

## TENDER FORM

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

#### TENDER FOR THE GRANT OF A PERMIT TO CONDUCT THE GENERAL RESTAURANT BUSINESS ----- AT TSING YI SWIMMING POOL -----

(Tender Ref. : LC/LS/T/GR/KwT/TYSP/2021 )

#### 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 a Permit to Conduct the General Restaurant Business at Tsing Yi Swimming Pool”** 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 **20 May 2021** (date). Late tenders will not be accepted.

Dated this 22 April 2021

FUNG Hon-wa, Harris, DLM(KwT)  
Government Representative

#### Part I — Tender Documents

These documents under the tender reference LC/LS/T/GR/KwT/TYSP/2021 consist of three (3) complete sets of :

- (a) This Tender Form (Sheets 1 to 2);
- (b) Tender Labels 1 and 2 (sheets 3 to 6)
- (c) Interpretation (Sheets 7 to 9);
- (d) Terms of Tender (Sheets 10 to 32);
- (e) Conditions of Contract (Sheets 33 to 62);
- (f) Schedules (Sheets 63 to 90);
 

First Schedule	Marking Scheme and Assessment Criteria for Tender Evaluation
Second Schedule	Information of the Tenderer
Third Schedule	Menus, Service Packages and Marketing Plans, Hygiene Maintenance Plan, Waste Management Plan, Innovative Suggestions and Experience in operating Catering Outlet(s)
Fourth Schedule	The Monthly Permit Fee
Fifth Schedule	Form of Security Deposit Election
Sixth Schedule	List of Commodities Recommended for Sale at the General Restaurant

- Seventh Schedule            List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the General Restaurant Business at Tsing Yi Swimming Pool
- Eighth Schedule            The Non-collusive Tendering Certificate
- Nine Schedule                Form of Bank Guarantee

(g) Annexes (Sheets 91 to 93); and

- Annex A                        Location Plan of the Venue at Tsing Yi Swimming Pool
- Annex B                        Location Plan of the General Restaurant at Tsing Yi Swimming Pool
- Annex C                        Layout Plan of the General Restaurant at Tsing Yi Swimming Pool

(h) Articles of Agreement (Sheets 94 to 96).

**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 General Restaurant Business mentioned in the Tender Documents and pay the Monthly Permit 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 chop, if applicable)

Address(es) of person(s) signing :

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

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

NOTES : 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 on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong

Tender for  
the Grant of a Permit to Conduct the General Restaurant Business  
at Tsing Yi Swimming Pool

Tender Ref. : LC/LS/T/GR/KwT/TYSP/2021

Tender Closing Date: 20 May 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 on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong**

**Tender for  
the Grant of a Permit to Conduct the General Restaurant Business  
at Tsing Yi Swimming Pool**

**Tender Ref.: LC/LS/T/GR/KwT/TYSP/2021**

**Tender Closing Date: 20 May 2021  
(before 12:00 noon)**

“This is a blank sheet”

## 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 commence as specified in Clause 2 of the Conditions of Contract (including any advancement or deferment pursuant to Clause 9 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 Permit Holder for the use of the Permit Area and subject to the terms and conditions set out in the Tender Documents and the tender submitted by the Permit Holder (to the extent accepted by the Government).
“Estimated Total Monthly Fee”	means an amount equal to 36 x Monthly Permit Fee.
“Execution Plans and Suggestions”	means the execution plans and suggestions required in the Third Schedule, viz., the plans known as “Menus, Service Packages and Marketing Plans”, “Hygiene Maintenance Plan” and “Waste Management Plan” and “Innovative Suggestions”.
“General Holiday”	means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
“General Restaurant”	has the meaning given to the term in Clause 3(a) of the Conditions of Contract.
“General Restaurant Business”	has the meaning given to the term in Clause 3(a) of the Conditions of Contract.
“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 the Contract.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Innovative Suggestions”	means the innovative suggestions 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.

“Monthly Permit Fee”	has the meaning 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.
“Permit”	means the permission to conduct the General Restaurant Business.
“Permit Area”	has the meaning given to the term in Clause 3(b) of the Conditions of Contract.
“Permit Holder”	means the Tenderer whose Tender is accepted by the Government.
“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 Permit Holder 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 8 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.
“Term”	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).
“Venue”	means the premises as delineated and shown edged red 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 hoisted, 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 context 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.
3. If there are any discrepancies between the English version and the Chinese version of the Tender Documents, the English version shall prevail. The Chinese version of the Tender Documents is for reference only.

**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/GR/KwT/TYSP/2021 consist of THREE (3) complete sets of –

- (a) Tender Form (Sheets 1 to 2);
- (b) Tender Labels 1 and 2 (Sheet 3 to 6)
- (c) Interpretation (Sheets 7 to 9);
- (d) Terms of Tender (Sheets 10 to 32);
- (e) Conditions of Contract (Sheets 33 to 62);
- (f) Schedules (Sheets 63 to 90);
  - First Schedule      Marking Scheme and Assessment Criteria for Tender Evaluation
  - Second Schedule    Information of the Tenderer
  - Third Schedule     Menu, Service Packages and Marketing Plans, Hygiene Maintenance Plan, Waste Management Plan, Innovative Suggestions and Experience in operating Catering Outlet(s)
  - Fourth Schedule    The Monthly Permit Fee
  - Fifth Schedule      Form of Security Deposit Election
  - Sixth Schedule     List of Commodities Recommended for Sale at General Restaurant
  - Seventh Schedule   List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the General Restaurant Business at Tsing Yi Swimming Pool
  - Eighth Schedule    The Non-collusive Tendering Certificate
  - Ninth Schedule     Form of Bank Guarantee
- (g) Annexes (Sheets 91 to 93 ); and
  - Annex A              Location Plan of the Venue at Tsing Yi Swimming Pool
  - Annex B              Location Plan of the General Restaurant at Tsing Yi Swimming Pool
  - Annex C              Layout Plan of the General Restaurant at Tsing Yi Swimming Pool
- (h) Articles of Agreement (Sheets 94 to 96).

## 2. Invitation to Tender

Tenders are invited for the grant of a permit to conduct the General Restaurant Business within the Permit Area at Tsing Yi Swimming Pool for the Term 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 on all Proposals (as defined in Notes 2(i), 3(i), 4(i) and (5) in the explanatory notes at the First Schedule for Stage 2) for evaluation under Assessment Criteria (1), (2), (3) and (4) respectively; and
- (iii) the Price Proposal in the form of the FOURTH Schedule with all the price information duly completed.

(b) **A Tenderer’s failure to submit all or any of the above documents 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 consider further.**

(c) The Tenderer shall complete, stamp with the Tenderer’s chop 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 - Menus, Service Packages and Marketing Plans, Hygiene Maintenance Plan, Waste Management Plan, Innovative Suggestions and Experience in operating Catering Outlet(s)
- (iv) Fourth Schedule The Monthly Permit Fee
- (v) Fifth Schedule Form of Security Deposit Election
- (vi) Eighth Schedule The Non-collusive Tendering Certificate
- (vii) Ninth 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 Service Provider 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, at 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 chop and dated, must be enclosed in a sealed envelope clearly marked as “Tender Ref.: LC/LS/T/GR/KwT/TYSP/2021 – Tender for the Grant of a Permit to Conduct the General Restaurant Business at Tsing Yi Swimming Pool – 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 “Tender Ref.: LC/LS/T/GR/KwT/TYSP/2021 – Tender for the Grant of a Permit to Conduct the General Restaurant Business at Tsing Yi Swimming Pool – 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 hoisted, or Black Rainstorm Warning Signal or "extreme conditions after super typhoons" announced by the Government is /are in force for any duration between 9:00 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 Eighth Schedules) 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 42(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 Tenderers

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 Document;
  - (ii) a signed Offer to be Bound in the Tender Form; 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 Permit Fee

Tenderers are requested to note Clause 6 of the Conditions of Contract on the Monthly Permit Fee.

11. Financial Vetting

- (a) If the Estimated Total Monthly Fee 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 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 two (2) times the Monthly Permit 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 Monthly Permit Fee or two (2) times the Monthly Permit Fee, whichever is lower, for the whole Term 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 Ninth Schedule; and
  - (iii) the bank guarantee shall come into effect on the date of commencement of the Term 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 the highest combined scores will normally be selected to conduct the General Restaurant Business.

