not less than one hundred and fifty (150) days from the Tender Closing Date.
- (b) If a Tenderer does not state in its tender the period for which the tender is to remain valid and open for acceptance, the Tender Validity Period of that Tender will be one hundred and fifty (150) days after the Tender Closing Date.
- (c) If a Tenderer offers in its tender a period that is shorter than one hundred and fifty (150)

days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with Clause 16(a) within five (5) working days or such other period as specified by the Government without any other change to the Tender (except any change made in response to any clarification by the Government pursuant to Clause 9). If the Tenderer fails to confirm compliance with Clause 16(a) within the specified deadline or, despite confirming compliance therewith, introduces any change to the tender not in response to any clarification by the Government pursuant to Clause 9, its tender will not be considered further.

- (d) If before expiry of the Tender Validity Period, a Tenderer withdraws its offer, the Government will take due notice of the Tenderer's action and this may prejudice its future standing as a Government contractor.

#### 17. Offers to be Binding

All parts of the Tender Documents submitted and offered by the Tenderer will be binding on the Tenderer after granting the Permit. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. Without prejudice to the Government to seek clarification or negotiate with any Tenderer, no request from the Tenderer for adjustment or variation whatsoever will be allowed or entertained after the Tender Closing Date.

#### 18. Counter-proposals

- (a) Tenderers must not submit any proposal that has the effect of varying or modifying:
  - (i) any essential requirements specified in the Tender Documents; and
  - (ii) the provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and the award of the Contract.
- (b) **If a Tenderer fails to comply with Clause 18(a), subject to any clarification which the Government may, but is not obliged to, make under Clause 9, its Tender will be disqualified and will not be considered further by the Government.**
- (c) Subject to Clause 18(a), if a Tenderer still wishes to submit a counter-proposal ("**Counter-Proposal**"), the Counter-Proposal must be submitted in the following manner:
  - (i) the Counter-Proposal shall be attached to the Offer to be Bound;
  - (ii) the original provision which the Counter-Proposal relates to should be fully recited before the proposed alteration or deletion;
  - (iii) the proposed alteration to the original provision should be underlined and should bear the corresponding clause number of the original provision unless it is an addition;

- (iv) if it is an addition, the additional provision should be underlined;
  - (v) words to be deleted should be crossed out by a single line only; and
  - (vi) an explanation should be given below the alteration or deletion and put in square brackets “[ ]”.
- (d) Any Counter-Proposal that is not submitted in accordance with Clause 18(c) will not be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original term to which the Counter-Proposal relates and the Government will continue to consider the Tenderer’s Tender on this basis.
- (e) Notwithstanding and without prejudice to the aforesaid, the Government may negotiate with the Tenderer any Counter-Proposal but is not obliged to do so. The Government may at its absolute discretion reject any Counter-Proposal. If negotiation is conducted but fails, the Government may reject or exclude the Counter-Proposal and assess the Tender as it is without the Counter-Proposal.

#### 19. Use of Personal Data

- (a) All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, award of the Contract and resolution of any dispute arising from this Invitation to Tender). In the case of the successful Tenderer, the purposes shall be extended to include enforcement and management of the Contract, and resolution of disputes arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- (b) By submitting a Tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, its consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in Clause 19(a).
- (c) An individual to whom personal data belongs or a person authorised by it in writing has the right of access and correction with respect to the individual’s personal data as provided for in sections 18 and 22 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual’s personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Leisure and Cultural Services Department.

#### 20. Site Visit and Tender Briefing

A tender briefing and site visit session will be held at 2:30 p.m. on **25 August 2021 (Wednesday)**



at the office of Hong Kong Stadium, 55 Eastern Hospital Road, So Kon Po, Hong Kong. Tenderers are invited to attend the tender briefing and site visit session before submitting their tender in order to acquaint themselves with the terms and conditions of the Invitation to Tender. For registration, please contact the Senior Assistant Manager (Suite and Catering) Hong Kong Stadium of the LCSD at 2895 7914 for reservation of seat for the tender briefing and site visit session by 4:00 p.m. on **24 August 2021 (Tuesday)**.

21. Provision of Services within the Venue

Tenderers shall note the Government Representative reserves the right to provide or allow any Person or contractor to provide drinking fountain, catering and/or vending machine services within any other areas of the Venue during the Licence Period. The Licensee is therefore not entitled to claim for abatement of the Monthly Licence Fee and/or Minimum Annual Licence Fee or any part thereof on the ground that the Fast Food Business is affected by such arrangement.

22. Successful Tenderer's Performance Monitoring

A tenderer 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 tenders/quotations submitted by it for any goods or services procured by the Government in future. An offer or tender submitted by a Tenderer 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 and not limited to, the seriousness and the number of breaches and its or their relevancy to the offer or tender submitted. The decision of the Government whether or not to consider the tender submitted by a Tenderer under the circumstances described in this provision shall be final.

23. Offering Gratuities

The Tenderer shall not and shall ensure that its agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer without knowing the breach, the Government shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred from the Tenderer.

24. Consent to Disclosure

- (a) The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) (written or otherwise) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, particulars (including the nature and quantity) of the Fast Food Business, the date of the award of the Contract, the name and address of the successful Tenderer and the total monies paid to the Licensee for the entire Term.

- (b) Nothing in Clause 24(a) above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 24(a) above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (i) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, Licensees and consultants);
  - (ii) the disclosure of any information already known to the recipient;
  - (iii) the disclosure of any information which is public knowledge;
  - (iv) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction; or
  - (v) without prejudice to the power of the Government under Clause 24(a) above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

25. Cancellation of the Invitation to Tender

Without prejudice to the Government's right to cancel the Invitation to Tender, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel the Invitation to Tender.

26. Cost of Tender

A Tenderer shall submit its tender proposal at its own cost and expense. Neither the Government nor the Government Representative shall be liable for any costs and expenses whatsoever incurred by the Tenderer in connection with the preparation or submission of its tender, including all costs and expenses relating to:

- (a) communication or negotiations with the Government Representative; or
- (b) attending briefings, document inspections, site visits or surveys made by the Tenderer, whether before, on or after the Tender Closing Date.

27. Tenderer's Commitment

The entire Tender, any subsequent clarification, and permitted submissions from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government Representative, be incorporated into and made

part of the Contract in such manner as the Government Representative considers appropriate and become binding on the Tenderer.

28. Complaints about Tendering Process or Contract Award

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

29. Application for Appropriate Food Licences

- (a) A Tenderer shall note that it is the Licensee's sole responsibility to approach the relevant authorities for obtaining all licences, permits and/or certificates required by law for operation of the Fast Food Business at the Licence Area(s). The Licensee shall note that it will be unlawful for it to sell any commodity in respect of which any licence, permit and/or certificate is so required without first obtaining such licence, permit and/or certificate.
- (b) The Licensee acknowledge that it will necessarily take time for the relevant authorities to consider and decide on an application for a licence, permit and/or certificate, and that the Licensee is not entitled for abatement of the Monthly Licence Fee and/or Minimum Annual Licence Fee on the grounds that it cannot operate its Fast Food Business pending the issue of the relevant licences, permits and/or certificates. Neither the Government nor the Government Representative shall be held responsible in the event of the Licensee's failure or inability for any reason to obtain or renew any such licences, permits and certificates. Nothing contained in the Tender Documents or in the Contract shall be construed to fetter the discretion of any public officer or authority as the licensing authority.
- (c) For activities relevant to licensing requirements regulated by the Director of Food and Environmental Hygiene, the Licensee should visit the following Food and Environmental Hygiene Department's website for more information –

*[http://www.fehd.gov.hk/english/licensing/Guide\\_on\\_Types\\_of\\_Licences\\_Required.html](http://www.fehd.gov.hk/english/licensing/Guide_on_Types_of_Licences_Required.html)*

30. Negotiation

The Government reserves the right to negotiate with any Tenderer on the terms of the Tenderer's Tender and conditions of the Contract.

31. Tender Addendum

The Government may issue addendum to the terms and conditions of the Tender Documents.

Tenderers may be asked to confirm compliance with the terms and conditions issued under the Tender Documents or those issued under any addendum thereto.

32. Government Discretion

- (a) Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
- (i) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Date or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer;
  - (ii) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
  - (iii) in the event of a claim alleging or the Government having grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
  - (iv) the Tenderer has made significant or persistent breaches or deficiencies in performance of any substantive requirement or obligation under any Government or other contracts;
  - (v) the Tenderer has been convicted by the final judgement in respect of serious crimes or other serious offences;
  - (vi) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Tenderer;
  - (vii) any failure of the Tenderer to pay taxes to the Government; or
  - (viii) the Tenderer has made any restrictions or limitations which seek to limit or avoid the responsibility of the Tenderer in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer/Licensee under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.

The grounds specified in Clauses 32(a)(i) to 32(a)(viii) are separate and independent, and shall not be limited by reference to or inference from the other of them.

- (b) For the purposes of Clause 32(a), each Tenderer shall provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself 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:

- (i) details of any petition or proceeding mentioned in Clause 32(a)(i);
- (ii) details of conviction of the Tenderer in Hong Kong or any overseas jurisdictions in respect of (a) serious offences; and (b) other offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of award;
- (iii) details of all infringement claims as mentioned in Clause 32(a)(iii); and
- (iv) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in Clause 32(a)(iv).

If none of the events as mentioned in Clauses 32(b)(i) to 32(b)(iv) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the Second Schedule at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 32(c) below.

- (c) In addition to the information mentioned in Clause 32(b), the Government reserves the right to request from a Tenderer and take into account all information about:
  - (i) the Tenderer itself;
  - (ii) any of the directors or management staff of the Tenderer who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer; and
  - (iii) any of the related persons of the Tenderer and of any directors and management staff of the related persons who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer, and such information is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 32(a).

Such information relating to any of the aforesaid persons may include, without limitation, details of any conviction in respect of offences referred to in Clause 32(b)(ii) or details of any breaches or performance deficiencies referred to in Clause 32(a)(iv), details of any serious crimes or serious offences referred to in Clause 32(a)(v), of any professional misconduct, acts or omissions referred to in Clause 32(a)(vi) and of any failure to pay taxes to the Government referred to in Clause 32(a)(vii) above.

- (d) If the Tenderer fails to comply with the request made by the Government pursuant to Clause 32(c) above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 32(a)(ii) above.

- (e) In providing the information required under Clauses 32(b) and 32(c) above, the Tenderer may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct, as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- (f) If the Tenderer is a company, the expression “**related person**” of the Tenderer 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 Tenderer (“**majority shareholder**”);
  - (ii) a holding company or a subsidiary of the Tenderer;
  - (iii) a holding company or a subsidiary of a majority shareholder of the Tenderer;
  - (iv) a company in which a majority shareholder (being an individual) of the Tenderer 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).

- (g) If the Tenderer is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
- (i) any partner of the Tenderer (if it is a partnership);
  - (ii) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child 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;
  - (iii) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- (h) References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in Clauses 32(a)(iv), 32(a)(v), 32(a)(vi), 32(a)(vii) or Clause 32(b)(ii).

### 33. New Information

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

34. Disclaimer

- (a) Tenderers should study all attachments to the Tender Documents (including the Annexes and Schedules) carefully before submitting their tenders. Tenderers should note that all information and statistics provided by the Government in connection with this tender are for reference only.
- (b) Forecasts or estimations and all other information, statistics and forecast set out in the Tender Documents or any information or clarification provided from time to time or given at the briefing session (collectively “**briefings**”), are provided purely for the Tenderer’s information on an “as is” basis without warranty of any kind. Neither the Government nor the Government Representative gives any warranty, representation or undertaking that any information, statistics and forecast provided in the Tender Documents or any information or clarification provided from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.
- (c) To the maximum extent permitted by law, neither the Government nor the Government Representative accepts any liability or responsibility for (i) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), (ii) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (iii) any cost or expense, suffered or incurred by any Tenderer arising from the use of, or reliance on, any information, statistics or forecast provided in the Tender Documents, or any information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Fast Food Business do not meet the expectation or projection of the successful Tenderer or do not recoup the investment cost incurred or by any margin.

35. Authentication of Documents

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

- (a) any person whose particulars are set out in the tender submitted by the Tenderer, and
- (b) any issuing body of any of the certificates or documentary evidence required in the Tender Documents,

all information which the Government considers appropriate and relevant to the evaluation of the tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer represents that such consent has been duly obtained.

36. Licence to Use of the Tender Documents

A Tender once submitted will become the property of the Government. The Government shall have the right to do any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Cap. 528) in respect of all written materials submitted by the Tenderer through the

tendering exercise for purposes including but not limited to tender evaluation, contract management, the disclosure made pursuant to Clause 24 of the Terms of Tender and all other purposes incidental thereto.

37. Communication with the Government

- (a) All communications given or made by the Government Representative or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in Clause 47 of the Conditions of Contract, save that the Government Representative may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. The Tenderer should note that the Government Representative will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- (b) All communications in relation to the Invitation to Tender shall be conducted directly between the Government Representative and the Tenderer.
- (c) Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or prospective Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

38. Tenderer's Enquiries

- (a) Any enquiries concerning the Tender Documents up to the date of lodging of its tender with the Government Representative shall be in writing and submitted to the below address or by facsimile to 2895 7962.

**Manager (Hong Kong Stadium)  
Hong Kong Stadium, 55 Eastern Hospital Road, Hong Kong**

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

39. Acceptance of Innovative Suggestions

The Government may, at its absolute discretion, accept one or more of the Innovative Suggestions submitted by the successful Tenderer in its Tender. The Accepted Innovative Suggestions shall form an integral part of the Contract.



40 Survival

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

41 Information of Hong Kong Stadium

- (a) With a maximum seating capacity of about 40 000, the Venue is only opened for use by hirers for pre-approved Events mostly involving public admission. On average there are about twenty (20) Event Days each year and most of them are soccer/sporting events such as the annual Hong Kong Sevens rugby tournament and the Lunar New Year soccer tournament. However, the estimated number of Events is indicative and for reference to Tenderers only.
- (b) Depending on maintenance schedule to be determined nearer the time by the maintenance authorities and the Government Representative, there are a total of about ten (10) weeks of closure of the whole Venue scattering in different periods each year, for the implementation of venue maintenance and improvement works. However, the estimated annual closure periods of the Venue are indicative and for reference to Tenderers only.
- (c) During the closure periods, the Venue will not be opened for holding any Event and therefore the Licence Area(s) are not required to be opened for business.
- (d) The Upper Level(s) of the Venue will normally be closed during Event Day with expected attendance below 10 000. Some blocks at South Stand of Main Level will normally be closed during the home events of the football tournament organised by Asian Football Federation. In case of closure of the Upper Level(s) and some blocks at South Stand of Main Level during Event Day, the Licence Area(s) on these specific Level(s) are not required to open for business. The successful Tenderer(s) is not entitled to claim any compensation for losses whatsoever arising from such arrangement.
- (e) As a sports facility owned and managed by the Government, the Venue supports the waste reduction policy and measures of the Government to minimize the adverse environmental impacts caused by wastes and pledges to follow the green procurement policies and green specifications made or stipulated by the Environmental Protection Department from time to time.

**CONDITIONS OF CONTRACT**

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## CONDITIONS OF CONTRACT

### 1. Nature of the Licence

- (a) It is expressly agreed between the parties that neither the Licence nor the Contract creates any tenancy or lease or any form of legal rights on land whatsoever between the parties except the permission to use the Licence Area(s) in accordance with the provisions of the Contract.
- (b) The Licence granted to the Licensee is personal to it and unless with the prior consent in writing from the Government Representative, the Licensee shall not assign, sublet, part with the possession of the whole or any part of the Licence Area(s) or transfer any of its rights or obligations under the Contract.