### 14. Basis of Acceptance

- (a) The Government Representative is not bound to accept the tender(s) with the highest offer 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 Executive Plans and Suggestions).
- (b) Tenderer(s) shall note that their offers will be considered on a complete overall basis. Tenders 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, 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 fulfill 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;
  - (ii) the payment of the Monthly Permit Fee in respect of the first month of the Term; and
  - (iii) 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 in writing, upon fulfilment of the conditions by the Tenderer specified in Clause 15(b) above to the satisfaction of the Government, the Government will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing 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 changes as the Government Representative may stipulate in exercise of its powers under the Tender Documents and such changes as the parties may agree (if any)). If a Tenderer fails to fulfill 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 Monthly Permit Fee submitted by that defaulting Tenderer and the eventual Permit Holder 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 permit holder and implementing any stop-gap measures during the time when no replacement permit holder 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 33 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. Tender 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 3:00 p.m. on 6 May 2021 (Thursday) in the meeting room of Tsing Yi Swimming Pool (Address: No. 51 Tsing King Road, Tsing Yi). Tenderers are invited to attend the tender briefing and site visit session before submitting their tenders in order to acquaint themselves with the terms and conditions of Invitation to Tender. For registration, please contact the Assistant District Leisure Manager (Kwai Tsing)<sup>4</sup> of the LCSD at 2425 7212 for reservation of seat for the visit and tender briefing by 3:00 p.m. on 4 May 2021 (Tuesday).

21. Regular Cleansing and Maintenance of the Venue

Tenderers shall note that regular cleansing and maintenance of the whole or part of the Venue will be carried out once weekly from 10:00 a.m. to the end of second session of the day. Facilities of the Venue will be closed for annual maintenance from 1 November to 31 March of the following year. During such closure periods, no activities (including but not limited to swimming, swimming galas, swimming training, etc.) shall be carried out at the closed aquatic facilities. Irrespective of whether or not the business of the successful Tenderer might be affected by such closure, the Government shall not be liable to pay any compensation whatsoever to the successful Tenderer and shall not be required to extend the Term or to abate the Monthly Permit Fee or any part thereof.

22. Provision of Services within the Venue

Tenderers shall note that 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 Term. The Permit Holder is therefore not entitled to claim for abatement of the Monthly Permit Fee or any part thereof on the ground that the General Restaurant Business is affected by such arrangement.

23. 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 the future. An offer or tender submitted by a Tenderer which has been in breach of any its statutory obligations or contractual obligations under any catering outlet contracts with Government (whether current or past) may not be considered having regard, including but not limited to, the seriousness and the number of breaches and its or their relevancy to the offer or 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.



24. 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.

25. 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 General Restaurant Business, the date of the award of the Contract, the name and address of the successful Tenderer and the total monies paid to the Permit Holder for the entire Term.
- (b) Nothing in Clause 25(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 25(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, Permit Holders 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 25(a) above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

26. 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 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.

27. 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.

28. 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.

29. 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.

30. Application for Appropriate Food Licences

- (a) A Tenderer shall note that it is the Permit Holder's sole responsibility to approach the relevant authorities for obtaining all licences, permits and/or certificates required by law for operation of its General Restaurant Business at the Permit Area. The Permit Holder 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 Permit Holder acknowledges 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 Permit Holder is not entitled to claim for abatement of the Monthly Permit Fee on the grounds that it cannot conduct its General Restaurant 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 Permit Holder'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 licensing requirements regulated by the Director of Food and Environmental Hygiene, the Permit Holder 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)

31. Negotiation

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

32. 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.

33. Government Discretion

- (a) Notwithstanding anything to the contrary in the Tender Document, 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/Permit Holder 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 33(a)(i) to 33(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 33(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 33(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 33(a)(iii); and
  - (iv) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in Clause 33(a)(iv).

If none of the events as mentioned in Clauses 33(b) (i) to 33(b)(iv) alone 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 Clauses 33(c) below.

- (c) In addition to the information mentioned in Clause 33(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 33(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 33(b)(ii) or details of any breaches or performance deficiencies referred to in Clause 33(a)(iv), details of any serious crimes or serious offences referred to in Clause 33(a)(v), of any professional misconduct, acts or omissions referred to in Clause 33(a)(vi) and of any failure to pay taxes to the Government referred to in Clause 33(a)(vii) above.

- (d) If the Tenderer fails to comply with the request made by the Government pursuant to Clause 33(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 33(a)(ii) above.
- (e) In providing the information required under Clauses 33(b) and 33(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 33(a)(iv), 33(a)(v), 33(a)(vi), 33(a)(vii) or Clause 33(b)(ii).

34. 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.

35. 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 General Restaurant Business do not meet the expectation or projection of the successful Tenderer or do not recoup the investment cost incurred or by any margin.

36. 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.

37. 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 25 of the Terms of Tender and all other purposes incidental thereto.

38. 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 49 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.

39. 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 **2425 1589**.

**Assistant District Leisure Manager (Kwai Tsing)<sup>4</sup>  
Kwai Tsing District Leisure Services Office  
Room 805, 8/F., Kwai Hing Government Offices,  
166-174 Hing Fong Road, Kwai Chung,  
New Territories, 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.

40. 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

41. 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.



**CONDITIONS OF CONTRACT**

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## CONDITIONS OF CONTRACT

### 1. Nature of the Permit

- (a) It is expressly agreed between the parties that neither the Permit 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 Permit Area in accordance with the provisions of the Contract.
- (b) The Permit granted to the Permit Holder is personal to it and unless with the prior consent in writing from the Government Representative, the Permit Holder shall not assign, sublet, part with the possession of the whole or any part of the Permit Area or transfer any of its rights or obligations under the Contract.

### 2. The Term

- (a) Subject to Clause 9 and other provision hereof, the Permit Holder must conduct the General Restaurant Business for a period of thirty-six **(36)** months from the 1<sup>st</sup> day of September 2021 or a date specified in the Articles of Agreement, whichever is later, subject to prior termination and extension as are hereinafter provided ("**The Term**").
- (b) The Government Representative shall be entitled to extend the Term for a maximum period of six (6) months upon its expiration by giving the Permit Holder one (1) month's advance notice in writing before the due expiration of the Term.
- (c) If a notice is given by the Government Representative under Clause 2(b) above, the Permit Holder shall continue to conduct its General Restaurant 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 the Term of the Contract shall be advanced or deferred under Clause 9(a) hereof, the expiry date of the Term shall be advanced or deferred accordingly with the length of the Term remains unchanged.

### 3. The General Restaurant Business

- (a) Subject to the terms and conditions of the Contract, the Government Representative grants to the Permit Holder during the Term the permission to conduct business of selling any of the refreshment and commodities set out in the Sixth Schedule through a General Restaurant ("**General Restaurant Business**") and
- (b) The Permit Holder shall conduct the General Restaurant Business within an area of about 205 square meters as delineated and shown coloured red in Annexes B and C (the "Permit Area").

### 4. Hours of Business

- (a) Subject to the terms and conditions of the Contract, the Permit Holder shall carry out its General Restaurant Business within the following hours-

#### Swimming Season

- (i) For the period of April, May, June, July, August, September and October  
From 6:30 a.m. to 10:00 p.m. daily

Non Swimming Season

(ii) For the period of January, February, March, November and December

1. The Permit Holder shall carry out its General Restaurant Business no less than five (5) days a week and no less than six (6) hours each business day during these months. The business hours shall be within the working hours of the Leisure and Cultural Services Department for the Venue as prescribed by the Government Representative in writing for these months.
2. Subject to Clause 4(a)(ii)1 above, the Permit Holder shall propose the business days and the daily business hours in writing to the Government Representative for approval at least fourteen (14) days before its implementation during these months.
3. If the Permit Holder fails to submit any proposal of the business days and daily business hours for these months in writing to the Government Representative for approval as required by Clause (4)(a)(ii)2 above, it shall carry out the General Restaurant Business for these months at the following hours –

From 6:30 a.m. - 10:00 p.m. daily

- (b) The Government Representative is entitled, in its sole discretion, to revise the business hours of the Permit Holder's General Restaurant Business as specified in Clause 4(a) above at any time and from time to time and the Permit Holder shall operate the business within such revised hours.
- (c) The Permit Holder shall not vary the business hours of its General Restaurant Business unless prior written consent of the Government Representative has been obtained.
- (d) The Permit Holder shall not be entitled to any adjustment or abatement of the Monthly Permit Fee for any change of the business hours referred to in this Clause and shall pay the Monthly Permit Fee in full pursuant to Clause 6 below under all circumstances.

5. Conduct of Business

- (a) The Permit Holder shall maintain the Permit Area a in a clean, tidy and serviceable condition to the satisfaction of the Government Representative.
- (b) The Permit Holder shall use the Permit Area only for the General Restaurant Business and shall not use, cause, suffer or permit to be used the Permit Area or any part thereof as sleeping quarters or domestic premises or for any other purposes.
- (c) The Permit Holder shall conduct its General Restaurant Business only in the Permit Area and shall not use, cause, suffer or permit to be used any area of the Venue except the Permit Area for such purpose or for any other purposes.

6. Monthly Permit Fee

- (a) The Permit Holder shall in each and every month pay to the Government a fee (“**Monthly Permit Fee**”).
- (b) The Permit Holder shall pay to the Government the Monthly Permit Fee in the following manner-
  - (i) The first payment of the Monthly Permit Fee shall be made by the Permit Holder within fourteen (14) days from the date of the Conditional Acceptance of Tender (or such later date as the Government Representative may allow) as specified in Clause 15(b) of the Terms of Tender.
  - (ii) For each and every subsequent month and until the expiry or sooner termination of this Contract, the Permit Holder shall pay the Monthly Permit Fee in advance on or before the 1<sup>st</sup> day of each month.
- (c) The Permit Holder shall be responsible for the payment of rates, taxes, fees, charges, assessments, impositions and outgoings payable in respect of the Permit Area.
- (d) In the event any fee payable under this Contract is overdue, the Permit Holder shall pay to the Government a surcharge on that outstanding Monthly Permit 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 the day on which such payment falls due to and including the date of actual payment in full.

#### 7. Abatement

If the Government Representative shall require a closure of the Permit Area or a suspension of the Permit Holder’s General Restaurant Business under Clause 20(b) hereof, for a continuous period of more than seven (7) days or a deferment of the commencement of the Term under Clause 9 hereof, the Monthly Permit Fee will abate, notwithstanding Clause 6 hereof, for the total period of such closure, suspension or deferment on a pro rata basis.

#### 8. Security Deposit

- (a) The Permit Holder 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 two (2) times the quoted Monthly Permit Fee as specified in the Fourth Schedule 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 Term 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 Term; or
  - (ii) upon early termination or expiry of the Term, there remain any outstanding obligations and liabilities of the Permit Holder 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 thirty-six (36) months after expiry or early termination of the Term.

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 Permit Holder 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 Permit Holder) any amount due or payable by the Permit Holder 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 Permit Holder 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 Permit Holder to the Government Representative.
- (e) If any deduction is made by the Government Representative from the Security Deposit in cash, cheque or cashier’s order or a call is made on the bank guarantee during the Guarantee Period, the Permit Holder shall, within fourteen (14) days after the date of 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 8(a).
- (f) In the event that this Contract is terminated early under Clause 42(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.

#### 9. 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 Date 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 Term under this Clause –
  - (i) the Government shall not be liable for any losses suffered or expenses incurred whatsoever by the Permit Holder due to such deferment or termination under Clause 9(b)(ii);
  - (ii) upon the expiry of such period of deferment and without further notification by the Government Representative of the commencement of the Term, the Contract shall

terminate automatically. The Government Representative will return to the Permit Holder without interest the balance of the Security Deposit and any Monthly Permit Fee already paid in advance;

- (iii) the Government Representative shall, as far as it is practicable in the circumstances, give the Permit Holder notice of advancement of the commencement of the original Term in writing at least fourteen (14) days prior to the revised Commencement Date of the Term; and
  - (iv) the Government Representative shall, as far as it is practicable in the circumstances, give the Permit Holder notice of deferment in writing at least fourteen (14) days prior to the original Commencement Date of the Term.
- (c) If the commencement of the Term has been advanced under Clause 9(a), the Monthly Permit Fee shall be paid in accordance with Clause 6 hereof.
  - (d) If the commencement of the Term has been deferred under Clause 9(a), the Monthly Permit Fee shall be adjusted in accordance with Clause 7 hereof.
  - (e) The Permit Holder may suspend its General Restaurant Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government 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.

#### 10. Resumption of Business

If the General Restaurant Business shall be suspended under the terms and conditions of the Contract, the Permit Holder shall resume the General Restaurant Business immediately within the period specified under the Contract or that specified by the Government Representative, as the case may be.

#### 11. Permit Holder's Warranties and Undertakings

The Permit Holder warrants and undertakes to the Government Representative that –

- (a) it shall produce its Business Registration Certificate or Certificate of Incorporation, as the case may be, upon demand by the Government Representative;
- (b) 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 Permit Holder by workers approved by the Government Representative and to a standard acceptable to the Government Representative;
- (c) it shall take all reasonable precautions to protect the Permit Area from damage by fire, storm, tropical cyclone or the like;
- (d) it shall furnish and provide all such equipment and furniture necessary for the efficient operation of the General Restaurant Business. All such equipment and furniture shall be of a designed and safety standard to the satisfaction of the Government Representative;

- (e) it shall keep and maintain at all times all the equipment and furniture more particularly referred to in Clause 11(d) above in good repair and condition (fair wear and tear excepted) to the Government Representative's satisfaction and shall replace the same or any of the same with new ones whenever necessary or when the Government Representative reasonably demands;
- (f) the name of the General Restaurant Business shall be such as the parties hereto may mutually agree, or in default of agreement as the Government Representative at its absolute discretion may prescribe, at any time and from time to time. Save and except as permitted or directed by the Government Representative, such name shall not be changed;
- (g) it shall maintain the Permit Area 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 Permit Holder fails to do so, the Government Representative may without notice close the Permit Area and suspend the Permit Holder's General Restaurant Business for a period or periods not exceeding seven (7) days on any one (1) occasion to cause the Permit Area and its surroundings to be cleaned and serviced and the Permit Holder shall pay the costs thereof to the Government Representative on demand and shall remain liable to pay the Monthly Permit Fee to the Government without any deduction;
- (h) it shall not use the Permit Area or any part thereof, or cause, or permit, or suffer the same to be used for any illegal, immoral purpose, gambling or any other purposes not permitted under the Contract;
- (i) it shall not permit any games to be played in the Permit Area including but not limited to mahjong and tin kau whether for gambling purpose or otherwise;
- (j) it shall not permit the Permit Area to be used as a changing room by users of the Venue or other members of the public;
- (k) it shall not cause or permit any floorshow or any type of entertainment to be staged in the Permit Area or its vicinity;
- (l) it shall permit the Government Representative and its agents at all times to have unimpeded access to all parts of the Permit Area to examine the conditions thereof and to execute repairs thereto;
- (m) it shall assume full responsibility for the safety of all operations and methods of operations;
- (n) 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 Permit Area;
- (o) it shall keep all articles of food stored or offered for sale at the Permit Area effectively protected against flies, cockroaches, vermin, dust and dirt and shall sell pastries, bread, biscuits, cakes, preserved foodstuffs and sweets only in their original wrappers and in such hygienic condition as is reasonably practicable;
- (p) it shall not stock, sell or provide at the Permit Area 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;
- (q) it shall not sell or offer for sale any liquid refreshment other than in sterile drink cups;
- (r) 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 preparation or serving of food or drinks and when not in use to store such implements in vermin-proof and dust-proof cupboards;
- (s) 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;
- (t) it shall pay all the costs and deposits in connection with all telephone(s) installed, electricity or gas supplied to the Permit Area, and shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever attributable to the Term in respect of the Permit Area and its General Restaurant Business;
- (u) it shall not request or receive any charge or fee from any Person for admission to the Permit Area or its surroundings, nor request or receive any other additional charge whether by way of service charge or otherwise;
- (v) it shall on receipt of forty-eight (48) hours' notice from the Government Representative produce to it for inspection the books, ledgers, vouchers, receipts and other documents relating to the General Restaurant Business, and make available copies of the same to the Government Representative, if required;
- (w) 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 turnover of the General Restaurant Business, for that month. For the purpose of these provisions "**monthly gross turnover of the General Restaurant 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 Permit Area plus all other income deriving from or in respect of the Permit Area;
- (x) it shall accept internationally recognised credit cards and electronic money as means of payment in the General Restaurant Business as the Government Representative and the Permit Holder may from time to time agree;
- (y) it shall pay to the Government any cost incurred by the Government plus an administrative overhead charge to be advised by the Government 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;
- (z) it shall not keep, or cause, permit or suffer to be kept any animals or pets in the Permit Area or any part thereof and to take all such steps and precautions to the reasonable satisfaction of the Government Representative to prevent the Permit Area or any part thereof from becoming infested by any pests or vermin;
- (aa) 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 Permit 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 Permit Area as aforesaid;