### 2. Licence Period

- (a) Subject to Clause 8 and other provisions hereof, the Licensee must conduct the Fast Food Business for a period of **twenty-four (24) months** from the **1<sup>st</sup> day of March 2022** or a date specified in the Articles of Agreement, whichever is later, subject to prior termination and extension as are hereinafter provided (“Licence Period”).
- (b) The Government Representative shall be entitled to extend the Licence Period for a maximum period of six (6) months upon its expiration by giving the Licensee one (1) month’s advance notice in writing before the due expiration of the Licence Period.
- (c) If a notice is given by the Government Representative under Clause 2(b) above, the Licensee shall continue to conduct the Fast Food Business for the whole period specified in the notice on the same terms and conditions as herein contained (save and except this Clause on extension).
- (d) If the Commencement Date of Licence Period of the Contract shall be advanced or deferred under Clause 8(a) hereof, the expiry date of the Licence Period shall be advanced or deferred accordingly with the length of the Licence Period remains unchanged.

### 3. The Fast Food Business

- (a) Subject to the terms and conditions of this Contract, the Government Representative grants to the Licensee during the Licence Period the permission to conduct the business of selling any of the commodities as set out in the Clause 1 of Third Schedule through:
  - (i) Two Fast Food Kiosks (each a “Fast Food Kiosk”);  
as set out in Clause 3(b), together the “Fast Food Business”.
- (b) The Licensee shall conduct the Fast Food Business within areas specified as follows (“the Licence Area”):

- (i) a Fast Food Kiosk located at Concession No. 5 within an area of about 82 square metres as delineated and shown coloured pink in Annexes B and C; and
- (ii) a Fast Food Kiosk located at Concession No. 17 within an area of about 72 square metres as delineated and shown coloured pink in Annexes B and C.

#### 4. Hours of Business

- (a) Subject to the terms and conditions of the Contract, the Licensee shall carry out its Fast Food Business and keep the Licence Area(s) open for business during all Event Day, except when otherwise authorised by the Government Representative.
- (b) The Government Representative is entitled in its sole discretion to revise the business hours of the Licensee's Fast Food Business as specified in Clause 4(a) above at any time and from time to time and the Licensee shall operate the business in such revised hours.
- (c) The Licensee shall not be entitled to claim indemnity from the Government or the Government Representative against any loss or damages arising from any change of the business hours referred to in this Clause and shall pay the Monthly Licence Fee in full pursuant to Clause 6 below under all circumstances.
- (d) The Licensee shall not vary the business hours of the Fast Food Business unless prior written consent of the Government Representative has been obtained.
- (e) Where the Licensee has failed to keep the Licence Area(s) open for business during the Event Day, the Licensee shall become liable for liquidated damages and not as penalty at a rate of HK\$9,780 for each Event Day unless prior written consent of the Government Representative has been obtained.

#### 5. Conduct of Business

- (a) The Licensee shall maintain the Licence Area(s) in a clean, tidy and serviceable condition to the satisfaction of the Government Representative.
- (b) The Licensee shall use the Licence Area(s) only for the Fast Food Business and shall not use, cause, suffer or permit to be used the Licence Area(s) or any part thereof as sleeping quarters or domestic premises or for any other purposes.
- (c) The Licensee shall conduct the Fast Food Business only in the Licence Area(s) and shall not use, cause, suffer or permit to be used any areas of the Venue except the Licence Area(s) for such purpose or for any other purposes.
- (d) The Licensee shall operate the Licence Area(s) in a manner consistent with the Licensee's other locations in Hong Kong both with regards the standard of the products and the standard of service, and generally in a manner which would not prejudice the reputation of the Venue as an international standard stadium.
- (e) The Licensee shall not provide seating accommodation for its customers and other members of public.

6. Monthly Licence Fee and Minimum Annual Licence Fee

- (a) The Licensee shall in each and every month pay to the Government a fee (“**Monthly Licence Fee**”).
- (b) The Licensee shall within fourteen (14) working days after the end of each and every month pay to the Government a Monthly Licence Fee at the rates specified in the **Fourth Schedule** and calculated and payable in the manners specified herein below.
- (i) The Monthly Licence Fee which should be rounded up to the nearest one (1) cent, is calculated as follows –

$$\text{Monthly Licence Fee} = \text{Monthly Gross Receipts} \times \text{Licence Percentage}$$

- (ii) The Licensee shall pay to the Government the first payment of the Monthly Licence Fee at such time as shall be directed by the Government Representative.
- (iii) Within fourteen (14) working days after the end of each month or within fourteen (14) working days after the expiry or sooner termination of this Contract, the Licensee shall pay the Monthly Licence Fee to the Government.
- (c) The Licensee shall be responsible for the payment of air-conditioning charges, electricity charge, gas charge, Government rent, pest control fee, rates, telephone charge, taxes, water charge, fees, charges, assessments, impositions and outgoings payable in respect of the Licence Area.
- (d) In the event any fee payable under the Contract is overdue, the Licensee shall pay to the Government a surcharge on that outstanding Monthly Licence Fee at an interest rate equivalent to the average of the best lending rate of the three note-issuing banks in Hong Kong plus 2% per annum. Such interest shall be calculated and payable from but excluding the day on which such payments falls due to and including the date of actual payment in full.
- (e) Within fourteen (14) working days after the end of each month or within fourteen (14) working days after the expiry or sooner termination of this Contract, the Licensee shall –
- (i) submit to the Government a statement of accounts in the form as the parties hereto may mutually agree, or in default of agreement, as the Government at its absolute discretion may prescribe at any time and from time to time showing the Monthly Gross Receipts, including the amount of Monthly Licence Fee that should be payable to the Government for that month. The statement of accounts shall be certified as being accurate and complete by the Licensee or such other Person as the Government may from time to time approve or prescribe; and
- (ii) if the statement of accounts is not submitted within the fourteen (14) working days as described above, the Licensee shall pay to the Government by way of a provisional Monthly Licence Fee for that month with an amount equivalent to the highest of the Monthly Licence Fee paid for any one (1) month during the

twelve (12) months' period immediately preceding the month in question. Provided always that when the statement of accounts for the month in question is later submitted by the Licensee, the Licensee shall pay to the Government forthwith an amount equivalent to the Monthly Licence Fee as shown on the statement of accounts less the amount of the provisional Monthly Licence Fee held by the Government for the month in question within fourteen (14) working days of demand. Where the amount of the provisional Monthly Licence Fee held by the Government for the month in question is greater than the Monthly Licence Fee shown, the Government shall pay to the Licensee the difference within thirty (30) days.

- (f) If the Government is of the opinion that it has reasonable grounds to do so, the Licensee shall at the request of the Government's notice in writing submit within thirty (30) days of such notice a statement of accounts in the form as the parties hereto may mutually agree, or in default of agreement, as the Government at its absolute discretion may at any time and from time to time prescribe. The statement of accounts shall show the Monthly Gross Receipts, including the amount of Monthly Licence Fee that should be payable to the Government for such month or months as stipulated in the notice. Such statement shall be audited and certified as being accurate and complete by a professional accountant holding practicing certificate or a corporate practice within the meaning of the Professional Accountants Ordinance (Cap. 50) (hereinafter referred to as the "**the Auditor**") in accordance with Hong Kong Standard on Assurance Engagements 3000 "Assurance Engagements Other Than Audits or Reviews of Historical Financial Information" issued by the Hong Kong Institute of Certified Public Accountants.
- (g) In the event that the amount of the Monthly Licence Fee as shown in the audited statement of accounts submitted by the Licensee under Clause 6(f) for any month shall exceed or shall be less than the Monthly Licence Fee actually paid by the Licensee to the Government for that month, the amount of the shortfall, if any, shall be paid by the Licensee to the Government within fourteen (14) working days of demand or the amount of overpayment, if any, shall be repaid by the Government to the Licensee within thirty (30) days of demand.
- (h) Within three (3) months after the end of each Contract Year or after the expiry or earlier termination of this Contract, the Licensee shall submit to the Government an audited statement of accounts certified as being accurate and complete by the Auditor in the form as the parties hereto may mutually agree, or in default of agreement, as the Government Representative at its absolute discretion may at any time and from time to time prescribe showing inter alia the Monthly Gross Receipts, including the amount of Monthly Licence Fee, for each month of that Contract Year or that part of the Contract Year since last such statement.
- (i) In the event that the amount of the aggregate Monthly Licence Fee paid for that Contract Year shall be less than the Minimum Annual Licence Fee, the amount of the shortfall, if any, shall be paid by the Licensee to the Government within fourteen (14) working days after the submission of the audited statement of accounts by the Licensee under Clause 6(h) above.
- (j) If the audited statement of accounts is not submitted within three (3) months after the end of each Contract Year or after the expiry or earlier termination of this Contract, as

described in Clause 6(h) above, and that the amount of the aggregate Monthly Annual Licence Fee paid for that Contract Year is be less than the Minimum Annual Licence Fee, the amount of the shortfall, if any, shall be paid by the Licensee to the Government within fourteen (14) working days upon the Government's request.

- (k) For the avoidance of doubt, it is hereby expressly agreed and declared that the acceptance by the Government of any statement of accounts or audited statement of accounts submitted or any money paid by the Licensee in accordance with this Contract shall not in any way whatsoever bar or otherwise preclude the Government from subsequently disputing the accuracy of any such statement of accounts or the correctness of any such sum and that in the event that any further sum whatsoever be found due from the Licensee to the Government, the same shall be paid by the Licensee to the Government within fourteen (14) working days of demand.
- (l) Payment of the Monthly Licence Fee for the last month of the Licence Period shall be made not later than fourteen (14) working day after expiration of the Licence Period or sooner termination of the Contract.
- (m) If the Licence Period is extended in accordance with Clause 2(b) above, the Minimum Annual Licence Fee for the final Contract Year together with the extension period shall be adjusted accordingly on pro-rata basis as follows –

$$\begin{array}{l} \text{Minimum Annual Licence Fee} \\ \text{for the Final Contract Year} \\ \text{together with the extension} \\ \text{period ("Adjusted Minimum} \\ \text{Annual Licence Fee")} \end{array} = \frac{\text{Minimum Annual} \\ \text{Licence Fee}}{12 \text{ months}} \times \begin{array}{l} 12 \text{ months plus} \\ \text{number of} \\ \text{months} \\ \text{extended} \end{array}$$

The Licensee shall pay to the Government the licence fee for the final Contract Year together with the extension period. Such fee shall either be the aggregate Monthly Licence Fee paid for the final Contract Year and the extension period or the Adjusted Minimum Annual Licence Fee, whichever is the higher.

- (n) The Licensee is required to –
- (i) properly record each and every sale or other payment received by the Licensee or any other Person in respect of or arising from the operation of the Fast Food Business under this Contract, issue receipts for all payments, including service charges, by customers, and to retain a copy of each such receipts for at least seven (7) years after the date of the sale or payment, as the case may be; and
- (ii) keep and maintain proper books of accounts including ledgers, supporting vouchers, receipts, etc. and other records or documents in respect of the Fast Food Business or Licence Area(s) under this Contract showing all Monthly Gross Receipts and to cause all such records and documents to be made up on a monthly basis and retain the same for at least seven (7) years after expiration of the Licence Period or sooner termination of this Contract.



## 7. Security Deposit

- (a) The Licensee shall, within fourteen (14) days from the date of the Conditional Acceptance of Tender, deposit with the Government Representative in cash, cheque or cashier's order or in the form of bank guarantee to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155), a sum equivalent to one-sixth (1/6) of the quoted Minimum Annual Licence Fee and, if applicable, an additional amount in accordance with Clause 12(d) of the Terms of Tender as security for the due and proper performance of the Contract.
- (b) The Security Deposit, if in the form of cash, cheque or cashier's order shall be retained by the Government Representative, or if in the form of a bank guarantee, shall remain in force, in any case, from the date of commencement of the Licence Period until the date specified in (i) or (ii) below, whichever is applicable.
- (i) the date falling three (3) months after the expiry or early termination of the Licence Period; or
- (ii) upon early termination or expiry of the Licence Period, there remain any outstanding obligations and liabilities of the Licensee 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, liabilities and rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than twenty-four (24) months after expiry or early termination of the Licence Period.

The aforesaid period (depending on whichever is applicable) is hereinafter referred to as the "**Guarantee Period**".

- (c) Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash, cheque or cashier's order and if any is remaining) be refunded to the Licensee without interest; or, if in the form of a bank guarantee, be discharged or released.
- (d) The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash, cheque or cashier's order or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Licensee) any amount due or payable by the Licensee to the Government Representative 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 Representative in its absolute discretion deems fit. The Security Deposit (whether in cash, cheque or cashier's order or in the form of the bank guarantee) may be deducted or called on, without the Government Representative first having recourse to any other security or rights or taking any other steps or proceedings against the Licensee 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 Licensee to the Government Representative.
- (e) If any deduction is made by the Government Representative from the Security Deposit, cheque or cashier's order or by making a call on the bank guarantee during the

Guarantee Period, the Licensee shall, within fourteen (14) working days on a demand in writing by the Government Representative, deposit a further sum or reinstate the level or extent of the bank guarantee or procure the issuance of a fresh bank guarantee in a sum equal to the amount so deducted or so called, which shall be added to the residue of and form part of the Security Deposit and, where applicable, the additional security amount required under Clause 7(a).

- (f) In the event that this Contract is terminated early under Clause 40(a) of Conditions of Contract, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government upon such termination without prejudice to the Government Representative's claims and demands under the Contract which cannot be satisfied by the Security Deposit.

8. Advancement, Deferment and Suspension of Business

- (a) Notwithstanding the provision of Clause 2 hereof and any other provisions of the Contract, the Government Representative shall be entitled to advance or defer the commencement of the Licence Period for whatsoever reasons and for such period as the Government Representative shall in its sole discretion decide.
- (b) If there shall be such advancement or deferment of commencement of the Licence Period under this Clause—
- (i) the Government shall not be liable for any losses suffered or expenses incurred whatsoever by the Licensee due to such deferment or termination under Clause 8(b)(ii);
- (ii) upon the expiry of such period of deferment and without further notification by the Government Representative of commencement of the Licence Period, the Contract shall terminate automatically. The Government Representative will return to the Licensee without interest the balance of the Security Deposit;
- (iii) the Government Representative shall, as far as it is practicable in the circumstances, give the Licensee notice of advancement of the original Licence Period in writing at least fourteen (14) days prior to the revised Commencement Date of the Licence Period; and
- (iv) the Government Representative shall, as far as it is practicable in the circumstances, give the Licensee notice of deferment in writing at least fourteen (14) days prior to the original Commencement Date of the Licence Period.
- (c) The Licensee may suspend the Fast Food Business for a reasonable period of time when the weather warrant such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained as far as it is practicable in the circumstances and the Government Representative's decision on the duration of such period of suspension shall prevail.
- (d) If the commencement of the Licence Period has been deferred under Clause 8(a), the Minimum Annual Licence Fee will be deducted for the total period of such deferment on a pro rata basis.

9. Resumption of Business

If the Fast Food Business shall be suspended under the terms and conditions of the Contract, the Licensee shall resume the Fast Food Business immediately within the period specified under the Contract or that specified by the Government Representative, as the case may be.

10. Licensee's Warranties and Undertakings

The Licensee warrants and undertakes to the Government Representative that—

- (a) It shall operate its Fast Food Business to the satisfaction of the Government Representative on such date as shall be agreed by the Government Representative in writing;
- (b) it shall produce its Business Registration Certificate or Certificate of Incorporation, as the case may be, upon demand by the Government Representative;
- (c) it shall use only those appliances, fixtures and fittings which have previously been approved by the Government Representative. It shall not make any alteration or addition to any of the appliances, furniture, fixtures or fittings therein or the decoration thereof without the prior permission in writing by the Government Representative, and it shall not carry out the repairs to the appliances, furniture, fixtures and fittings supplied by the Government without first obtaining the approval of the Government Representative. Subject to such approval being sought, the relevant works shall be carried out at the expenses of the Licensee by workers approved by the Government Representative to a standard acceptable to the Government Representative;
- (d) it shall take all reasonable precautions to protect the Licence Area(s) from damage by fire, storm, tropical cyclone or the like;
- (e) it shall maintain the Licence Areas and its surroundings in a clean, tidy and serviceable condition to the satisfaction of the Government Representative and if in the opinion of the Government Representative the Licensee fails to do so, the Government Representative may without notice close the Licence Areas and suspend the Licensee's Fast Food Business to cause the Licence Areas and its surroundings to be cleaned and serviced and the Licensee shall pay the costs thereof to the Government Representative on demand and shall remain liable to pay the Monthly Licence Fee and/or the Minimum Annual Licence Fee to the Government without any deduction;
- (f) it shall not use the Licence Areas or any part thereof, or cause, or permit or suffer the same to be used for any illegal, immoral purpose, gambling or any other purpose not permitted under the Contract;
- (g) it shall not permit any games to be played in the Licence Areas including but not limited to mahjong and tin kau whether for gambling purposes or otherwise;
- (h) it shall not permit the Licence Area(s) to be used as a changing room by users of the Venue or other members of the public;

- (i) it shall not cause or permit any floorshow or any type of entertainment to be staged in the Licence Area(s) or its vicinity;
- (j) it shall permit the Government Representative and its agent at all times to have unimpeded access to all parts of the Licence Area(s) to examine the conditions thereof and to execute repairs thereto;
- (k) it shall assume full responsibility for the safety of all operations and methods of operations;
- (l) it shall provide and maintain at all times properly 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(s);
- (m) it shall keep all articles of food stored or offered for sale at the Licence Area(s) effectively protected against flies, cockroaches, vermin, dust and dirt and shall sell bread, biscuits, cakes and sweets only in their original wrappers and in such hygienic condition as is reasonably practicable;
- (n) it shall not stock, sell or provide at the Licence Area(s) any smoking products whatsoever and to ensure the compliance of the relevant clauses of the Smoking (Public Health) Ordinance (Cap. 371) and other relevant legislation regarding prohibition of selling or giving of smoking products to minors;
- (o) it shall not sell or offer for sale any liquid refreshment other than in sterile drink cups;
- (p) it shall not sell or offer for sale any cut or peeled fresh fruit;
- (q) it shall cleanse and immerse in boiling water for not less than one (1) minute and allow to dry by evaporation before each use of crockery, cutlery and utensils used in the preparation or serving of food or drinks and when not in use to store such implements in vermin-proof and dust-proof cupboards;
- (r) it shall be responsible for the safety of any vehicles which it uses or brings alongside or onto the Venue and it shall indemnify the Government in respect of any losses or damages thereto as a result of the use of such vehicles;
- (s) it shall pay all the costs and deposits in connection with all telephone(s) installed, electricity or gas supplied to the Licence Area(s), and shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever attributable to the Licence Period in respect of the Licence Area(s) and the Fast Food Business;
- (t) it shall not request or receive any charge or fee from any Person for admission to the Licence Area(s) or its/their surroundings, nor request or receive any other additional charge whether by way of service charge or otherwise;
- (u) it shall on receipt of forty-eight (48) hours notice from the Government Representative produce to it for inspection of the books of accounts, ledgers, vouchers, receipts and other documents relating to the Fast Food Business, and make available copies of the same to the Government Representative, if required;

- (v) it shall not later than fourteen (14) working days after the expiry of each month during the continuance of this Contract and not later than fourteen (14) working days after the termination of this Contract howsoever caused, submit to the Government Representative a statement of account in the form as the parties hereto may mutually agree, or in default of agreement as the Government Representative may from time to time prescribe, showing the monthly gross receipts of the Fast Food Business, for that month. For the purpose of these provisions “**monthly gross receipts of the Fast Food Business**” shall mean the gross proceeds or receipts as received or receivable for any food and/or drinks sold or consumed or of all goods, merchandise and commodities and services of any kind and description provided or sold within or through or out of the Licence Areas plus all other income deriving from or in respect of the Licence Areas;
- (w) it shall pay the Government any cost incurred by the Government plus an 20% administrative overhead charge if it fails to carry out any of its obligations or duties under this Contract and the Government Representative executes such obligations or duties on its behalf;
- (x) it shall not keep, or cause, permit or suffer to be kept any animals or pets in the Licence Area or any part thereof and to take all such steps and precautions to the reasonable satisfaction of the Government Representative to prevent the Licence Area or any part thereof from becoming infested by any pests or vermin;
- (y) it shall not infringe any copyright or other intellectual property right in respect of any music or other entertainment whatsoever provided in or from any part of the Licence Area or Venue AND it shall indemnify and keep indemnified the Government Representative, and all their respective servants and agents in full against all actions, claims, proceedings, demands, liabilities, costs and expenses in respect of any infringement or alleged infringement of any such rights in or at the Licence Area as aforesaid;
- (z) it shall load and unload all items only through such entrances and by such services lifts and at such time or times as shall be reasonably designated or directed by the Government Representative for this purpose from time to time;
- (aa) it shall make good any loss or damage to the Venue or any part thereof or any facilities or other fixture or fitting therein not being the property of the Licensee which may arise as a result of the operation of the Fast Food Business or any other act, neglect or default of the Licensee or any of its servants or agents;
- (bb) it shall not use or cause, or suffer, or permit to be used the Licence Areas or any part thereof for any purposes whatsoever other than the carrying out of its Fast Food Business;
- (cc) it shall not carry out the Fast Food Business in or from or otherwise howsoever use, cause, suffer or permit to be used for any purpose whatsoever any part of the Venue other than the Licence Area without the prior written consent of the Government Representative;
- (dd) save and except with the prior permission of the Government Representative, it shall not cause, suffer or permit any of its employees or agents to enter into any part of the

Venue other than Licence Area where the general public does not have access;

- (ee) it shall withdraw from sale for the duration of any Event any Products which the Government Representative considers may jeopardize the said Event from taking place within the Venue, provided that such withdrawal from sale shall not have the effect of conferring to any third party, without the Licensee's consent, the Licensee's right to sell the Products as provided in this Contract;
- (ff) it shall obey and comply with all rules, regulations made from time to time by the Government Representative for the management of the Licence Areas or any other part of the Venue and to cause its agents, employees, contractors and customers to obey and comply with the same; and
- (gg) it shall obey it shall obey and comply with such notice, direction or requirement of any public or other authority as the Government Representative may from time to time be required to observe or comply and to indemnify the Government from and against any breach thereof.

#### 11. Cleansing, Collection and Disposal of Refuse and Litter

- (a) The Licensee shall provide and keep in good and hygienic condition dustbins in the Licence Area(s) in such numbers and of such a type as shall be approved by the Government Representative and shall collect all refuse and litter therein.
- (b) The Licensee shall arrange 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 thus collected in the course of the Fast Food Business. Such refuse and litter shall be collected in polyethylene bags to be supplied by the Licensee, or in any other containers approved by the Government Representative and shall be properly disposed to such a refuse collection point inside or outside the Venue designated by the Government Representative or to such places as shall be specified by the Government Representative at any time and from time to time in such manner as approved or prescribed by the Government Representative. The Government Representative reserves the right to alter the designated refuse collection points and disposal method and the Licensee shall follow such directions by the Government Representative and make necessary arrangement as approved by the Government Representative at its own cost.
- (c) The Licensee shall carry out cleansing and clearing of all grease tanks and grease traps in the Licence Area(s) for which the Licensee is liable for, at least, on a daily basis and of all the drainage and sewerage pipes in the Licence Area(s) for which the Licensee is liable for at frequent intervals to the Government Representative's reasonable satisfaction to prevent chokage and blockage of the installations. Where the Government Representative reasonably considers that hot or warm effluent can congeal and cause blockage within the drainage system, the Licensee 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 contractor as may be approved or prescribed by the Government Representative.
- (d) In the event of failure to comply with this Clause, the Licensee shall pay the

Government Representative on demand the costs incurred by the Government Representative if the removal and disposal of such refuse and litter or the cleansing and clearing of any of the drains, sewers and grease traps choked or blocked is carried out by the Government Representative due to the act, default or negligence of the Licensee or any of its employees or agents.

- (e) The Licensee is required to collect and sort all refuse in an environmentally friendly manner as instructed by the Government Representative and remove and dispose of properly in polythene bags (to be supplied by the Licensee) or containers as may be approved or prescribed by the Government Representative all refuse, except those recyclable waste collected, immediately after each cleansing operation. Licensee is not entitled to claim any compensation from the Government for any additional costs and expenses it may incur whatsoever for ensuring compliance with the waste reduction policies and recycling measures and other environmental policies of the Government.
- (f) The Licensee shall not place or leave or cause, or suffer, or permit to be placed or left in any part of the Venue (including but not limited to fire exits, common area, stairways, landings and passages of such buildings) any boxes, furniture, rubbish, chattels or any other materials or otherwise in any way to encumber, obstruct or block the same. The Licensee shall arrange at its own cost proper and immediate disposal of the same at designated locations as approved by the Government authorities from time to time.

## 12. Monies or Valuables Found or Property Lost

All monies or other items of value found by the Licensee, its employees and/or agents in carrying out the Fast Food Business in the Licence Area(s) shall be handed to the Government Representative's management in the Venue as soon as possible and a written receipt shall be obtained therefrom.

## 13. Staffing

- (a) The Licensee shall arrange all persons employed at the Licence Area(s) to submit such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Licence Area(s) any person found by the medical practitioner to be likely to spread a communicable disease.
- (b) The Licensee shall ensure that its managerial or supervisory staff shall be in attendance at the Licence Area(s) at all times when its staff are at work.
- (c) The Licensee shall be responsible for the good conduct of its employees or agents while they are in the Licence Area(s), and shall ensure that they will behave accordingly.
- (d) The Government Representative shall be entitled to demand on reasonable grounds, including but not limited to medical, health, security and disciplinary grounds, the removal or replacement of any of the Licensee's employees or agents.
- (e) The Government and the Government Representative shall in no circumstances be liable either to the Licensee or to its employees or agents in respect of any liabilities,

losses or damages occasioned by such removal as stipulated in Clause 13(d) and the Licensee shall fully indemnify the Government against any claim made by such employees or agents.

- (f) The Government shall be entitled to refuse to admit to the Venue or any part thereof for the purposes of the Contract any person employed by the Licensee, or by the Licensee's agents, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- (g) Any removal demanded or refusal made under Clauses 13(d) and 13(f) shall not be construed as a breach of the Contract by the Government Representative and the Licensee shall continue to carry out its obligations under the Contract.
- (h) The Licensee shall provide a sufficient quantity of clean uniforms with clear identifications of the Fast Food Business and of a type approved by the Government Representative for the use of its employees at the Licence Area(s).
- (i) The Licensee shall provide lockers for the staff to store their clothing and personal effects and shall not allow personal effects such as clothing, footwear, luggage, umbrellas and other articles to be stored or left in any room where food for sale for the purpose of the Fast Food Business is stored.
- (j) The Licensee shall ensure that at all times when its employees are at work or on duty in the Licence Area(s) they shall wear such uniforms approved by the Government Representative in a clean and tidy manner.
- (k) The Licensee shall ensure that all persons employed by it in carrying out the Contract shall keep to such parts of the Venue as are necessary for the due discharge of the Licensee's obligations under the Contract.
- (l) The Licensee shall maintain a proper, current and accurate record of all its employees or agents employed for carrying out the Fast Food Business. Such record shall include the name, Hong Kong Identity Card number, grade, age and photograph of each employee. The Licensee shall produce such record for inspection by the Government Representative on request.
- (m) The Licensee shall not employ any person who is forbidden in the Laws of Hong Kong or not entitled for whatever reasons to undertake any employment in Hong Kong in the execution of this Contract or any other Government contract. If there is any breach of this Clause by the Licensee, the Government Representative may, by notice in writing, terminate this Contract and the Licensee is not entitled to claim any compensation. The Licensee shall be responsible for any expenses or loss that the Government Representative may incur or suffer due to the breach of this Clause by itself.
- (n) Unless otherwise approved by the Government Representative, all workers and staff employed by the Licensee for the execution of this Contract shall be local residents engaged in Hong Kong. Any contravention to this Clause shall be deemed as a material breach of the Contract which shall entitle the Government Representative to terminate the Contract by giving fourteen (14) days' notice to the Licensee.
- (o) The Licensee shall be liable for all expenses necessarily incurred by the Government



Representative as a result of the termination of this Contract.

- (p) The Licensee shall not employ any person at the Licence Area(s) who has not been inoculated against typhoid and paratyphoid and inoculated and vaccinated against such other diseases as the Government Representative may direct.
- (q) The Licensee shall deploy at least one (1) designated staff with professional certificate on food hygiene such as Basic Food Hygiene Certificate for Hygiene Manager/Supervisor issued by a registered post-secondary institution awarded after its registration, or equivalent at managerial or supervisory level for operation of the Catering Business in the Venue.

#### 14. Publicity and Advertisement

- (a) The Licensee shall not publish or use any advertising or other publicity materials or perform any act with an advertising nature in relation to the Fast Food Business except with the prior written consent of the Government Representative.
- (b) Save and except where the Government Representative at its discretion may permit or require, the Licensee shall not exhibit or display, or cause, or permit, or suffer to be exhibited or displayed either inside or outside the Licence Area(s) 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(s) or any part thereof) of any advertising nature.
- (c) Without prejudice to the generality of Clause 14(b), the Licensee shall not exhibit or display, or cause, or permit, or suffer to be exhibited or displayed either inside or outside the Licence Area(s) 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(s) or any part thereof) of any advertising nature relating to any smoking products.
- (d) The Licensee shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplies or other work done in connection with the Contract wherein the Government's name is mentioned or from the language used a connection with the Government can reasonably be inferred or implied.

#### 15. Notices to be Displayed or Circulated in the Venue

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

16. Water Supply

- (a) The Licensee, if so permitted by the Government Representative, may use water supply which may be available at the Venue to operate the Fast Food Business and shall pay all fees and charges in connection therewith.
- (b) If water supply is not available at the Licence Area(s), or permission to use available supply is not granted or is withdrawn, the Licensee shall at its own expense install and provide such supply for the Fast Food Business and pay all fees and charges in connection therewith.
- (c) All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved in writing by the Government Representative and the works shall be carried out by qualified personnel approved by and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government Representative. The Licensee shall be responsible to maintain and repair such installation at its own expense as well as to remove the same should the Government Representative so directs.