- (bb) it shall load and unload all items only through such entrances at such time or times as shall be reasonable designated or directed by the Government Representative for this purpose from time to time;
- (cc) 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 Permit Holder which may arise as a result of the operation of the General Restaurant Business or any other act, neglect or default of the Permit Holder or any of its servants or agents;
- (dd) it shall not use or cause, or suffer, or permit to be used the Permit Area or any part thereof for any purposes whatsoever other than the carrying out of its General Restaurant Business;
- (ee) it shall not carry out the General Restaurant 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 Permit Area without the prior written consent of the Government Representative; and
- (ff) 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 Permit Area where the general public does not have access.

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

- (a) The Permit Holder shall provide and keep in good and hygienic condition dustbins in the Permit Area 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 Permit Holder shall arrange at least once every day or at a frequency as prescribed by the Government Representative at any time and from time to time for the removal and disposal of all refuse and litter thus collected in the course of its General Restaurant Business. Such refuse and litter shall be collected in polyethylene bags to be supplied by the Permit Holder, or in any other containers approved by the Government Representative and shall be properly disposed of at least once every day 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 rights to alter the designated refuse collection points and disposal method and the Permit Holder shall follow such directions by the Government Representative and make necessary arrangement as approved by the Government Representative at its own cost.
- (c) The Permit Holder shall carry out cleansing and clearing of all grease tanks and grease traps in the Permit Area for which the Permit Holder is liable for, at least, on a daily basis and of all the drainage and sewerage pipes in the Permit Area for which the Permit Holder is liable 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 Permit Holder 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 contractors as may be approved or prescribed by the

Government Representative.

- (d) In the event of failure to comply with this Clause, the Permit Holder 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 Permit Holder or any of its employees or agents.
- (e) The Permit Holder 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 Permit Holder) or containers as may be approved or prescribed by the Government Representative all refuse, except those recyclable waste collected, immediately after each cleansing operation.
- (f) The Permit Holder 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 areas, 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 Permit Holder 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.

### 13. Monies or Valuables Found or Property Lost

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

### 14. Staffing

- (a) The Permit Holder shall arrange all persons employed at the Permit Area to submit to such medical examination 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 Permit Area any person found by the medical practitioner to be likely to spread a communicable disease.
- (b) The Permit Holder shall ensure that its managerial or supervisory staff shall be in attendance at the Permit Area at all times when its staff is at work.
- (c) The Permit Holder shall be responsible for the good conduct of its employees or agents while they are in the Permit Area, 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 Permit Holder's employees or agents.
- (e) The Government and the Government Representative shall in no circumstances be liable either to the Permit Holder or to its employees or agents in respect of any liabilities, losses or damages occasioned by such removal as stipulated in Clause 14(d) and the Permit Holder 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 Permit Holder, or by the Permit Holder's agents, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.

- (g) Any removal demanded or refusal made under Clauses 14(d) and 14(f) shall not be construed as a breach of the Contract by the Government Representative and the Permit Holder shall continue to carry out its obligations under the Contract.
- (h) The Permit Holder shall provide a sufficient quantity of clean clothes with clear identifications of its General Restaurant Business and of a type approved by the Government Representative for the use of its employees at the Permit Area.
- (i) The Permit Holder shall provide lockers for the staff to store their clothing and personal effects and not to allow personal effects such as clothing, footwear, luggage, umbrella and other articles to be stored or left in any room where food for sale for the purpose of the General Restaurant Business is stored.
- (j) The Permit Holder shall ensure that at all times when its employees are at work or on duty in the Permit Area they shall wear clothes in a clean and tidy manner.
- (k) The Permit Holder 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 Permit Holder's obligation under the Contract.
- (l) The Permit Holder shall maintain a proper, current and accurate record of all its employees or agents employed for carrying out its General Restaurant Business. Such record shall include the name, Hong Kong Identity Card number, grade, age and photograph of each employee. The Permit Holder shall produce such record for inspection by the Government Representative on request.
- (m) The Permit Holder 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 Permit Holder, the Government Representative may, by notice in writing, terminate this Contract and the Permit Holder is not entitled to claim any compensation. The Permit Holder 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 Permit Holder 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 Permit Holder.
- (o) The Permit Holder shall be liable for all expenses necessarily incurred by the Government Representative as a result of the termination of this Contract.
- (p) The Permit Holder shall not employ any person at the Permit Area who has not been inoculated against typhoid and paratyphoid and inoculated and vaccinated against such other diseases as the Government Representative may direct.

#### 15. Publicity and Advertisement

- (a) The Permit Holder shall not publish or use any advertising or other publicity materials or perform any act with an advertising nature in relation to the General Restaurant 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 Permit Holder shall not exhibit or display, or cause, or permit, or suffer to be exhibited or displayed either inside or outside the Permit Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Permit Area or any part thereof) of any advertising nature.

- (c) Without prejudice to the generality of Clause 15(b) above, the Permit Holder shall not exhibit or display, or cause, or permit, or suffer to be exhibited or displayed either inside or outside the Permit Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Permit Area or any part thereof) of any advertising nature relating to any smoking products.
- (d) The Permit Holder shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied 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.

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

If the Permit Holder 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 its General Restaurant 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 Permit Holder in the Venue shall be written in both English and Chinese.

#### 17. Water Supply

- (a) The Permit Holder, if so permitted by the Government Representative, may use water supply which may be available at the Venue to conduct its General Restaurant Business and shall pay all fees and charges in connection therewith.
- (b) If water supply is not available at the Permit Area, or permission to use available supply is not granted or is withdrawn, the Permit Holder shall at its own expense install and provide such supply for its General Restaurant 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. The Permit Holder 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. Electricity and Towngas Supply

- (a) The Permit Holder, if so permitted by the Government Representative, may consume electricity and/or towngas from supply points which are available at the Venue to conduct the General Restaurant Business and shall pay all deposits, fees and charges in connection therewith. The maximum electricity loading available to the General Restaurant is 100 Ampers (3 phases).
- (b) If electricity and/or towngas supply point is not available at the Permit Area, or permission to use available supply point is not granted or is withdrawn, the Permit Holder shall at its own

expense install and provide its own source of electricity and/or town gas supply required for the General Restaurant 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. 406D) and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government. The Permit Holder 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 direct.
- (d) All installation of gas appliances, and all other installation of town 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 D) and to the satisfaction of the Government Representative, and such installations shall thereupon become the property of the Government. The Permit Holder 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 direct.

#### 19. Provision of Air-conditioning

- (a) In the event of the Permit Holder wishing to install private air-conditioning units in the Permit Area or any part thereof with the prior written consent of the Government Representative, the Permit Holder shall comply with the directions and instructions of the Government Representative regarding installation and shall at its own expense be responsible for periodic inspection, maintenance and repair and for the replacement of defective wiring and the Permit Holder shall be strictly liable for any damage caused by the installation, operation or removal of such units. Provided further that in the event of undue noise vibration or heat being caused or generated by any air-conditioning units installed hereunder the Government Representative may require the Permit Holder to remove or replace such installations forthwith and to make good any loss or damage to the Permit Area or the Venue caused thereby. The Permit Holder agrees to make adequate provision to ensure against the dripping of water from the air-conditioning units to the detriment of the property of the Venue or to the annoyance of the Government or any third parties and to ensure that such water be collected and discharged within the Permit Area. Any damage to the property of the Venue resulting from a breach of this provision shall be made good by the Permit Holder.
- (b) In carrying out any approved work hereunder the Permit Holder, its servants, agents, contractors and workmen shall obey and comply with all instructions and directions which may be given by the Government Representative in connection with the carrying out of such work.

#### 20. Rights Reserved by Government Representative

- (a) The Government Representative reserves the right to suspend at its sole discretion the Permit Holder's General Restaurant Business by closing the Permit Area 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 Permit Holder is in breach of any of the terms and conditions of the Contract and in such event the Permit Holder shall remain liable to pay the Monthly Permit Fee in full during such period of suspension.
- (b) The Government Representative reserves the right to close the Venue in whole or in part, including the Permit Area and/or to suspend the General Restaurant Business by reason of fire or storm or damage (not being the result of wilful default or misconduct or negligence of the

Permit Holder, 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 Term. The Government shall not be liable for any loss suffered or expenses incurred whatsoever by the Permit Holder due to such closure or suspension.

- (c) In connection with Clause 20(b) above, if the demand of such closure or suspension of the General Restaurant Business by the Government Representative is due to repair or maintenance or building modification, the Government Representative will give the Permit Holder one (1) month's advance notice before the commencement date of such closure and suspension, if it is practicable in the circumstances.
- (d) If there shall be suspension of the General Restaurant Business as required under Clause 20(b), the Monthly Permit Fee shall be adjusted according to Clause 7 hereof.
- (e) 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 General Restaurant Business of the Permit Holder might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Permit Holder and shall not be required to abate the Monthly Permit Fee or any part thereof.
- (f) 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 organisation to bring into the Venue or distribute freely therein any refreshments or commodities for consumption or for use whatsoever. The Permit Holder is not entitled to claim for any compensation or prohibition for whatsoever causes resulting from the grant of the said permission and authorisation. The Permit Holder shall continue to carry on its General Restaurant Business on any day covered by such permission if it is not required to suspend its General Restaurant Business.
- (g) Notwithstanding Clause 3 hereof, the Government Representative may, by giving not less than seven (7) days' notice to the Permit Holder, hold or permit any person or organisation to hold any function in the Venue. Where the Government Representative considers it necessary to do so, it may require the Permit Holder to suspend the whole or part of the General Restaurant Business temporarily during the time when such functions are being held in the Venue. The Permit Holder is not entitled to claim for any compensation whatsoever resulting from the grant of the said permissions and the holding of the functions. If the Permit Holder suspends its General Restaurant Business whether in whole or in part as demanded by the Government Representative under this Clause, the Monthly Permit Fee shall abate on a pro rata basis depending on the length and extent of such suspension of the General Restaurant Business which shall be determined by the Government Representative. The Permit Holder shall continue to carry on the General Restaurant Business on any day covered by such permission if it is not required to suspend the General Restaurant Business.
- (h) 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 service within any other areas of the Venue during the Term of the Contract. Irrespective of whether or not the General Restaurant Business of the Permit Holder might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Permit Holder and shall not be required to abate the Monthly Permit Fee or any part thereof.
- (i) 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 Permit Area at any reasonable time upon prior notice having been given to the Permit Holder.

## 21. Sale of Commodities

- (a) The Permit Holder shall notify the Government Representative of the latest price list of the commodities it offers to sell in the General Restaurant Business whenever the Government Representative so demands.
- (b) The Permit Holder shall provide to customers upon request receipts for commodities sold in conducting the General Restaurant Business specifying the commodities sold and the respective price.
- (c) The Permit Holder shall abide by any directions as to the quality of the commodities sold or offered for sale at the Permit Area as may be given by the Hong Kong Consumer Council.

## 22. Display of Commodity Prices

The Permit Holder shall prominently display at all times the prices of commodities for sale in respect of the General Restaurant Business at the Permit Area. 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.

## 23. Erection of Structure

- (a) The Permit Holder shall not allow or permit any structure to be erected in or on the Permit Area and its immediate vicinity except for the following:
  - (i) those stipulated in Clauses 22 above or 29(c).
  - (ii) one (1) signboard bearing the words “General Restaurant” for the General Restaurant Business.

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

- (b) The size and location of the signboards shall be those approved or prescribed by the Government Representative in writing.

## 24. Watchman

- (a) The Permit Holder shall not allow any person to remain in the Permit Area overnight without the permission of the Government Representative in writing. Such permission shall only be given to enable the Permit Holder to post a watchman/ watchmen to look after the contents of the Permit Area.
- (b) The Permit Holder shall ensure that each watchman shall possess a valid security personnel permit issued under the 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 Permit Holder shall immediately remove such person(s) from the Permit Area if the Government Representative notifies the Permit Holder in writing of the withdrawal of its approval for such person(s) to stay overnight in the Permit Area.

## 25. Use of Fuel

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



## 26. Store of Dangerous Goods and Prohibited Goods

Except a reasonable quantity to be stored at the Permit Area required for the operation of the General Restaurant Business, the Permit Holder shall not keep, store or cause, permit or suffer to be kept or stored in the Permit Area any dangerous or prohibited goods or 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.

## 27. Fire Safety Management

- (a) The Permit Holder 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 Permit Area.
- (b) The Permit Holder shall provide fire safety training to all staff and all staff shall be given specific safety responsibilities. Safety responsibilities and activities shall include, but not limited to –
  - (i) good security and vigilance by all staff to limit the risk of fires;
  - (ii) house keeping management established housekeeping procedures to remove fire hazards and limit the risk from combustible materials; to ensure the fire load in each area is controlled and the requirement of fire engineering design is met;
  - (iii) staff training; and
  - (iv) regular fire drills, testing and maintenance of all fire services installations.

## 28. Discharge of Waste Water

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

## 29. Sale of Alcoholic Liquor

- (a) The Permit Holder shall not sell alcoholic liquor in the Permit 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 such permission referred in Clause 29(a) to the Permit Holder 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 Permit Holder for such withdrawal.
- (c) The Permit Holder shall obtain a licence as is required under the Dutiable Commodities Ordinance (Cap. 109) if the sale of alcoholic liquor is for consumption at the Permit Area. The Permit Holder shall ensure a prescribed notice in both the Chinese and English displayed in a prominent location at the permit area in compliance of relevant clauses of Dutiable Commodities Ordinance (Cap. 109).
- (d) The Permit Holder shall not sell or supply at the Permit Area any intoxicating liquor

whatsoever; and to ensure the compliance of the relevant clauses of the Dutiable Commodities Ordinance (Cap. 109) and other relevant legislation regarding prohibition of selling or supplying of intoxicating liquor to minors.

### 30. Green Measures Relating to Disposable Tableware

- (a) The Permit Holder shall not provide plastic straws for any customers.
- (b) The Permit Holder shall provide reusable tableware for dine-in customers, and not provide any disposable cutlery (e.g. stirrer, fork, knife, spoon and chopsticks) and disposable food / drink containers (e.g. cups, bowls, dishes, plates and boxes) by default or in sets for take-away customers.
- (c) If requested by take-away customers, the Permit Holder may provide non-plastic disposable cutlery (e.g. soft wood or bamboo) and non-plastic disposable food/ drink containers (e.g. paper, plant fibre or metal foil) on a need basis for take-away food or drinks provided that such non-plastic disposable cutlery is not provided in sets. The Permit Holder 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 Permit Holder shall not provide disposable plastic tableware.
- (d) For clarity purpose, plastic includes polyfoam, polyethylene, poly-lactic acid (PLA), oxo-plastic and all other types of plastic. It does not include paper coated with plastic or wax. “Tableware” includes straws and stirrers, cutlery (e.g. stirrer, fork, knife, spoon and chopsticks), food / drink containers (e.g. cups, dishes, plates, bowls and boxes) and individually packed wet tissues.
- (e) The Permit Holder may provide plastic lids for cups and bowls for take-away food or drinks.
- (f) The Permit Holder may provide disposable plastic tableware when warranted by genuine service/ operational needs and with prior approval in writing by the Government under exceptional circumstances, such delivery of public service in emergency situations (e.g. special/ ad-hoc operations and special operational requirements required during prolonged outdoor work).
- (g) The Permit Holder 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.
- (h) The Permit Holder may provide prepackaged food with disposable tableware not made of polyfoam if cooking or preparation of food is not allowed in the Permit Area.
- (i) The requirements and conditions as stipulated in Clauses 30(a) to 30(h) 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 Permit Holder.