17. Electricity and Gas Supply

- (a) The Licensee, if so permitted by the Government Representative, may consume electricity and/or gas from supply points which are available at the Venue to operate the Fast Food Business and shall pay all deposits, fees and charges in connection therewith. The maximum electricity loading available to the Licence Area(s) are shown in **Annex C**.
- (b) If electricity and/or gas supply point is not available at the Licence Area(s), or permission to use available supply point is not granted or is withdrawn, the Licensee shall at its own expense install and provide its own source of electricity and/or gas supply required for the Fast Food Business and pay all fees and charges in connection therewith.
- (c) Any installation of wiring and lighting fittings, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out by a Registered Electrical Contractor (REC)/ Registered Electrical worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406) and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government. The Licensee shall be responsible to maintain and repair such installation at its own expense as well as to remove the same should the Government Representative so directs.
- (d) All installation of gas appliances, and all other installation of gas supply system, be it permanent or temporary, shall be approved by the Government Representative and the works shall be carried out by registered gas contractor registered under the Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap. 51 sub. leg. (D)) and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government. The Licensee shall be responsible to maintain and repair such installation at its own expense as well as to remove the same

should the Government Representative so directs.

18. Rights Reserved by Government Representative

- (a) The Government Representative reserves the right to suspend at its sole discretion the Licensee's Fast Food Business by closing any part of the Licence Area(s) for a specified period of not more than seven (7) days at any one (1) time if the Government Representative is of the opinion that the Licensee is in breach of any of the terms and conditions of the Contract. The Licensee is not entitled to claim against the Government or the Government Representative any loss suffered or expenses incurred due to such closure or suspension.
- (b) The Government Representative reserves the right to close the Venue in whole or in part, including the Licence Area(s) and/or to suspend the Fast Food Business by reason of fire or storm or damage (not being the result of wilful default or misconduct or negligence of the Licensee, its employees or agents) or an act of God or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Licence Period. The Government shall not be liable for any loss suffered or expenses incurred whatsoever by the Licensee due to such closure or suspension.
- (c) In connection with Clause 18(b) above, if the demand of such closure or suspension of Fast Food Business by the Government Representative is due to repair or maintenance or building modification, the Government Representative will give the Licensee one (1) month advance notice before the commencement date of such closure and suspension, if it is practicable in the circumstances.
- (d) Notwithstanding Clause 3 hereof, the Government Representative may permit any person or organisation to provide in the Venue by way of sale or otherwise any refreshments or commodities. Irrespective of whether or not the Fast Food Business of the Licensee might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Licensee and shall not be required to abate the Monthly Licence Fee and/or Minimum Annual Licence Fee or any part thereof.
- (e) For the avoidance of doubt, nothing expressed or implied in the Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorise any person or organisations to bring into the Venue or distribute freely therein any refreshments or commodities for consumption or for use whatsoever. The Licensee is not entitled to claim for any compensation or prohibition for whatsoever causes resulting from the grant of the said permissions and authorisations. The Licensee shall continue to carry on the Fast Food Business on any day covered by such permission if it is not required to suspend the Fast Food Business.
- (f) Notwithstanding Clause 3 hereof, the Government Representative reserves the right to provide or allow any person or contractor to provide catering services, drinking fountain and/or vending machine services within any other areas of the Venue during the Licence Period of the Contract. Irrespective of whether or not the Fast Food Business of the Licensee might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Licensee and shall not be required to abate the Monthly Licence Fee and/or Minimum Annual Licence Fee or any part thereof.

- (g) The Government shall not be liable to the Licensee or any other person in any way whatsoever in respect of or for —
- (i) any loss of or damage to person or property sustained by the Licensee or any other person of any mechanical, electrical or other machinery at the Venue, including but not limited to sound or public address systems, electric, gas and water supplies, air-conditioning, lifts and escalators other than for injury to or death of any person directly attributable to the negligence of the Government or its employees or any of its agents; or
  - (ii) any loss or damage to person or property sustained by the Licensee or any other person caused by or through or in any way owing to the escape of fumes, fire, smoke or any other substance or thing or the overflow of water from anywhere in the Venue other than for injury to or death of any person directly attributable to the negligence of the Government or its employees or any of its agents; or
  - (iii) the security of the Licence Area(s); or
  - (iv) any interruption to the Fast Food Business of the Licensee howsoever caused inclusive but not limited to the cancellation of Events at the Venue, the breakdown of air-conditioning, lighting or otherwise which results in any loss or damage to the Licensee.
- (h) During the six (6) months immediately preceding the expiry of this Contract, the Government reserves the right to allow any prospective Tenderers to enter and view the Licence Areas at any reasonable time upon prior notice having been given to the Licensee.

19. Sale of Commodities

- (a) Unless otherwise specified in the Contract, the Licensee shall sell the commodities listed in the **Third Schedule** and to a standard to the satisfaction of the Government Representative.
- (b) Any alteration of the commodities listed in the **Third Schedule** as approved by the Government Representative will only be made after obtaining the prior written approval of the Government Representative. The Licensee shall notify the Government Representative of the latest price list of commodities in the Fast Food Business whenever the Government Representative so demands.
- (c) The Licensee shall abide by any directions as to the quality of the commodities sold or offered for sale at the Licence Area(s) as may be given by the Hong Kong Consumer Council.
- (d) The Licensee shall provide to customers upon request receipts for commodities sold in conducting Fast Food Business specifying the commodities sold and the respective price.
- (e) The Licensee shall withdraw from sale for the duration of an Event any product which the Government considers may jeopardise the said Event from taking place or which may cause breach of contracts between the Government and any commercial operation within the Venue.

20. Display of Commodity Prices

The Licensee shall prominently display at all times the prices of commodities for sale in respect of the Fast Food Business at the Licence Areas. The displays shall be in both Chinese and English and put up in such form, manner and at such locations as shall be approved or prescribed in writing by the Government Representative.

21. Erection of Structure

- (a) The Licensee shall not allow or permit any structure to be erected in or on the Licence Areas and their immediate vicinity except for the following:
- (i) those stipulated in Clause 20 above or 27(c).
  - (ii) Two (2) signboards bearing the words “Fast Food Kiosk” for the Fast Food Business.

in both English and Chinese approved in writing by the Government Representative.

22. Watchman

- (a) The Licensee shall not allow any person to remain in the Licence Area(s) overnight without the permission of the Government Representative in writing. Such permission shall only be given to enable the Licensee to post a watchman/watchmen to look after the contents of the Licence Area(s).
- (b) The Licensee shall ensure each watchman shall possess a valid security personnel permit issue under Security and Guarding Services Ordinance (Cap. 460) and submit to the Government Representative for approval the name and Hong Kong Identity Card number of such watchman.
- (c) The Licensee shall immediately remove such person(s) from the Licence Area(s) if the Government Representative notifies the Licensee in writing of the withdrawal of its approval for such person(s) to stay overnight in the Licence Area(s).

23. Use of Fuel

The Licensee shall heat, cook food or boil water only by electricity or town gas.

24. Store of Dangerous Goods and Prohibited Goods

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

25. Fire Fighting Equipment

The Licensee 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 Director of Buildings or the Director of Fire Services in connection with the Licence Areas.

26. Discharge of Waste Water

The Licensee shall ensure waste water that comes out from the Licence Area(s) is free of grease and shall not cause, suffer or permit to be caused the waste water discharging onto areas surrounding the Licence Area(s).

27. Sale of Liquor

- (a) The Licensee shall not sell liquor in the Licence Area without first obtaining the written permission of the Government Representative.
- (b) The Government Representative shall take into account all relevant factors in considering whether to grant the permission referred in Clause 27(a) to the Licensee if the latter applies to the Government Representative for such permission. The Government Representative reserves the right to withdraw any permission granted and shall not be required to provide any reasons to the Licensee for such withdrawal.
- (c) After obtaining the written permission of the Government Representative, the Licensee shall obtain the licence as is required under the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. Leg B) if liquor is sold at the Venue or in an Event for consumption at the Venue. The Licensee shall ensure that a prescribed notice in both the Chinese and English shall be displayed in a prominent location at the Licence Area in compliance with the relevant clauses of Dutiable Commodities Ordinance (Cap. 109) and Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. Leg B).
- (d) The Licensee shall not sell or supply at the Licence Area any intoxicating liquor to any Minors and shall ensure full compliance with all provisions in the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. Leg B), including but not limited to those provisions imposing restrictions on the sale of intoxicating liquor from vending machines and restrictions on the sale and supply of intoxicating liquor to Minors in Part 5 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. Leg. B).

28. Green Measures Relating to Disposable Tableware

- (a) The Licensee shall not provide plastic straws for any customers.
- (b) The Licensee shall not provide any type or item of disposable cutlery (e.g. stirrer, fork, knife, spoon and chopsticks), disposable food containers (e.g. bowls, dishes, plates and boxes) and non-environmental friendly disposable drink containers (e.g. cups) by default or in sets for take away customers.

- (c) All types of crockery, cutlery and containers to be used for provision of Services in the Fast Food Business at the Venue shall be made from environmentally friendly, biodegradable and sustainable materials and shall be subject to the prior written approval of the Government. The Licensee shall submit supporting documentary proof and such other information and documents as may be requested by the Government in connection with the application for such approvals.
- (d) If requested by take-away customers, the Licensee may provide non-plastic disposable cutlery (e.g. soft wood or bamboo), non-plastic disposable food and drinks 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 Licensee 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 Licensee shall not provide disposable plastic tableware.
- (e) 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. fork, knife, spoon and chopsticks), food / drink containers (e.g. cups, bowls, dishes, plates and boxes) and individually packed wet tissues.
- (f) The Licensee may provide plastic lids for cups and bowls for take-away food or drinks.
- (g) The Licensee may provide disposable plastic tableware when warranted by genuine service / operational needs and with prior approval in writing by the Government Representative under exceptional circumstances, such delivery of public service in emergency situations (e.g. special / ad-hoc operations, safety concerns and special operational requirements required during prolonged outdoor work).
- (h) The Licensee 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.
- (i) The Licensee may provide prepackaged food with disposable tableware not made of poly-foam if cooking or preparation of food is not allowed in the Licence Area.
- (j) The requirements and conditions as stipulated in Clauses 28(a) to 28(i) shall be all to the satisfaction of the Government Representative and the decision of the Government Representative shall be final, conclusive and binding on the Licensee.

29. Arrangement During Epidemic Illness

In the event of illness of any epidemic nature breaking out or situation related to suspected or confirmed communicable disease cases, the Licensee 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 Licensee shall comply with any instructions issued by the Government regarding measures to be adopted to prevent or control diseases of any kind.

30. Government Premises, Property, Machinery and Equipment

- (a) When the Government premises, property, machinery or equipment is provided for the Licensee under the Contract (inclusive of those listed in the Seventh Schedule and Annex C), the Licensee shall keep and maintain the same in good, clean and serviceable condition (fair wear and tear excepted), and shall be responsible for the due and immediate return of all such premises, property, machinery and equipment in good repair, clean and serviceable condition (fair wear and tear excepted) at any time upon request by the Government Representative and/or upon the expiry or termination of the Agreement.
- (b) The Licensee shall not make any alteration or addition to the premises, property, machinery and equipment provided by the Government Representative therein 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 written approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by a qualified person approved by and to a standard acceptable to the Government Representative.
- (c) The Licensee shall be liable to the Government for any damage or loss to such premises, property, machinery and equipment provided by the Government Representative. If any such premises, property, machinery or equipment is found damaged or lost, as the case may be, in whatsoever scale and from whatsoever cause while in the occupancy or control of the Licensee, the Licensee shall pay the cost for all repair or replacement of the same plus a sum equivalent to the staff administrative costs as an administrative overhead charges.
- (d) All premises, property, machinery and equipment so provided for the Licensee under the Contract, shall remain the property of the Government, and the Government reserves the right to check stock of the same at any time and the Licensee shall provide every assistance to the Government Representative for this purpose.
- (e) The Licensee shall accept the Licence Area(s) and the Government's provisions of property, machinery or equipment under the Contract (inclusive of those listed in Sixth Schedule) in the state and condition in which occupancy is given.

31. Access Granted to the Licensee

- (a) The Government Representative shall grant access of the Venue or any part thereof to the Licensee as may be necessary for it, its employees or agents to perform its obligations under the Contract, provided that the Government Representative shall be entitled to close the Venue or any part thereof or to prohibit any vehicular access to the Venue at any time and for any period if the Government Representative considers it prudent and expedient to do so. Such closure shall not be deemed to be a breach of the Contract by the Government Representative.
- (b) Upon such closure or prohibition of access or on demand of the Government Representative, the Licensee and its employees and agents shall forthwith suspend the Fast Food Business, remove the plant, equipment, materials and vehicles under the control of the Licensee from the Venue.



- (c) The Licensee and its personnel shall have access during Event Day for the sole purpose of the Licensee's Fast Food Business in accordance with this Contract to and from the Licence Area(s) by and from a designated entrance at the Venue as advised by the Government Representative from time to time.
- (d) For the purposes of identification and security, all employees or duly authorised representatives of the Licensee shall be in company apparel or wearing a Hong Kong Stadium pass as will be issued from time to time by the Government Representative or provided by the Licensee at its own costs in a form or design approved by the Government and shall return the same to the Government Representative upon demand. The Licensee hereby undertakes to ensure that all of its personnel complies with the requirements of this sub-clause.

32. Inconvenience or Annoyance Caused at the Venue

- (a) The Licensee shall ensure that its employees or agents shall perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- (b) The Licensee shall use its best endeavors to avoid causing nuisance or annoyance to the users of the Venue or to the Government's staff or agents working there while carrying out the Fast Food Business. The Government Representative shall be, without prejudice to any rights it has under the Contract and without releasing or discharging the Licensee of its obligations hereunder and without compensation whatsoever to the Licensee, entitled to suspend the Fast Food Business or use whatever means the Government may consider suitable so as to stop the Licensee from causing further nuisance to the users of the Venue and the Government's staff or agents working there.
- (c) The Licensee shall not place or leave, or cause, or 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 Venue other than the Licence Area(s) or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government Representative if the Government Representative 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 Representative has or may have under the Contract, the Government Representative 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 Licensee to seize and dispose of any such property in such manner as the Government Representative may see fit without any liability whether towards the Licensee or any other Person and the Licensee shall pay the Government on demand all the costs in relation to such removal and/or disposal which are incurred by the Government.

33. Inspection and Rejection

- (a) The Fast Food Business carried on by the Licensee shall be subject to inspection by the Government Representative at any time.

- (b) Without prejudice to any other rights provided under the Contract, the Government Representative may reject any action undertaken by the Licensee which is purported to be for the compliance or observance of any term or condition of the Contract or result of such action which does not strictly conform to the terms and conditions of the Contract.
- (c) Within twenty-four (24) hours (or such longer time as may be notified by the Government) of being notified in writing of the rejection of any action undertaken by the Licensee or result of such action, the Licensee shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government Representative.
- (d) If the Licensee shall fail to rectify such rejected action or result of action, the Government Representative may without prejudice to any other rights and remedies available to the Government carry out and complete such rectification by its own staff or by its agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Licensee forthwith on demand. The normal working hours for the staff of the Government are, with the exception of General Holiday, from 9:30 a.m. to 4:30 p.m. from Monday to Friday. If such rectification is carried out by the staff of the Government outside these normal working hours, the Licensee shall be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such staff.

34. Licensee's Act, Default, etc.

- (a) Any act, default, negligence or omission of any employee, agent or sub-contractor (of whatever tier), or any employee or agent of such sub-contractor, or visitor, patron or invitee of the Licensee shall be deemed to be the act, default, negligence or omission of the Licensee.
- (b) It shall be regarded as a default, if the Licensee —
  - (i) shall abandon the Contract; or
  - (ii) shall persistently or wilfully neglect to carrying out its obligations under the Contract; or
  - (iii) shall fail to carry out all or any of the rectification as stipulated in Clause 33(c) within the time specified.
- (c) Without prejudice to any other rights provided for under the Contract, the Licensee shall indemnify the Government and the Government Representative against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government Representative may sustain or incur or which may be brought or established against it as a result of the Licensee's default.
- (d) Notwithstanding the above provision, the Government Representative may at its own discretion terminate the Contract in accordance with Clause 40 hereof as a result of the Licensee's default.