### 31. 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 Permit Holder 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 Permit Holder shall comply with any instructions issued by the Government regarding

measures to be adopted to prevent or control diseases of any kind.

32. Government Premises, Property, Machinery and Equipment

- (a) When the Government premises, property, machinery or equipment is provided for the Permit Holder under the Contract (inclusive of those listed in the Seventh Schedule), the Permit Holder 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 Contract.
- (b) The Permit Holder shall not make any alteration or addition to the premises, property, machinery and equipment provided by the Government therein without the prior permission in writing by the Government Representative and shall not carry out the repairs to the same without 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 Permit Holder shall be liable to the Government for any damage or loss to such premises, property, machinery and equipment provided by the Government. 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 Permit Holder, the Permit Holder 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 Permit Holder under the Contract, shall remain the property of the Government, and the Government Representative reserves the right to check stock of the same at any time and the Permit Holder shall provide every assistance to the Government Representative for this purpose.
- (e) The Permit Holder shall accept the Permit Area and the Government's provisions of property, machinery or equipment under the Contract (inclusive of those listed in the Seventh Schedule) in the state and condition in which occupancy is given.

33. Access Granted to the Permit Holder

- (a) The Government Representative shall grant access of the Venue or any part thereof to the Permit Holder 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 Permit Holder and its employees and agents shall forthwith suspend the General Restaurant Business, remove the plant, equipment, materials and vehicles under the control of the Permit Holder from the Venue.

34. Inconvenience or Annoyance Caused at the Venue

- (a) The Permit Holder 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 Permit Holder shall use its best endeavours 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 General Restaurant Business. The Government Representative shall be, without prejudice to any rights it has under the Contract and without releasing or discharging the Permit Holder of its obligations hereunder and without compensation whatsoever to the Permit Holder, entitled to suspend the General Restaurant Business or use whatever means the Government may consider suitable so as to stop the Permit Holder from causing further nuisance to the users of the Venue and the Government's staff or agents working there.
- (c) The Permit Holder 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 Permit Area 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 Permit Holder to seize and dispose of any such property in such manner as the Government Representative may see fit without any liability whether towards the Permit Holder or any other Person and the Permit Holder shall pay the Government on demand all the costs in relation to such removal and/or disposal which are incurred by the Government.

### 35. Inspection and Rejection

- (a) The General Restaurant Business carried on by the Permit Holder 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 Permit Holder (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 Permit Holder or the result of such action, the Permit Holder shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government Representative.
- (d) If the Permit Holder 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 Permit Holder forthwith on demand. The normal working hours for the staff of the Government are, with the exception of General Holiday, from 9:00 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 Permit Holder shall be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such staff.

### 36. Permit Holder'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 Permit Holder shall be deemed to be the act, default, negligence or omission of the Permit Holder.

- (b) It shall be regarded as a default, if the Permit Holder –
  - (i) shall abandon the Contract; or
  - (ii) shall persistently or wilfully neglect to carry out its obligations under the Contract; or
  - (iii) shall fail to carry out all or any of the rectification as stipulated in Clause 35(c) hereof within the time specified.
- (c) Without prejudice to any other rights provided for under the Contract, the Permit Holder 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 may sustain or incur or which may be brought or established against it as a result of the Permit Holder's default.
- (d) Notwithstanding the above provision, the Government Representative may at its own discretion terminate the Contract in accordance with Clause 42 hereof as a result of the Permit Holder's default.

### 37. Public Liability Insurance

- (a) The Permit Holder 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 Permit Holder 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 Term of the Contract 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 Permit Holder, or the Government or their employees and agents. The Policy shall also indemnify all sums which the Permit Holder 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 sold/provided by the Permit Holder at the Venue.
- (c) The Permit Holder 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 Permit Holder require the insured parties to bear any excess amount in the event of claims, the Permit Holder 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 Permit Holder is responsible to lodge all claims with the insurance company and shall deal with the said insurance company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage.

- (g) The Permit Holder 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 Permit Holder shall not do or permit or suffer to be done any act or omission whereby the Policy shall be rendered void or voidable, or which would otherwise amount to breach of the Policy. The Permit Holder 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 Permit Holder to observe and comply with this Clause.

38. Accident to Permit Holder's Employees

- (a) The Government, its employees and agents shall not be under any liability whatsoever for or in respect of any injury to or death of any of the Permit Holder's employees or agents save and except such injury or death caused by the negligence of the Government or its employees or agents. The Permit Holder 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 Permit Holder 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 Permit Holder on any work done in pursuance of the Contract with an insurance company authorised by the Insurance 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 such Policy together with the receipt for payment of the current premiums.
- (c) In the event of any staff or other persons employed by the Permit Holder on any work done in pursuance of the Contract suffering any personal injury or death, the Permit Holder shall within forty-eight (48) hours notify the Government Representative in writing and whether there be a claim for a compensation or not, the Permit Holder 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.

39. Liability and Indemnity

- (a) The Permit Holder shall indemnify the Government 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 reasons of -
- (i) the negligence, recklessness, tortious act or wilful misconduct of the Permit Holder, its employees or agents or sub-contractors (of whatever tier) or those employees or agents of such sub-contractors, or any visitor or patron of the Permit Area (all of the aforesaid persons collectively the "**Permit Holder 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 Permit Holder Responsible Group; or
- (iii) any defaults, unauthorised acts or omissions of any member of the Permit Holder 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 Permit Holder 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 or its employees 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 Permit Holder 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 Permit Holder shall not be affected or reduced by reasons 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 Permit Holder's operation or method of working, or in detecting or preventing or remedying any defective work carried out by any member of the Permit Holder Responsible Group.

#### 40. Failure to Insure

If the Permit Holder shall fail to effect or to keep in force the Policy referred to in Clauses 37 and 38 hereof 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 8 hereof or may recover the same as a debt due from the Permit Holder.

#### 41. Probity

- (a) If the Permit Holder or any of the Permit Holder'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 Permit Holder to any compensation therefor.
- (b) The Permit Holder 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 Permit Holder 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 Permit Holder 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 Permit Holder 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 General Restaurant Business from soliciting or accepting any form of advantages in discharging its duties under the Contract. The Permit Holder shall ensure that any person employed by it to provide such services is well aware of

the prohibited acts explicitly stated in Clause 41(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.

#### 42. 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 Permit Holder to compensation in any of the following events –
- (i) if the Permit Holder 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 Permit Holder under the Contract or in the case of a breach capable of being remedied, 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 Permit Holder 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 the 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 Permit Area, or a petition is filed for the bankruptcy or winding up of its business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government Representative in writing; or
  - (iii) if the Permit Holder, 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 Permit Holder'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 Permit Holder 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 eighteen (18) months from the commencement of the Term either party may terminate the Contract by giving the other party not less than six (6) months' prior written notice.
- (c) If the Permit Holder has terminated the Contract early by serving prior written notice pursuant to Clause 42(b), and the Government conducts a new procurement exercise to award a contract to provide the General Restaurant Business from another sources replace the existing Contract, any tender/quotation offer from the same Permit Holder or a related person of the Permit Holder (as defined as below) for the contract to be awarded in that new procurement exercise will be rejected.

For the purpose of this Clause 42(c):

- (i) If the Permit Holder is a company, the expression "**related person**" of the Permit Holder includes any one of the following:



- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Permit Holder (“**majority shareholder**”); or
- (b) a holding company or a subsidiary of the Permit Holder; or
- (c) a holding company or a subsidiary of a majority shareholder of the Permit Holder; or
- (d) a company in which a majority shareholder (being an individual) of the Permit Holder directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of director.