35. Public Liability Insurance

- (a) The Licensee shall effect, take out, maintain and renew upon expiry the benefit of and at its own expense a policy of insurance (including public liability) (“the Policy”) in the joint names of the Licensee and the Government of the Hong Kong Special Administrative Region in the sum of not less than Ten Million Hong Kong Dollars (HK\$10,000,000) for any one (1) incident and for an unlimited number of claims arising during the Licence Period with an insurance company authorised by the Insurance Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative. There shall be no limit to the number of claims during the period of insurance.
- (b) The Policy shall cover full liability to pay damages or compensation as a result of the damage to properties, death of or injury to or illness suffered by any person arising out of any act, negligence or default of the Licensee, or the Government or their employees and agents. The policy of insurance shall also indemnify all sums which the Licensee and the Government shall become legally liable to pay as compensation for bodily injury due to any food and/or drinks and/or other commodities supplied by the Licensee at the Venue.
- (c) The Licensee shall keep the Policy in force during the continuance of the Contract and shall forthwith deposit with the Government Representative for safe keeping a copy of such Policy together with the receipt for payment of the current premiums.
- (d) If the terms of the Policy taken out by the Licensee require the insured parties to bear any excess amount in the event of claims, the Licensee shall be personally and solely responsible for the payment of such excess amount and shall indemnify the Government for such payment. Under no circumstances whatsoever shall the Government be responsible for the premium payable under the Policy or the premium payable for the renewal thereof.
- (e) The Policy shall include a cross liability clause.
- (f) The Licensee is responsible to lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage.
- (g) The Licensee shall conform to the terms and conditions of the 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 Licensee shall not do or permit or suffer to be done any act or omission whereby the public liability insurance policy shall be rendered void or voidable, or which would otherwise amount to breach of the Policy. The Licensee shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Licensee to observe and comply with this Clause.

36. Accident to Licensee’s Employees

- (a) The Government, its employees and agents shall not be under any liability whatsoever for or in respect of injury to or death of any of the Licensee’s employees or agents save

and except such injury or death caused by the negligence of the Government or its employees or agents. The Licensee shall indemnify the Government and its employees or agents against all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions whatsoever in respect of any such injury or death for which the Government and its employees and agents are not liable under this Clause.

- (b) The Licensee shall effect and keep in force at its own expense the Policy against all liability to pay damages or compensation as aforesaid in respect of all staff and other persons, other than the Government employees, who may be employed by the Licensee on any work done in pursuance of the Contract with an insurance company authorised by the Insurance Companies Ordinance (Cap. 41) and on such terms and conditions to be approved by the Government Representative, and shall, as and when required, deposit with the Government Representative for safe keeping a copy of the Policy together with the receipt for payment of the current premiums.
- (c) In the event of any staff or other persons employed by the Licensee on any work done in pursuance of the Contract suffering any personal injury or death, the Licensee shall within forty-eight (48) hours notify the Government Representative in writing and whether there be a claim for a compensation or not, the Licensee shall, as soon as it is practicable thereafter, give notice in writing of such personal injury or death to the Commissioner for Labour and the insurer.

### 37. Liability and Indemnity

- (a) The Licensee shall indemnify the Government, the Government Representatives, its employees, authorised persons and successors-in-title of the Government and/or Government Representatives and keep the Government fully and effectively indemnified against all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government may sustain or incur or which may be brought or established against it by any person and which in any cases arise out of or in relation to or by reason of —
  - (i) the negligence, recklessness, tortious act or wilful misconduct of the Licensee, its employees or agents or sub-contractors (of whatever tier) or those employees or agents of such sub-contracts, or any visitor or patron of the Licence Area(s) all of the aforesaid persons collectively the “**Licensee Responsible Group**”); or
  - (ii) the performance or breach or the non-performance or non-observance of any of the warranties and undertakings, obligations or conditions by any member of the Licensee Responsible Group;
  - (iii) any defaults, unauthorised acts or omissions by any member of the Licensee Responsible Group; or
  - (iv) the non-compliance with any applicable laws and any requirements or regulations of any Government authorities or agencies in connection with the performance of the obligations under this Contract by any member of the Licensee Responsible Group; or

- (v) any loss or damage sustained by or any injury to or death of any third party which is partially or jointly in consequence of any negligence, omission, default of the Government Representative or its employee or any agent under statute and under common law as long as such loss or damage sustained by or any injury to or death of such third party is partially or jointly attributable to any member of the Licensee Responsible Group in the manner as described in (i) to (iv) above.
- (b) The indemnities, payment and compensation given in pursuance of the Contract by the Licensee 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 Licensee's operation or method of working, or in detecting or preventing or remedying any defective work carried out by any member of Licensee Responsible Group.

38. Failure to Insure

If the Licensee shall fail to effect or to keep in force the Policy referred to in Clauses 35 and 36 or any other policy of insurance which it may be required to effect under the terms and conditions of the Contract, the Government Representative may effect and keep in force any such insurance policy 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 7 hereof or may recover the same as a debt due from the Licensee.

39. Probity

- (a) If the Licensee or any of the Licensee's employees or agents commits an offence under the Prevention of Bribery Ordinance (Cap.201), or the Theft Ordinance (Cap. 210), the Crime Ordinance (Cap. 200) or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Licensee to any compensation therefor.
- (b) The Licensee shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract under this Clause.
- (c) The Licensee shall not, whether by itself or by any person employed by it to provide services in connection with the Fast Food Business, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of such services other than charges properly approved in writing by the Government Representative under the Contract. The Licensee shall prohibit its employees and agents who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Contract. The Licensee shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Licensee shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any 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.

- (d) The Licensee shall within fourteen (14) days after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting any person employed by it to provide services in connection with the Fast Food Business from soliciting or accepting any person employed by it to provide the services from soliciting or accepting any form of advantages in discharging its duties under the Contract. The Licensee shall ensure that any person employed by it to provide such services is well aware of the prohibited acts explicitly stated in Clause 39(c) above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

#### 40. Termination

- (a) Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government Representative, the Government may at any time by notice summarily terminate the Contract without entitling the Licensee to compensation in any of the following events—
- (i) if the Licensee 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 Licensee under the Contract or in the case of a breach capable of being remedied, will have fails within fourteen (14) days or such longer period as the Government Representative may allow after the receipt of a notice in writing from the Government Representative so to do to remedy the breach (such notice shall contain a warning of the Government Representative's intention to terminate the Contract); or
- (ii) if the Licensee goes into liquidation, or 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 any Bankruptcy Ordinance (Cap. 6) for the time being in force, or becomes insolvent, or makes a proposal for a composition or a scheme of arrangement or makes any conveyance or assignment of its effects for the benefit of its creditors or purports so to do, or suffers any execution to be levied on its goods and assets in the Licence Area(s), 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 Representative in writing; or
- (iii) if the Licensee, being a company, passes a resolution, or the Court makes an order, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances which entitle the court or debenture holders to appoint a receiver or manager have arisen, for the liquidation of the Licensee's assets, provided that such determination shall not prejudice or affect any right or action or remedy which have accrued or accrue thereafter to the Government; or
- (iv) if the Licensee assigns or purports to assign all or any part of the burden or benefits of the Contract without the prior written consent of the Government

Representative.

- (b) Notwithstanding any provision to the contrary, at any time after the expiration of the twelve (12) months from the commencement of the Licence Period either party may terminate the Contract by giving the other party not less than six (6) months' prior written notice.
- (c) If the Licensee has terminated the Contract early by serving prior written notice pursuant to Clause 40(b), and the Government conducts a new procurement exercise to award a contract to provide Fast Food Business from another source to replace the existing Contract, any tender/ quotation offer from the same Licensee or a related person of the Licensee (as defined as below) for the contract to be awarded in that new procurement exercise will be rejected.

For the purpose of this Clause 40(c):

- (i) If the Licensee is a company, the expression “**related person**” of the Licensee includes any one of the following:
  - (a) a shareholder (cooperate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Licensee (“**majority shareholder**”); or
  - (b) a holding company or a subsidiary of the Licensee; or
  - (c) a holding company or a subsidiary of a majority shareholder of the Licensee; or
  - (d) a company in which a majority shareholder (being an individual) of the Licensee 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 (Cap. 622).

- (ii) If the Licensee is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
  - (a) any partner of the Licensee (if it is a partnership); or
  - (b) the spouse, parent, child, brother or sister of the Licensee, 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 Licensee or any partner of the Licensee beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- (d) If the Government Representative shall at any time be prevented from performing the Contract by force majeure, then the Contract shall terminate immediately but without

- prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of any of the terms and conditions of the Contract.
- (e) For the purpose of Clause 40(d), “**force majeure**” means acts of God, strikes, lockouts, acts of war, civil disorders, governmental laws, orders or regulations or other similar or different events or contingencies beyond the reasonable control of the respective parties. For these purposes an event shall not be deemed to be within the control of the Government Representative on the ground that the Government Representative could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.
- (f) (i) If the Licence Area(s) or any part thereof shall be rendered unfit for use by any cause whatsoever not attributable to any act, omission or default on the part of the Licensee or any of its servants or agents, the obligation of the Licensee to carry on the Business shall be suspended until such part or parts shall have been again rendered fit for use. If such part or parts shall not be rendered fit for use within six (6) months of the date of the occurrence of the event rendering the same unfit, then either party hereto shall be entitled at any time before the same are so rendered fit to terminate this Contract by notice in writing to the other but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach. Notwithstanding the above the Government shall have the sole right to determine whether the Licence Area(s) or any part thereof has become unfit for use.
- (ii) For the avoidance of doubt, it is hereby expressly agreed and declared that notwithstanding anything contained herein, the Government shall not in any circumstances whatsoever be required or otherwise obliged to repair or reinstate the Licence Area(s) or any part thereof rendered unfit for use by any cause whatsoever if the Government shall be of the opinion that it is not practicable or reasonable to do so.

#### 41. Effect of Termination

- (a) Upon termination of the Contract –
- (i) the Licensee shall immediately deliver up vacant possession of the Licence Area(s) including the appliances, furniture, fixtures and fittings provided by the Government Representative or the Government therein in good repair (fair wear and tear excepted) and in clean and hygienic condition. Provided always that where the Licensee has made any alterations or installed any fixtures or additions to the Licence Area(s) with or without the Government Representative’s consent, the Government Representative may at its discretion require the Licensee to reinstate or remove at the Licensee’s own expense such alterations, fixtures, fittings or additions or such part or portion thereof as the Government Representative may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area(s) and to the Government’s fixtures and installations thereof before delivering up the Licence Area(s) to the Government Representative;
- (ii) the Licensee shall at its own expense forthwith retreat all its employees. Sub-



contractor or agents and remove from the Venue all its fixtures, fittings, structures, materials, machinery, equipment, plant and all other properties which the Government Representative does not desire to take over. The Licensee shall at its own expense make good any damage to the Government premises, property, machinery and equipment which are caused by such retreat or removal;

- (iii) the Licensee shall return all Government premises, property, machinery and equipment provided by the Government Representative under this Contract in the manner as stipulated in Clause 30 hereof;
- (iv) if the Licensee shall fail to comply with Clause 41(a)(ii), the Government Representative may forthwith enter the Licence Area(s) to remove any person therein, or to remove any fixtures and fittings 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(s) in a good repair, 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 Licensee or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Licensee 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 Licensee; and
- (v) if the Contract is terminated by the Government (other than pursuant to Clause 40(b) and Clause 40(f)(i)) and the Government makes other arrangements for the conduction of Fast Food Business, the Government may recover from the Licensee:
  - (1) any amount in short of the total Minimum Annual Licence Fee of the remaining Licence Period which is calculated on pro rata of the remaining of Licence Period (which would have been payable by the Licensee had the Contract not been terminated) suffered by the Government in engaging another Licensee to operate the fast food business and all costs and expenses incurred in making the arrangements for the same including conducting tender/quotation exercise to award a contract under which a person is granted a licence to conduct the Fast Food Business; and
  - (2) any additional expenditure incurred by the Government in connection with a default by the Licensee referred to in Clause 40(a). If the contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Licensee for the Services provided by the Licensee prior to termination and in accordance with the Contract for which payment has yet to be made by the Government.
- (vi) In the event that the Contract is terminated under Clause 40(b), the Minimum Annual Licence Fee shall be deducted on a pro-rata basis and shall be rounded down to the nearest multiple of one (1) cent.

- (b) Any termination of the Contract howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. All warranties and indemnities given by the Licensee under this Contract shall survive the expiration or early termination of this Contract.
- (c) In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in this Clause or otherwise, 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 Licensee arising out of or in relation to the termination or expiry.

#### 42. Recovery of Sums Due

Wherever under the Contract any sum of money (including but not limited to rates and Government rent payable in respect of the Licence Area(s)) shall be recoverable from or payable by the Licensee to the Government (but the Licensee has failed to pay the same by the due date), the Government is entitled to deduct the same from any sum then due or which at any time thereafter may become due to the Licensee under this or any other agreement(s) and/or contract(s) with the Government or from the Security Deposit in cash, cheque, cashier's order or by making a call on the bank guarantee in accordance with Clause 7 hereof forthwith without notice.

#### 43. Jurisdiction

The Contract shall be governed by and construed according to the Laws of Hong Kong and subject to Clause 51 the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of the Hong Kong in relation to any dispute arising from or in connection with or in relation to the Contract.

#### 44. Licence, Permit and/or Certificate

- (a) The Contract does not confer exemption from any licensing requirements pertaining to the Licensee's Fast Food Business.
- (b) The Licensee shall apply to the appropriate authorities to obtain or renew, as the case may be, all licences, permits and/or certificates required by the Laws of Hong Kong for the operation of the Fast Food Business. The Licensee shall make no claim of any kind whatsoever against the Government Representative in the event of the Licensee's failure or inability for any reason to obtain or renew any such licences, permits and/or certificates.
- (c) It will be unlawful for the Licensee to operate the Fast Food Business without the licences, permits and/or certificates as required by the Laws of Hong Kong,

notwithstanding the granting of the Licence by the Government Representative. The Licensee shall not provide any service or sell any commodities for which any licence, permit and/or certificate is so required by law without first obtaining such licences, permits and/or certificates. The Licensee shall ensure that those licences, permits and/or certificates shall remain in full force and effect as long as the Licence remains in force.

- (d) Since it will necessarily take time for the relevant authorities to consider and decide on an application for the requisite licences, permits and/or certificates, the Licensee agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee which is calculated on pro rata of the Minimum Annual Licence Fee on the grounds that the Licensee cannot conduct the Fast Food Business pending the consideration of its applications and issuance or renewal of the relevant licences, permits and/or certificates. For avoidance of doubt, the non-issuance of a relevant licence, permit and/or certificate by a relevant authority shall not constitute any grounds for the abatement of the Monthly Licence Fee.
- (e) The Licensee shall observe and comply with the conditions of any licence, permit and/or certificate issued to it in relation to the performance of the Contract.

45. Applicability of Public Health and Municipal Services Ordinance (Cap. 132)

The Contract is subject to the provisions of the Public Health and Municipal Services Ordinance, and of all regulations made thereunder, which may be applicable to the Venue, the Licence Area(s) and the Fast Food Business. For activities relevant to licensing requirements regulated by the Director of Food and Environmental Hygiene, the Licensee should visit the Food and Environmental Hygiene Department's website at the following link –

*[http://www.fehd.gov.hk/english/licensing/Guide\\_on\\_Types\\_of\\_Licences\\_Required.html](http://www.fehd.gov.hk/english/licensing/Guide_on_Types_of_Licences_Required.html)*

46. Compliance with Law and Government Requirements

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

47. Notices

- (a) Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address, facsimile number set out in the Articles of Agreement (or such other postal address, facsimile number as the addressee has by not less than seven (7) working days' prior written notice specified to the other party).
- (b) Such notices, demands, invoices, correspondence or other communications shall be addressed as provided in Clause 47(a) and, if so addressed, shall be deemed to have been duly given or made as follows:
  - (i) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;

- (ii) if sent by post, four (4) days (for any place in Hong Kong) and seven (7) days (for any place outside Hong Kong) after the date of posting;
- (iii) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.

48. Waiver of Remedies

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

49. Severability

- (a) In the event that any provisions of the Contract or any part of any such provisions shall at any time be adjudged to be invalid, unlawful, illegal or otherwise howsoever unenforceable under any applicable laws of Hong Kong, such provisions or such part of such provisions, as the case may be, but only to the extent required by such laws, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions hereof.
- (b) If at any time any one or more provisions hereof shall be adjudged to be invalid or illegal in any respect under any applicable laws of Hong Kong, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be thereby impaired or affected.
- (c) Where, however, the provisions or any such applicable laws of Hong Kong may be waived, they are hereby waived by the parties hereto to the full extent permitted by such laws to the end that the Contract shall be valid, binding and enforceable in accordance with its terms and conditions.

50. Relationship of the Parties

- (a) The Licensee enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall be construed as in any way constituting a contract of employment, a relationship of agency or partnership, a relationship of landlord and tenant, or a joint venture between the parties.

- (b) Neither party shall without the prior approval in writing of the other commit that other party to any obligation other than those prescribed in the Contract. 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.

51. Mediation

- (a) The parties hereto agree that any dispute or claim arising out of or in connection with this Contract (“**the Dispute**”) shall be referred to mediation prior to commencement of litigation. In default of agreement, the Dispute shall be referred to mediation at the Hong Kong International Arbitration Centre in accordance with its Mediation Rules. In case the Dispute cannot be resolved by mediation, the Dispute shall be referred to, and finally settled by, arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609).
- (b) The Licensee shall be obliged to carry on the Fast Food Business in accordance with the Contract irrespective of a notice of mediation or arbitration having been served by either party or whether mediation or arbitration is in progress.

52. Assignment and Sub-Contracting

- (a) Unless otherwise provided for in the Contract, the Licensee must not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Licensee shall be personal to it.
- (b) If the Licensee proposes to appoint any sub-contractor, it must submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A certified copy of the sub-contract must be deposited with the Government within seven (7) days after the effective date of the sub-contract.
- (c) The Licensee must remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Licensee must be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

53. Entire Agreement

- (a) The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government.
- (b) All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the conducting of the Fast Food Business under the Contract (except insofar as those obligations which have been fully performed).

54. Variations

No addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

55. Contracts (Rights of Third Parties) Ordinance

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Right of Third Parties) Ordinance (Cap. 623).

**SCHEDULES**

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| 7.                | Seventh Schedule - The Non-collusive Tendering Certificate   | 93                  |
| 8.                | Eighth Schedule - Form of Bank Guarantee   | 96                  |

**SCHEDULES****FIRST SCHEDULE****Marking Scheme and Assessment Criteria for Tender Evaluation**

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

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

2. All tenders received will be checked on whether all the documents and information required in Clause 3 in the Terms of Tender have been submitted. Failure to submit any of the following documents **on or before the Tender Closing Date will render a tender invalid and the tender will not be considered further:**

- (a) a duly signed Offer to be Bound in the Tender Form;
- (b) the Execution Plans and Suggestions required in the Third Schedule with at least some information on all Proposals (as defined in Notes 2(i), 3(i), 4(i) and (5) in the explanatory notes below for Stage 2) for evaluation under Assessment Criteria (1), (2), (3) and (4) respectively in Stage 2; and
- (c) the Price Proposal in the Fourth Schedule with all the price information duly completed.

**Stage 2 – Technical Assessment**

3. The maximum total technical marks are 100 and are divided into five criteria. There is no overall passing mark for the total marks scored in the Technical Assessment. Passing marks of 7, 5 and 5 are set for Assessment Criteria (1), (2) and (3) respectively, which are 25% of the maximum mark of the respective Assessment Criteria. **Tenders that do not attain any of the above said passing marks for Assessment Criteria (1), (2) and (3) will not be considered further.**

| Assessment Criteria   | Maximum Mark | Unit Mark (M) | Standard Score (S)<br>(See Note 1) |   |   |   |   |   | Marks Scored (M x S) | Passing Mark |
|---|--------------|---------------|------------------------------------|---|---|---|---|---|----------------------|--------------|
|   |              |               | 5                                  | 4 | 3 | 2 | 1 | 0 |                      |              |
| <b>(A) Execution Plans and Suggestions</b>  |              |               |                                    |   |   |   |   |   |                      |              |
| (1) Marketing, Menus and Service Packages Plans (See Note 2 )                               | 28           | 7             | N.A                                |   |   |   |   |   |                      | 7            |
| (2) Staff Training Plan (See Note 3)  | 20           | 5             | N.A                                |   |   |   |   |   |                      | 5            |
| (3) Hygiene Maintenance and Waste Management Plan (See Note 4 )                             | 20           | 5             | N.A                                |   |   |   |   |   |                      | 5            |
| (4) Innovative Suggestions that bring positive values to the Hong Kong Society (See Note 5) | 17           | 4.25          | N.A                                |   |   |   |   |   |                      | –            |
| <b>Sub-total for (A)</b>  | <b>85</b>    |               |                                    |   |   |   |   |   |                      | –            |
| <b>(B) Experience</b>   |              |               |                                    |   |   |   |   |   |                      |              |
| (5) Experience in providing catering services for event(s) (See Note 6)                     | 15           | 3             |                                    |   |   |   |   |   |                      | –            |
| <b>Sub-total for (B)</b>  | <b>15</b>    |               |                                    |   |   |   |   |   |                      | –            |
| <b>Total Technical Mark</b>   | <b>100</b>   |               |                                    |   |   |   |   |   |                      | –            |



4. A tender which has attained no less than the passing marks mentioned in paragraph 3 above shall be considered as a “conforming tender” (or “a Tenderer which has passed Stage 2 assessment”) for the purpose of the calculation of the weighted technical score below. A maximum weighted technical score of 50 will be allocated to the conforming tender with the highest total technical marks, while the weighted technical score for other conforming tenders will be calculated by the following formula –

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

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

### Explanatory Notes for Stage 2 – Technical Assessment

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

Tenderer’s Execution Plans and Suggestions and Experience will be rated as follows:

For Assessment Criteria (1) to (4)

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

For Assessment Criterion (5)

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

#### Note 2: for Assessment Criterion (1) – Marketing, Menus and Service Packages Plans

(i) Marketing, Menus, Service Packages Plans shall cover the following three (3) type of Proposals (collectively “**Proposals**” and each a “**Proposal**”):

- (1) The marketing, sales pricing strategies to serve different scales and nature of events at the Hong Kong Stadium (“Proposal Note 2(i)(1)”);
- (2) Details of the food proposal for sale in licence area for normal small to medium scale of events (e.g. local football events with expected attendance less than 15,000 (“Proposal Note 2(i)(2)”); and
- (3) Details of the food proposal for sale and service packages specifically offered to meet special events (e.g. religious events, etc.) or medium to large scale of events with expected attendance equal or over 15,000 (e.g. Hong Kong Rugby Sevens) (“Proposal Note 2(i)(3)”).

(ii) 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 three Proposals** Note 2(i)(1) to Note 2(i)(3) as required in Note (2)(i) above.
- 3 – The proposed plan is **practical** with **detailed information** on **any two** of the three Proposals and brief information covering the remaining Proposal as required in Note (2)(i) above.

- 2 – The proposed plan is **practical** with **detailed information** on **any one** of the three Proposals and brief information covering the remaining Proposals as required in Note (2)(i) above.
- 1 – The proposed plan is **practical** with **brief information** on all three Proposals as required in Note (2)(i) above.
- 0 – The proposed plan is **impractical** or **fails** to provide brief information on any of the Proposals as required in Note (2)(i) above.

(iii) To the extent accepted by the Government, all Proposals submitted by the successful Tenderer for evaluation under Assessment Criteria (1) shall form part of the Contract.

**Note 3: for Assessment Criterion (2) – Staff Training Plan**

(i) The staff training plan shall cover the following three (3) types of Proposals:

- (1) Details of the training plan (such as methodology, frequency, training content and materials, etc.) on customer service skills and food services skills, etc. (“Proposal Note 3(i)(1)”)
- (2) Details of the training plan (such as methodology, frequency, training content and materials, etc.) on different language skills to ensure staff are able to communicate with customers in Cantonese, Putonghua and English (“Proposal Note 3(i)(2)”)
- (3) Details of the monitoring system (such as methodology, frequency, evaluation form, etc.) to ensure staff performance and maintain high consistency of service standard (“Proposal Note 3(i)(3)”)

(ii) **Standard scores will be given to Assessment Criterion (2) in accordance with the following five-grade approach –**

- 4 – The proposed plan is **practical** with **detailed information** on **all three Proposals** Note 3(i)(1) to Note 3(i)(3) as required in Note (3)(i) above.
- 3 – The proposed plan is **practical** with **detailed information** on **any two** of the three Proposals and brief information covering the remaining Proposal as required in Note (3)(i) above.
- 2 – The proposed plan is **practical** with **detailed information** on **any one** of the three Proposals and brief information covering the remaining Proposals as required in Note (3)(i) above.
- 1 – The proposed plan is **practical** with **brief information** on all three Proposals as required in Note (3)(i) above.
- 0 – The proposed plan is **impractical** or **fails** to provide brief information on any of the Proposals as required in Note (3)(i) above.

(iii) To the extent accepted by the Government, all Proposals submitted by the successful Tenderer for evaluation under Assessment Criterion (2) shall form part of the Contract.

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

- (i) Hygiene Maintenance and Waste Management Plan shall cover the following three (3) types of Proposals:
- (1) Guidelines with procedures to staff on food hygiene (such as food handling, food safety and kitchen hygiene) and environmental protection to prevent pollution from greasy fume, wastewater, waste and noise arising from the Fast Food Business (“Proposal Note 4(i)(1)”)
  - (2) Details of the monitoring system (such as methodology and frequency, etc.) to ensure the staff’s compliance with the proposed guidelines (“Proposal Note 4(i)(2)”); and
  - (3) Details of training/refresher programmes (such as frequency, training content and materials, etc.) for staff on hygiene maintenance and environmental protection (“Proposal Note 4(i)(3)”).
- (ii) Standard scores will be given to Assessment Criterion (3) in accordance with the following five-grade approach –
- 4 – The proposed plan is **practical** with **detailed information** on **all three Proposals** Note 4(i)(1) to Note 4(i)(3) as required in Note (4)(i) above.
  - 3 – The proposed plan is **practical** with **detailed information** on **any two** of three Proposals and brief information covering the remaining Proposal as required in Note (4)(i) above.
  - 2 – The proposed plan is **practical** with **detailed information** on **any one** of the three Proposals and brief information covering the remaining Proposals as required in Note (4)(i) above.
  - 1 – The proposed plan is **practical** with **brief information** on all three Proposals as required in Note (4)(i) above.
  - 0 – The proposed plan is **impractical** or **fails** to provide brief information on any of the Proposals as required in Note (4)(i) above.
- (iii) To the extent accepted by the Government, all Proposals submitted by the successful Tenderer for evaluation under Assessment Criterion (3) shall form part of the Contract.

**Note 5: for Assessment Criterion (4) – Innovative Suggestions that can bring positive values to the Hong Kong society at large**

- (i) Marks will be given if the proposed innovative suggestions can bring about positive values to the Hong Kong society at large.
- (ii) Innovative suggestions shall contribute to any positive values to Hong Kong society at large and shall cover the following –
- (1) An innovative suggestion in relation to technological development
    - Application of new technology or innovative application of existing technology for contributing to the development of Hong Kong as a “Smart City” as envisioned under the Government’s Smart City Blueprint for Hong Kong

- (2) An innovative suggestion in relation to social well-being
    - Fostering a caring society
  - (3) An innovative suggestion in relation to environmental protection
    - Promotion of consumption of fewer resources and reduction of waste
  - (4) Other practical innovative suggestions
- (iii) Standard scores will be given to Assessment Criterion (4) in accordance with the following five-grade approach –
- 4 – **Four (4)** or more **practicable** innovative suggestions have been proposed.
  - 3 – **Three (3)** **practicable** innovative suggestions have been proposed.
  - 2 – **Two (2)** **practicable** innovative suggestions have been proposed.
  - 1 – **One (1)** **practicable** innovative suggestion has been proposed.
  - 0 – **No** practicable innovative suggestion has been proposed.
- (iv) Tenderers shall highlight the proposed innovative suggestions and explain clearly the positive values which innovative suggestions proposed by them can bring about in their submissions to facilitate tender evaluation.
- (v) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original tender submissions.
- (vi) To the extent accepted by the Government, all innovative suggestions proposed by the successful Tenderer shall form part of the Contract.

**Note 6: for Assessment Criterion (5) – Experience in providing catering services for event(s)**

- (i) Assessment will be based on the Experience in operating catering services for the event(s), each with serving capacity not less than 1000 patrons in any one (1) day of an event, during the past five (5) years.
- (ii) Standard scores will be given to Assessment Criterion (5) in accordance with the following five-grade approach –
  - 5 – A Tenderer has experience in providing catering services for five (5) events, each with serving capacity not less than 1 000 patrons at the same time in any one (1) day of an event, during the past five (5) years.
  - 4 – A Tenderer has experience in providing catering services for four (4) events, each with

serving capacity not less than 1 000 patrons at the same time in any one (1) day of an event, during the past five (5) years.

- 3 – A Tenderer has experience in providing catering services for three (3) events, each with serving capacity not less than 1 000 patrons at the same time in any one (1) day of an event, during the past five (5) years.
  - 2 – A Tenderer has experience in providing catering services for two (2) events, each with serving capacity not less than 1 000 patrons at the same time in any one (1) day of an event, during the past five (5) years.
  - 1 – A Tenderer has experience in providing catering services for one (1) event, each with serving capacity not less than 1 000 patrons at the same time in any one (1) day of an event, during the past five (5) years.
  - 0 – Tenderer do not have event experience or failure to provide documentary proof of the respective experience.
- (iii) A Tenderer shall submit documentary evidence (e.g. a copy of signed agreement or contract, statement of accounts, and licences, reference letter from event organisers etc.) to substantiate its claim of the experience. Experience not substantiated will not be taken into account.
- (iv) The Tenderer's experience must be gained as an owner of the business in either operating fast food, light refreshment restaurant or general restaurant.
- (v) Local and / or outside Hong Kong experience will be counted.
- (vi) The experience gained by a Tenderer will only be counted where the previous contract(s) was/were entered under the same name of the Tenderer. For the avoidance of doubt, a Tenderer's experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Tenderer shall not be considered. The meanings of "parent company" and "subsidiary" follow the meanings under the Companies Ordinance (Cap. 622).
- (vii) Attending capacity refers to the maximum number of participants in an "Event" throughout the Event day. An "Event" is defined as a performance, sports, competition, function or party, etc. which has been arranged for particular date and time.
- (viii) If the duration of an Event is over one (1) day, only one Event will be counted.
- (ix) The decision of the Government whether or not to count the experience of a Tenderer under the circumstances described in this provision shall be final.