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

- (ii) If the Permit Holder is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
  - (a) any partner of the Permit Holder (if it is a partnership); or
  - (b) the spouse, parent, child, brother or sister of the Permit Holder, 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 Permit Holder or any partner of the Permit Holder 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 42(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 on the grounds that the Government could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.
- (f) (i) If the Permit Area 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 Permit Holder or any of its servants or agents, the obligation of the Permit Holder to carry on the Business shall be suspended until such part or parts shall have been again rendered fit for use. If the period of suspension exceeds seven (7) days then the Monthly Permit Fee hereby agreed to be paid or a proportionate part thereof shall abate until the Permit Area or any part thereof shall have been 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 Permit Area 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 Permit Area 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.

#### 43. Effect of Termination

(a) Upon termination of the Contract –

- (i) the Permit Holder shall immediately deliver up vacant possession of the Permit Area 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 Permit Holder has made any alterations or installed any fixtures or additions to the Permit Area with or without the Government Representative's consent, the Government Representative may at its discretion require the Permit Holder to reinstate or remove at the Permit Holder'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 Permit Area and to the Government's fixtures and installations thereof before delivering up the Permit Area to the Government Representative;
- (ii) the Permit Holder shall at its own expense forthwith retreat all its employees or agents and remove from the Permit Area all its fixtures, fittings, structures, materials, machinery, equipment, plant and all other properties which the Government Representative does not desire to take over. The Permit Holder 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 Permit Holder shall return all Government premises, property, machinery and equipment provided by the Government under the Contract in the manner as stipulated in Clause 32 hereof;
- (iv) if the Permit Holder shall fail to comply with Clause 43(a)(ii), the Government Representative may forthwith enter the Permit Area to remove any persons 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 Permit Area 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 Permit Holder or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Permit Holder 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 Permit Holder; and
- (v) If the Contract is terminated by the Government (other than pursuant to Clause 42(b) and Clause 42(f)(i) and the Government makes other arrangements for the operation of the General Restaurant Business, the Government may recover from the Permit Holder:

- (1) any amount short of the total Monthly Permit Fee (which would have been payable by the Permit Holder had the Contract not been terminated) suffered by the Government in engaging another Permit Holder to conduct the general restaurant business and all costs and expenses incurred in making the arrangements for the same including conducting tendering/quotation exercise to award a contract under which a person is granted a permit to conduct the general restaurant business; and
  - (2) any additional expenditure incurred by the Government in connection with a default by the Permit Holder referred to in Clause 42(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 Permit Holder for the Services provided by the Permit Holder prior to termination and in accordance with the Contract for which payment has yet to be made by the Government.
- (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 Permit Holder 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 Permit Holder arising out of or in relation to the termination or expiry.

#### 44. Recovery of Sums Due

Whenever under the Contract any sum of money (including but not limited to rates and Government rent payable in respect of the Permit Area) shall be recoverable from or payable by the Permit Holder to the Government (but the Permit Holder 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 Permit Holder 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 8 hereof forthwith without notice.

#### 45. Jurisdiction

The Contract shall be governed by and construed according to the laws of Hong Kong and subject to Clause 53 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.

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

- (a) The Contract does not confer exemption from any licensing requirements pertaining to the Permit Holder's General Restaurant Business.

- (b) The Permit Holder 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 its General Restaurant Business. The Permit Holder shall make no claim of any kind whatsoever against the Government Representative in the event of the Permit Holder'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 Permit Holder to conduct the General Restaurant Business without the licences, permits and/or certificates as required by the Laws of Hong Kong, notwithstanding the granting of the Permit by the Government Representative. The Permit Holder 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 Permit Holder shall ensure that those licenses, permits, and/or certificates shall remain in full force and effect as long as the Contract shall remain 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 Permit Holder agrees and accepts that there will be no abatement or reduction of the Monthly Permit Fee on the grounds that the Permit Holder cannot conduct the General Restaurant 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 Permit Fee.
- (e) The Permit Holder 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.

47. 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 Permit Area and the General Restaurant Business. For activities relevant to licensing requirements regulated by the Director of Food and Environmental Hygiene, the Permit Holder 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)

48. Compliance with Law and Government Requirements

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

49. 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 49(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; and
- (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.

#### 50. 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 Permit Holder in respect of any breach, non-observance or non-performance by the Permit Holder of any of the terms and conditions of this Contract on the Permit Holder's part to be observed and performed.

#### 51. 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 provision 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.

#### 52. Relationship of the Parties

- (a) The Permit Holder 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.

#### 53. 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 Permit Holder shall be obliged to carry on the General Restaurant 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.

#### 54. Assignment and Sub-Contracting

- (a) Unless otherwise provided for in the Contract, the Permit Holder 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 Permit Holder shall be personal to it.
- (b) If the Permit Holder 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 Permit Holder 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 Permit Holder must be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

#### 55. 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 General Restaurant Business under the Contract (except insofar as those obligations which have been fully performed).

#### 56. 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.

#### 57. 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 the Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

**SCHEDULES**

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**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 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) (See Note 1)					Marks Scored (M x S)	Passing Mark
			4	3	2	1	0		
<b>(A) Execution Plans and Suggestions</b>									
(1) Menus, Service Packages and Marketing Plans (See Note 2)	28	7						7	
(2) Hygiene Maintenance Plan (See Note 3)	20	5						5	
(3) Waste Management Plan (See Note 4)	20	5						5	
(4) Innovative Suggestions that can bring positive values to the society of Hong Kong (See Note 5)	17	4.25						–	
<b>Sub-total for (A)</b>	<b>85</b>							–	
<b>(B) Experience</b>									
(5) Years of experience in operating catering outlet(s) (See Note 6)	15	3.75						–	
<b>Sub-total for (B)</b>	<b>15</b>							–	



	<b>Total Technical Mark</b>	<b>100</b>		–
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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 purposed 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 proposal and experience will be rated as follows:

##### For Assessment Criteria (1) to (5)

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

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

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

- (1) a list of types of cuisine, regular and special festive menus including the proposed lists of food, drinks and beverages (“Proposal Note 2(i)(1)”);
- (2) details of the proposed service packages which attract the customers (“Proposal Note 2(i)(2)”); and
- (3) details of the marketing strategies to promote revenue (“Proposal Note 2(i)(3)”).

(ii) Standard scores will be given to Assessment Criteria (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 Proposals 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 all three 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) – Hygiene Maintenance Plan**

(i) Hygiene Maintenance Plan shall cover the following three (3) types Proposals:

- (1) guidelines to staff on food hygiene including food handling, food safety, kitchen hygiene, seating area hygiene and toilet hygiene (“Proposal Note 3(i)(1)”);
- (2) details of the monitoring system to ensure the staff’s compliance with the proposed guidelines (“Proposal Note 3(i)(2)”); and
- (3) details of training/refresher programmes for staff on hygiene maintenance (“Proposal Note 3(i)(3)”).

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

- 4 - The proposed plan is **practical** with **detailed information** on **all three** Proposals (1) to (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 Proposals 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 all three 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 Criteria (2) shall form part of the Contract.

### **Note 4: for Assessment Criterion (3) –Waste Management Plan**

(i) The Waste Management Plan shall cover the following three (3) types of Proposals:

- (1) guidelines to staff on environmental protection to prevent pollution from greasy fume,

- wastewater, waste and noise arising from the General Restaurant Business (“Proposal Note 4(i)(1)”);
- (2) details of the monitoring system to ensure the staff’s compliance with the proposed guidelines (Proposal Note 4(i)(2)”); and
- (3) details of training/refresher programmes for staff on environmental protection (“Proposal Note 4(i)(3)).
- (ii) Standard scores will be given to Assessment Criteria (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 the three Proposals and brief information covering the remaining Proposals 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 all three 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 Criteria (3) shall form part of the Contract.

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

- (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 include 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 Blue print to Hong Kong (e.g. to adopt mobile apps for food ordering; to adopt mobile money as means of payment, etc. );
- (2) An innovative suggestion in relation to social well-being

- Fostering a caring society (e.g. to provide job opportunity/on-the-job training for elderly, youth, people with disabilities and/or rehabilitators);

(3) An innovative suggestion in relation to environmental protection

- Promotion of consumption of fewer resources and reduction of waste (e.g. to introduce new green measure, etc.)

(4) Other practical innovative suggestion

(iii) Standard scores will be given in accordance with the following rule:

4 - **Four (4)** or more 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 is proposed.

(iv) Tenderers shall highlight the proposed innovative suggestions and explain clearly the positive values which innovative suggestions proposed by them can bring about.