### **Stage 3 – Price Assessment**

5. Failure to submit a Price Proposal in the form of **Fourth Schedule** with price information duly completed will render a tender invalid and will not be considered further. The price assessment shall be based on the Monthly Licence Fee and Minimum Annual Licence Fee of the tenders which have passed Stage 2 assessment, and the aforesaid completeness check of the Price Proposal.

6. Pursuant to Clause 10 of the Terms of Tender, each Tenderer must quote a fixed percentage of the Monthly Gross Receipts for the determination of the Monthly Licence Fee and a fixed amount for Minimum Annual Licence Fee, such fixed percentage and fixed amount to be applicable for the whole of the Licence Period. The Minimum Annual Licence Fee quoted must be quoted in Hong Kong dollars and electricity charge, gas charge, Government rent, pest control fee, rates, telephone charge, taxes, water

charge, fees, charges, assessments, impositions and outgoings payable in respect of the Licence Area, otherwise the Tender will not be considered further. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, or any offer of different percentages of the Monthly Gross Receipts and/or different amounts of Minimum Annual Licence Fee to apply in different periods of the Licence Period will not be considered.

7. The maximum weighted price score is 50. The weighted price score for all tenders will be calculated by the following formulae –

$$\text{Mark of Minimum Annual Licence Fee} = 50\% \times \frac{\text{Minimum Annual Licence Fee of the conforming tender being assessed}}{\text{Highest Minimum Annual Licence Fee among all conforming tenders}}$$

$$\text{Mark of Licence Percentage} = 50\% \times \frac{\text{Licence Percentage of the conforming tender being assessed}}{\text{Highest Licence Percentage among all conforming tenders}}$$

$$\text{Weighted Price Score} = 50 \times (\text{Mark of Minimum Annual Licence Fee} + \text{Mark of Licence Percentage})$$

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

#### **Stage 4 - Calculation of Combined Score**

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

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

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

**SCHEDULES****SECOND SCHEDULE**

(to be placed in the Technical Proposal envelope)

**Information of the Tenderer**

1. The Tenderer is required to provide the information required below.

**(A) If the Tenderer is a Sole Proprietor**

- (a) Name of Owner/Proprietor: (in English) \_\_\_\_\_  
(in Chinese) \_\_\_\_\_
- (b) Hong Kong Identity Card Number: \_\_\_\_\_
- (c) Residential Address: \_\_\_\_\_  
\_\_\_\_\_
- (d) Telephone Number: \_\_\_\_\_
- (e) Facsimile Number: \_\_\_\_\_
- (f) Business Registration Certificate Number of the business being operated (if any): \_\_\_\_\_
- (g) Expiry Date of Business Registration Certificate (if applicable) : \_\_\_\_\_
- (h) Name of Bank and Branch dealing with the business being operated: \_\_\_\_\_
- (i) Address of Branch: \_\_\_\_\_
- (j) Bank Account Number: \_\_\_\_\_
- (k) I submit this tender for and on my own behalf as the sole proprietor with details as shown above.

**(B) If the Tenderer is a Firm**

- (a) Name of the Firm: (in English) \_\_\_\_\_  
(in Chinese) \_\_\_\_\_
- (b) Address of the Firm: \_\_\_\_\_  
\_\_\_\_\_
- (c) Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_
- (d) Business Registration Certificate  
Number of the business being operated: \_\_\_\_\_
- (e) Expiry Date of Business Registration  
Certificate: \_\_\_\_\_
- (f) Name of Bank and Branch dealing with the business being operated:  
\_\_\_\_\_
- (g) Address of Branch:  
\_\_\_\_\_
- (h) Bank Account Number: \_\_\_\_\_
- (i) Names of all Partners in BLOCK letters :  
\_\_\_\_\_  
\_\_\_\_\_
- (j) Residential Address(es) of Partners (in above order):  
\_\_\_\_\_  
\_\_\_\_\_
- (k) I myself am a partner of the said firm and am duly authorised to bind the said firm and all its partners by my signature. I attach to the Tender Form a letter certifying that I am an authorised person to sign contracts on behalf of the firm.



**(C) If the Tenderer is a Body Corporate –**

- (a) Name of the Body Corporate: (in English) \_\_\_\_\_  
(in Chinese) \_\_\_\_\_  
If a Subsidiary, Name of Parent Company: \_\_\_\_\_  
(in English) \_\_\_\_\_  
(in Chinese) \_\_\_\_\_
- (b) Address of Registered Office: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (c) Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_
- (d) Certificate of Incorporation Number of the Company: \_\_\_\_\_  
\_\_\_\_\_
- (e) Limited or Unlimited Liability: \_\_\_\_\_
- (f) Year of Establishment: \_\_\_\_\_
- (g) Business Registration Certificate number of the business being operated: \_\_\_\_\_
- (h) Expiry Date of Business Registration Certificate: \_\_\_\_\_
- (i) Name (in BLOCK letters) and Residential Address of the Managing Director: \_\_\_\_\_  
\_\_\_\_\_
- (j) Name (in BLOCK letters) and Residential Address of the Company Secretary: \_\_\_\_\_  
\_\_\_\_\_
- (k) Name of Bank and Branch dealing with the business being operated: \_\_\_\_\_  
\_\_\_\_\_
- (l) Address of Branch: \_\_\_\_\_  
\_\_\_\_\_
- (m) Bank Account Number: \_\_\_\_\_

All Tenderers, regardless of their legal status, shall provide the information in parts (D), (E), (F) (G) and (H) below:

**(D) Proposed investment –**

\_\_\_\_\_

**(E) Proposed number of staff to be employed for operating the Fast Food Business bidding for -**

\_\_\_\_\_

**(F) Confirmation required under Clause 32(b) of the Terms of Tender.**

I/We confirm that none of the events as mentioned in Clause 32(b)(ii) to 32(b)(iv) of the Terms of Tender has ever occurred within the applicable period as mentioned in therein#;  
OR

I/We hereby provide the details as required in any of Clause 32(b)(i) to 32(b)(iv) where applicable.#

#Delete where inapplicable

**(G) Details or any proposed sub-contracting arrangements for the Contract (including those which will be entered into after the Contract is awarded)**

\_\_\_\_\_

**(H) Other information –**

\_\_\_\_\_

2. In the event of any queries relating to my/our offer, please contact -

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Name(s) and address(es) of Tenderer and Authorised Representative signing this document:

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature of Tenderer  
or Authorised Representative\*: \_\_\_\_\_  
(with Tenderer’s stamp, if applicable)

Dated this \_\_\_\_\_ day of \_\_\_\_\_

- Notes:
- (i) All the particulars required above shall be accurately completed and the supply of any untruthful particulars or wilful omission may lead to rejection of this tender.
  - (ii) Any alternatives, which are not applicable, should be struck out.
  - (iii) The Tenderer is requested to read carefully each and every part of the Tender Documents.
  - (iv) The information provided will be used solely for processing of this tender exercise.

#Delete where inapplicable

**SCHEDULES****THIRD SCHEDULE**

(to be placed in the Technical Proposal envelope)

**Marketing, Menus and Service Packages Plans, Staff Training Plan,  
Hygiene Maintenance and Waste Management Plan and  
Innovative Suggestions and Experience in providing catering services for event(s)**

**1. Marketing, Menus and Service Packages Plans**

The Tenderer shall provide the following information for evaluation:

- (1) The marketing, sales pricing strategies to serve different scales and nature of events at the Hong Kong Stadium –

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*(if there is not enough space, please use additional sheets.)*

- (2) Details of the food proposal for sale in licence area for normal small to medium scale of events (e.g. local football events with expected attendance less than 15,000) –

---

*(if there is not enough space, please use additional sheets.)*

- (3) Details of the food proposal for sale and service packages specifically offered to meet special events (e.g. religious events, etc.) or medium to large scale of events with expected attendance equal or over 15,000 (e.g. Hong Kong Rugby Sevens) –

---

*(if there is not enough space, please use additional sheets.)*

**2. Staff Training Plan**

The Tenderer shall provide the following information for evaluation :

- (1) Details of the training plan (such as methodology, frequency, training content and materials, etc.) on customer service skills and food services skills, etc. –

---

*(if there is not enough space, please use additional sheets.)*

- (2) Details of the training plan (such as methodology, frequency, training content and materials, etc.) on different language skills to ensure staff are able to communicate with customers in Cantonese, Putonghua and English –

---

*(if there is not enough space, please use additional sheets.)*

- (3) Details of the monitoring system (such as methodology, frequency, evaluation form, etc.) to sure staff performance and maintain high consistency of service standard –

---

*(if there is not enough space, please use additional sheets.)*

### **3. Hygiene Maintenance and Waste Management Plan**

The Tenderer shall provide the following information for evaluation:

- (1) Guidelines with procedures to staff on food hygiene (such as food handling, food safety and kitchen hygiene) and environmental protection to prevent pollution from greasy fume, wastewater, waste and noise arising from the Fast Food Business –

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*(if there is not enough space, please use additional sheets.)*

- (2) Details of the monitoring system (such as methodology and frequency, etc.) to ensure the staff's compliance with the proposed guidelines –

---

*(if there is not enough space, please use additional sheets.)*

- (3) Details of training/refresher programmes (such as frequency, training content and materials, etc.) for staff on hygiene maintenance and environmental protection –

---

*(if there is not enough space, please use additional sheets.)*

#### 4. Innovative Suggestions that can bring positive values to the society of Hong Kong

The Tenderer shall propose innovative suggestions covering the following items for evaluation:

- (1) Technological development
  - Application of new technology or innovative application of existing technology for contributing to the development of Hong Kong as a “Smart City” as envisioned under the Government’s Smart City Blueprint for Hong Kong
- (2) Social well-being
  - Fostering a caring society
- (3) An innovative suggestion in relation to environmental protection
  - Promotion of consumption of fewer resources and reduction of waste
- (4) Other practical innovative suggestions

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

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

The Tenderer may include other materials as appropriate to facilitate consideration of its Tender by the Government. **Please note that all proposals and innovative suggestions as proposed in this SCHEDULE will be binding on the successful Tenderer if and to the extent accepted by the Government.**

#### 5. The Tenderer’s Experience in providing catering services for event(s)

- (a) Experience in operating Catering Service for the event(s), each with serving capacity not less than 1 000 patrons in any one (1) day of an event, during the past five (5) years.

The Tenderer shall complete the following table –

|    | Date | Event | Location | Type of Services | No. of Patron |
|----|------|-------|----------|------------------|---------------|
| 1. |      |       |          |                  |               |
| 2. |      |       |          |                  |               |
| 3. |      |       |          |                  |               |
| 4. |      |       |          |                  |               |
| 5. |      |       |          |                  |               |

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

- (b) The Tenderer must provide documentary proof including but not limited to Business Registration Certificates and licences of the catering outlet(s) issued/approved by Food and Environmental Hygiene Department, reference letter from event organiser, etc. to substantiate its claim of experience in operating catering outlets.
- (c) Other information relating to the Tenderer's relevant experience which may assist the Government Representative in assessing the Tender, e.g. a copy of contract.

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

Name of Tenderer/  
Authorised Representative\*: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Tenderer /  
Authorised Representative\* : \_\_\_\_\_  
(with Tenderer's stamp, if applicable)

\* Delete as appropriate

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**SCHEDULES**

**FOURTH SCHEDULE**

**The Monthly Licence Fee and Minimum Annual Licence Fee**

**(to be placed in the Price Proposal envelope)**

|           |   |   |
|-----------|---|---|
| Business  | Monthly Licence Fee and Minimum Annual Licence Fee# |   |
| Fast Food | Monthly Licence Fee                                 | _____ % (Percentage in figures) of the Monthly Gross Receipts |
|           | Minimum Annual Licence Fee                          | HK\$ _____ (in figures)                                       |

#Notes :

The Tenderer should read carefully Clause 10 of the Terms of Tender, Clause 6 of the Conditions of Contract and the First Schedule in completing this Fourth Schedule.

Name of Tenderer/  
 Authorised Representative\* : \_\_\_\_\_

Signature of Tenderer or  
 Authorised Representative\* : \_\_\_\_\_  
 (with Tenderer's stamp, if applicable)

Date : \_\_\_\_\_

\* Delete as appropriate

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**SCHEDULES**

**FIFTH SCHEDULE**

**(to be placed in the Technical Proposal envelope)**

**Form of Security Deposit Election**

Tenderer is required to provide the information required below:

I/ We select to furnish the Security Deposit by \*cash, cheque or cashier's order/ bank guarantee.

Signature of Tenderer  
or Authorised Representative\*: \_\_\_\_\_  
(with Tenderer's stamp, if applicable)

Dated this: \_\_\_\_\_ day of \_\_\_\_\_

\* Delete as appropriate

**SCHEDULES****SIXTH SCHEDULE****List of Appliances, Furniture, Fixtures and Fittings  
provided by the Government for the Fast Food Business at Hong Kong Stadium**

| <b>Item</b>    | <b>Description</b>   |
|----------------|--|
| Floors         | At present state   |
| Counter top    | At present state   |
| Roller Shutter | Motorized roller shutters provided.  |
| Door           | Only main entry door provided.   |
| MVAC           | Final extensions of supply and extract system. Fire dampers at present state provided at ceiling line. |
| Electricity    | 1 no. of independent power consumption meter for each concession.                                      |
| Lighting       | Lighting provided.   |
| Telephone      | Intercom telephone cabling provided.   |
| Fire Services  | Fire sprinkler head and smoke detector provided. Connect shutter to fire alarm system.                 |

**SCHEDULES****SEVENTH SCHEDULE**

**(to be placed in the Technical Proposal envelope)**

**The Non-collusive Tendering Certificate**

To: the Government

Dear Sir/ Madam,

The Non-collusive Tendering Certificate

1. I/We, (name of the Tenderer) \_\_\_\_\_ of  
(address(es) of the Tenderer(s)) \_\_\_\_\_ refer to  
the Government's invitation to tender for the Contract ("Invitation to Tender") and my/our Tender in  
response to the Invitation to Tender.

Non-collusion

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

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or  
SCHEDULES

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 Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
  - (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
  - (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
  - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
  - (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
  - (g) any person other than the Government, provided that the Government has given prior written consent.

#### Disclosure of subcontracting

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

#### Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 6(a) of the Terms of Tender, the Government may exercise any of the rights under Clauses 6(c) to 6(e) of the Terms of Tender 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 Tender and my/our personal information.

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

: \_\_\_\_\_

Name of the authorised signatory  
(where applicable)

: \_\_\_\_\_

Title of the authorised signatory  
(where applicable)

: \_\_\_\_\_

Date

: \_\_\_\_\_

**SCHEDULES**

**EIGHTH SCHEDULE**

**Form of Bank Guarantee**  
**for the Performance of a Contract**

THIS GUARANTEE is made on the ..... day of .....202.....

By..... of .....

....., a bank within the meaning of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

The Government of the Hong Kong Special Administrative Region (hereinafter called the "Government") of the other part.

**WHEREAS**

(A) By a contract (hereinafter called the "Contract") dated the...[Day].....of [Month]..... 202..... made between ..... of ..... (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Tender Ref.: LC/LS/T/FFK/HKS/HKS/2021/01), the Contractor agreed and undertook to operate the Fast Food Business at Concession No. 5 and 17 of Hong Kong Stadium of LCSD upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions hereinafter appearing, the due and faithful performance of the Contract by the Contractor.

Now this Guarantee as a deed witnesses as follows:

(1) Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them under the Contract.

(2) In consideration of the Government's acceptance of the bank named herein as the Guarantor under this Guarantee:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence



of any default on the part of the Contractor in performing or observing any of the obligations, terms, conditions, stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.

- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government 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 arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations, terms or conditions, stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

(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 or in its constitution.

(4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver 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 or assents to:

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;

- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(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;  
or
- (b) in the event that upon early termination or expiry of the Contract, there are 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, the date on which all such obligations and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing), but in the absence of any such confirmation, this Guarantee shall expire upon twenty-four (24) months after the expiry or early termination of the Contract, whichever is 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 may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government 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 specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

(10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

(11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

- (12) All documents arising out of or in connection with this Guarantee shall be served:
  - (a) upon the Government, at the Leisure and Cultural Services Department of 1-3, Pai Tau Street, Sha Tin, New Territories, Hong Kong, marked for Director of Leisure and Cultural Services facsimile number (852) 2603 0235;
  - (b) upon the Guarantor, at \_\_\_\_\_, Hong Kong, 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 fax 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; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed \_\_\_\_\_.
- (15) The Guarantor hereby acknowledges that the Guarantor should read and fully understand, with the benefit of independent legal advice if necessary, the terms and conditions of this Guarantee before entering into this Guarantee.

IN WITNESS whereof this Guarantee was executed as a deed and the said 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 & Title] )  
 duly authorised by its board of )  
 directors in the presence of: )  
 Name of witness:  
 Title of witness:  
 Signature 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 & Title] )  
 and in the presence of: )

Name of witness:

Title of Witness:

Signature of witness:

\* Please delete as appropriate

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

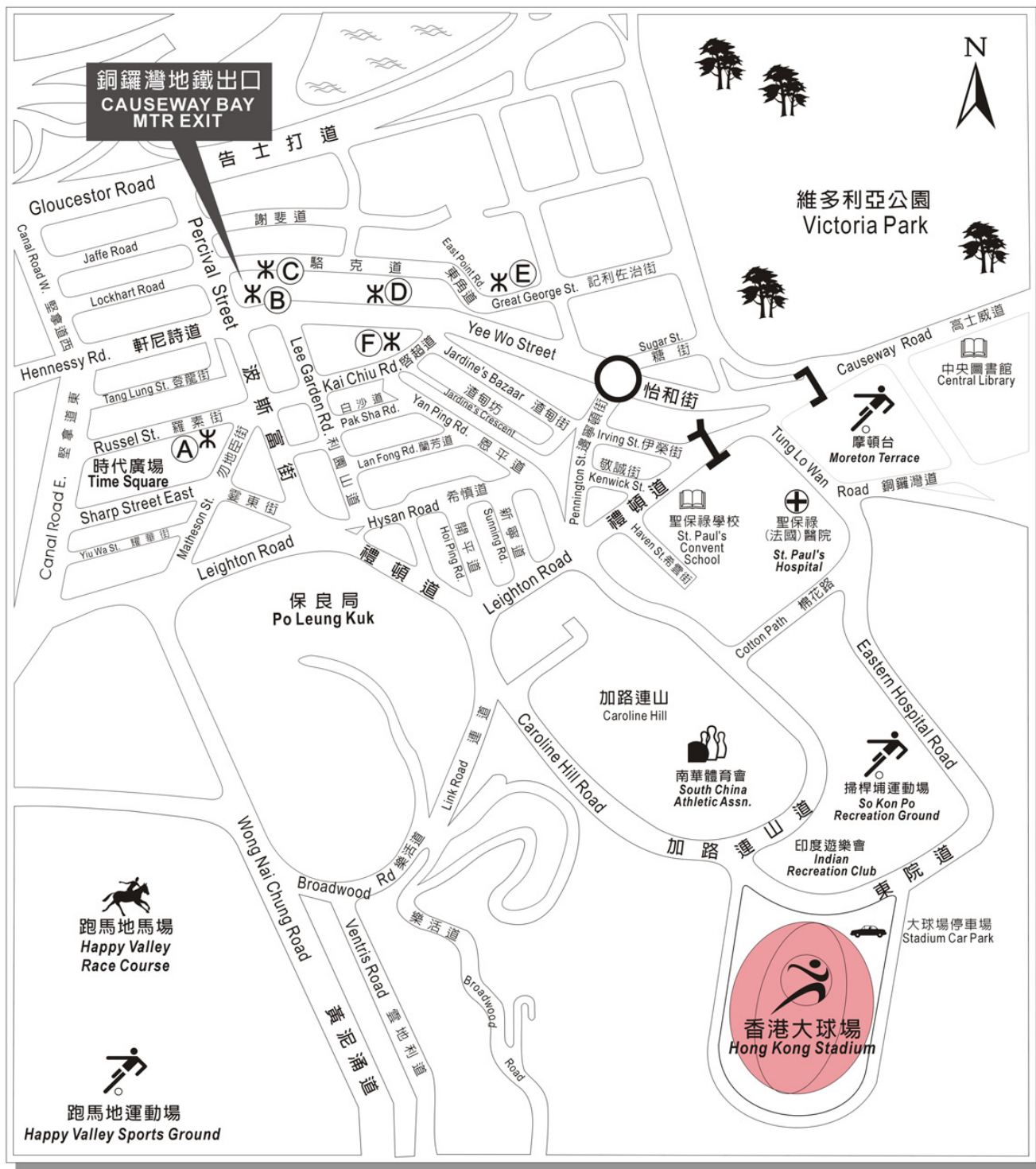
Note: When bank guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.

**ANNEXES**

**ANNEX A**

**Location Plan of the Venue at Hong Kong Stadium**

(Venue as delineated and shown coloured pink)

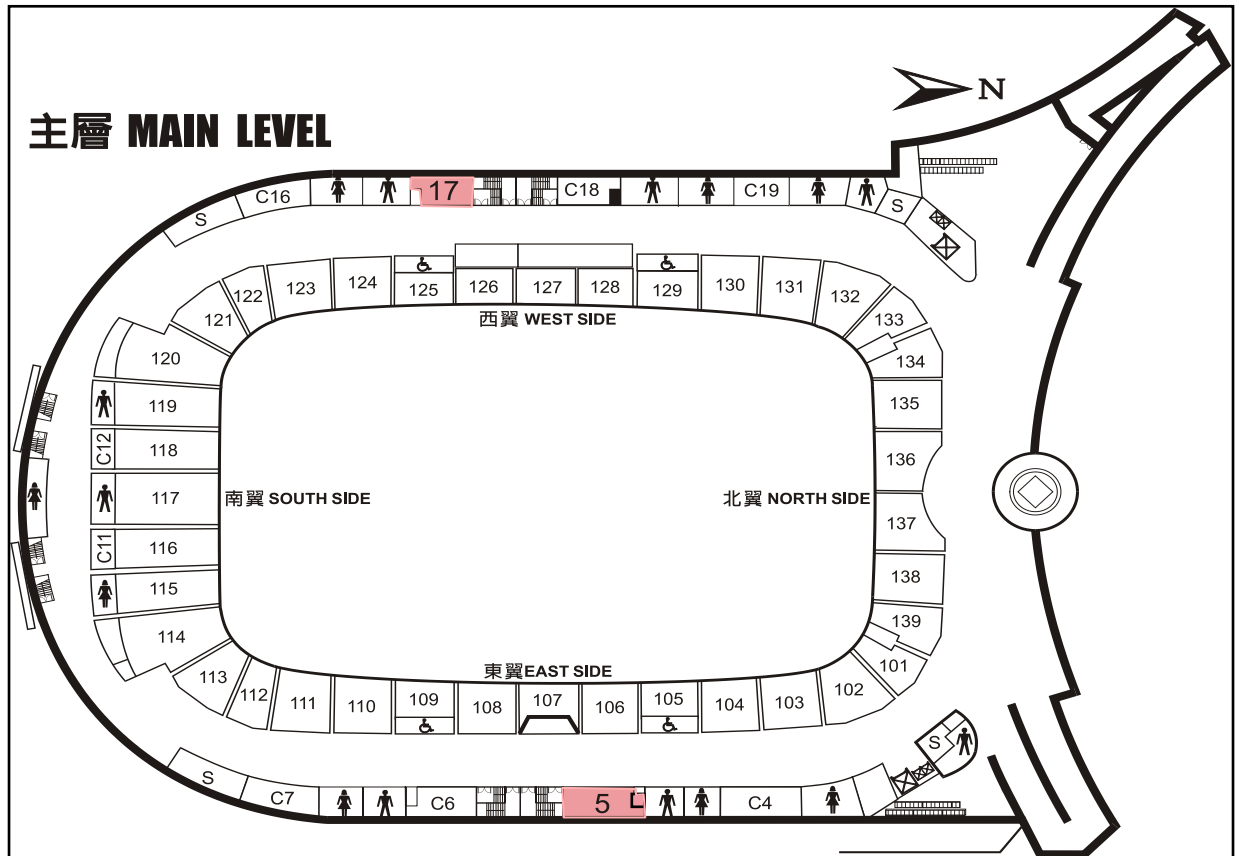


(Not to Scale)

**ANNEXES**

**ANNEX B**

**Location Plan Showing Concession Nos. 5 and 17 at Hong Kong Stadium  
(Licence Area(s) for the Fast Food Business as delineated and shown coloured pink)**



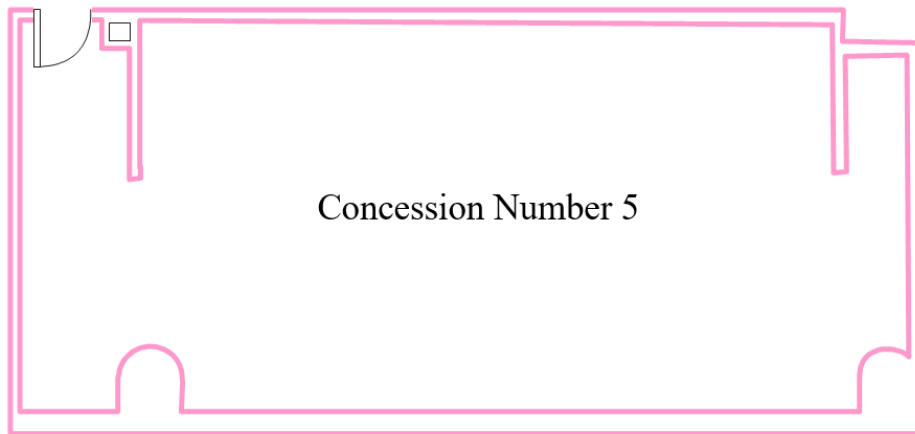
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ANNEXES

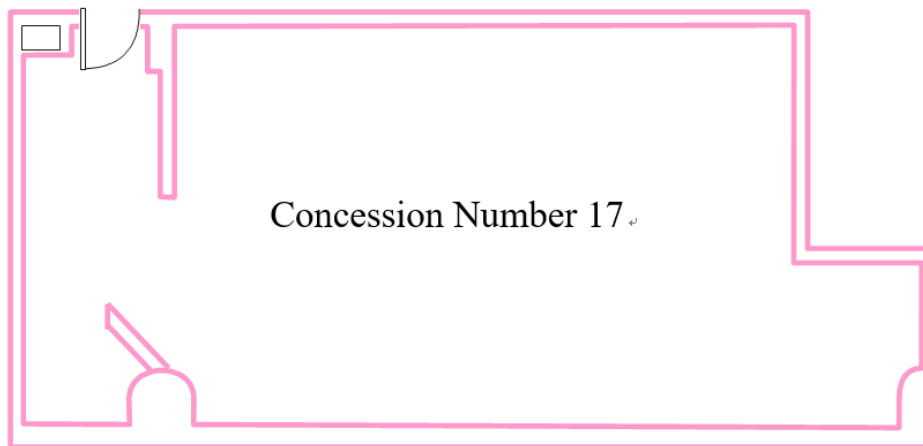
ANNEX C

**Layout Plan Showing Concessions Nos. 5 and 17 at Hong Kong Stadium**

(Licence Areas for the Fast Food Business as shown edged pink)



Maximum Electricity Loading : 150 Amp TP & N  
Area: Approx. 82m<sup>2</sup>



Maximum Electricity Loading : 150 Amp TP & N  
Area: Approx. 72m<sup>2</sup>

(Not to Scale)

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## **ARTICLES OF AGREEMENT**

THESE ARTICLES OF AGREEMENT are made on the \_\_\_\_\_ day of \_\_\_\_\_ 2022 BETWEEN THE ASSISTANT DIRECTOR (LEISURE SERVICES)<sup>2</sup> OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, New Territories acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (hereinafter referred to as "Government") of the one part,

AND \_\_\_\_\_

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

### **WHEREAS:**

- (A) By an Invitation to Tender (Tender Ref.: LC/LS/T/FFK/HKS/HKS/2021/01), the Government has invited tenders for the grant of a licence to conduct the Fast Food Business at Concession Nos. 5 and 17 in Hong Kong Stadium.
- (B) The Licensee's tender for the Contract was accepted in principle by the Government by a notification of Conditional Acceptance of Tender to the Licensee pursuant to Clause 15(b) of the Terms of Tender.
- (C) The Licensee has apparently fulfilled all conditions specified in the notification of Conditional Acceptance of Tender.
- (D) Pursuant to Clause 15(c) of the Terms of Tender, the parties hereto enter into these Articles of Agreement.

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

- 1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
- 2. The Contract between the Government and the Licensee is hereby constituted and shall comprise the following documents:
  - (i) Articles of Agreement
  - (ii) Tender Form
  - (iii) Interpretation
  - (iv) Terms of Tender
  - (v) Conditions of Contract
  - (vi) First to Eighth Schedules (in their original form as found in the Tender Documents)
  - (vii) Second to Fifth, Seventh and Eighth Schedules (in the form as submitted by the Licensee as part of its tender subject to any modifications as the parties may agree or as the Government may stipulate in exercise of its powers under the Tender Documents)
  - (viii) Annexes A to C

**ARTICLES OF AGREEMENT**

3. The Commencement Date of the Licence Period shall be:\_\_\_\_\_. The Contract shall only come into effect upon commencement of the Licence Period notwithstanding that these Articles of Agreement may be signed and dated earlier than the aforesaid Commencement Date.

4. For the purpose of Clause 47 of the Conditions of Contract, the address and facsimile number of the Licensee are as follows:

Government:

Postal Address:

Facsimile Number:

Attention (Post Title):

Licensee:

Name of the Licensee:

Postal Address:

Facsimile Number:

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 THE LICENSEE / THE  
AUTHORISED REPRESENTATIVE for and  
on behalf of THE LICENSEE\*

)  
)  
) \_\_\_\_\_

Name of the Licensee / the Authorised Representative:\*

\_\_\_\_\_  
(with Licensee’s stamp, if applicable)

Title of the Licensee / the Authorised Representative\*:

\_\_\_\_\_

In the presence of:

Name of witness:

\_\_\_\_\_

Title of witness:

\_\_\_\_\_

Signature of witness:

\_\_\_\_\_

**ARTICLES OF AGREEMENT**

SIGNED BY THE ASSISTANT DIRECTOR )  
(LEISURE SERVICES)2 OF LEISURE AND CULTURAL )  
SERVICES DEPARTMENT for and on behalf of **THE** )  
**GOVERNMENT OF THE HONG KONG SPECIAL**  
**ADMINISTRATIVE REGION**

\_\_\_\_\_  
Name

In the presence of:

Name of witness:

Title of witness:

Signature of witness:

\*Delete as appropriate

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