(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) – Years of experience in operating catering outlet(s)**

(i) Assessment will be based on the aggregate number of years of experience in operating catering outlet(s) in the past **ten (10) years** immediately preceding the Original Tender Closing Date.

(ii) Standard scores will be given to Assessment Criterion (5) in accordance with the following five-grade approach –

4 – An aggregate of five (5) years' experience or more.

3 – An aggregate of four (4) to less than five (5) years' experience.

2 – An aggregate of three (3) to less than four (4) years' experience.

1 – An aggregate of two (2) to less than three (3) years' experience.

0 – An aggregate of less than two (2) years' experience,

or

failing to produce documentary proof to support its claim of experience.

- (iii) A Tenderer shall submit documentary evidence (e.g. a copy of agreement) to substantiate its claim of the experience. Experience not substantiated will not be taken into account.
- (iv) Catering outlet(s) refer to licensed restaurant(s), e.g. 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) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership, will be counted.
- (viii) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, "an aggregate of two (2) years' experience" is equivalent to have accumulated 730 days (i.e. 365 days x 2) of experience under different catering outlets.
- (ix) It is not necessary for a Tenderer to have continuous experience in operating catering outlet(s) in the past ten (10)-year period immediately preceding the Original Tender Closing Date.
- (x) For the purpose of tender assessment, the relevant experience in operating catering outlet(s) could be gained under the same catering outlet or different catering outlets. However, a Tenderer's experience under different catering outlets will not be double-counted for those overlapping periods. A Tenderer's experience under different catering outlets with overlapping periods is to be counted in accordance with the following examples:

Example:

Catering Outlet	Contract Period	Contract Period without Overlapping with an Earlier Contract	Number of Days Counted for Accumulated Experience
A	16.4.2013 – 15.4.2015	16.4.2013 – 15.4.2015	730
B	1.10.2014 – 31.3.2016	16.4.2015 – 31.3.2016	351 (29 days in Feb 2016)
C	1.1.2015 – 31.12.2016	1.4.2016 – 31.12.2016	275
<b>Total:</b>			<b>1356</b>

- (xi) Experience in operation of LCSD's fast food kiosks would also be counted.
- (xii) 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 is based on the Monthly Permit Fee of the tenders which have passed Stage 2 assessment.
6. The maximum weighted price score is 50. The weighted price score for all tenders will be calculated by the following formulae –

$$\text{Weighted Price Score} = 50 \times \frac{\text{Monthly Permit Fee of the conforming tender being assessed}}{\text{Highest Monthly Permit Fee among the conforming tenders}}$$

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

**Stage 4 - Calculation of Combined Score**

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

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

8. Normally, the 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 business bidding for -**

---

**(F) Confirmation required under Clause 33(b) of the Terms of Tender.**

I/We confirm that none of the events as mentioned in Clauses 33(a)(i) to 33(a)(viii) 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 Clauses 33(b)(i) to 33(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 chop, 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 as appropriate.

**SCHEDULES**

**THIRD SCHEDULE**

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

**Menus, Service Packages and Marketing Plans, Hygiene Maintenance Plan, Waste Management Plan, Innovative Suggestions and Experience in operating Catering Outlet(s)**

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

The Tenderer shall provide information as to the following for evaluation :

- (1) a list of types of cuisine, regular and special festive menus including the proposed lists of food, drinks and beverages-

---

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

- (2) details of the proposed service packages which attract the customers-

---

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

- (3) details of the marketing strategies to promote revenue-

---

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

**2. Hygiene Maintenance Plan**

The Tenderer shall provide information as to the following for evaluation :

- (1) guidelines to staff on food hygiene including food handling, food safety, kitchen hygiene, seating area hygiene and toilet hygiene-

---

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

- (2) details of the monitoring system 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 for staff on hygiene maintenance-

---

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

### 3. **Waste Management Plan**

The Tenderer shall provide information as to the following for evaluation :

- (1) guidelines to staff on environmental protection to prevent pollution from greasy fume, wastewater, waste and noise arising from the General Restaurant Business-

---

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

- (2) details of the monitoring system 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 for staff on 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 on 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 Blue print to Hong Kong (e.g. to adopt mobile applications for food ordering, use of mobile devices as means of payments etc.)-

(2) Social well-being

- Fostering a caring society (e.g. to provide job opportunity/on-the-job training for elderly, youth, people with disabilities and/or rehabilitators)

(3) Environmental protection

- Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling on top of the green measures relating to disposable tableware as stated in the tender document (e.g. to introduce new green measure, etc.)

(4) Other Innovation suggestions

a.

b.

c.

d.

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

Tenderers shall highlight the proposal innovative suggestions and explain clearly the positive values which innovative suggestions proposal by them can bring about.

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 just like the rest of the tender.**

**5. The Tenderer’s Experience in Operating Catering Outlet(s)**

- (a) The Tenderer should state its years of experience in the ten (10) aggregate years immediately preceding the Original Tender Closing Date in operating catering outlet(s).

The Tenderer shall complete the following table:

Name of Catering Outlet(s)	Location	Duration of the Catering Outlet Operated		Cuisine/Food Style
		from	to	

*(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 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.

\_\_\_\_\_

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

Name of Tenderer: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

\* Delete as appropriate

**SCHEDULES**

**FOURTH SCHEDULE**

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

**The Monthly Permit Fee**

Business	Monthly Permit Fee (in Hong Kong dollars)
General Restaurant	HK\$ _____ (in figures)

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

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

\* Delete as appropriate

“This is a blank sheet”



**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 chop, if applicable)

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

\* Delete as appropriate

**SCHEDULES****SIXTH SCHEDULE****List of Commodities Recommended for Sale at the General Restaurant**Description of commodities

- |     |  |  |
|-----|--|--|
| (a) | Pre-packed soft drinks   |  |
| (b) | Ice cream and other frozen confections (the sale and /or manufacture of which is subject to the grant to the Permit Holder of an appropriate licence from the Food and Environmental Hygiene Department) |  |
| (c) | Pre-packed distilled and mineral water   |  |
| (d) | Cakes  | } (From licensed food factories or other lawful sources and in original wrapper) |
| (e) | Pastries   |  |
| (f) | Preserved foodstuffs   |  |
| (g) | Bread and biscuits   |  |
| (h) | Sweets   |  |
| (i) | Uncut fruit  |  |
| (j) | Chinese / western style cuisine  |  |
| (k) | Others (e.g. paper tissue etc)   |  |

## Notes :

- (1) All items for sale and their respective prices shall be prominently displayed at the General Restaurant.
- (2) A Tenderer may offer with prior written consent of the Government Representative for sale any commodity, which is compatible with categories mentioned in (a) to (k) or with licencing requirement relating to the General Restaurant Business.
- (3) It is not the intention of the Government Representative to exercise control over prices of commodities for sale at the Permit Area.

**SCHEDULES****SEVENTH SCHEDULE****List of Appliances, Furniture, Fixtures and Fittings provided  
by the Government for the General Restaurant Business  
at Tsing Yi Swimming Pool**

Item	Description	Quantity
1.	Roller shutter	1 no.
2.	Electrical socket	14 nos.
3.	Flourescent tube	42 sets
4.	Exhaust fan	1 no.
5.	Sink	1 no.
6.	Grease trap	1 no.
7.	Main switch box	1 no.
8.	Fresh air fan	1 no.
9.	Water scrubber	1 no.
10.	Water pump	1 no.
11.	Water Closet	4 nos.
12.	Urinal	1 no.
13.	Hand Dryer	2 nos.
14.	Smoke Door	2 nos.
15.	Wash hand basin	4 nos.
16.	Water Tap	2 nos.
17.	Exit Sign	4 nos.

**SCHEDULES****EIGHTH SCHEDULE****(to be placed in the Technical Proposal envelope)**

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 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 sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

#### Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in 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**

**NINTH 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 <<Contractor Name>>..... of <<Contractor-Address>>..... (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Tender Ref.: LC/LS/T/GR/KwT/TYSP/2021), the Contractor agreed and undertook to operate the business of general restaurant at Tsing Yi Swimming Pool 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 thirty-six (36) 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 Tsing Yi Swimming Pool**

Venue is delineated and shown edged red



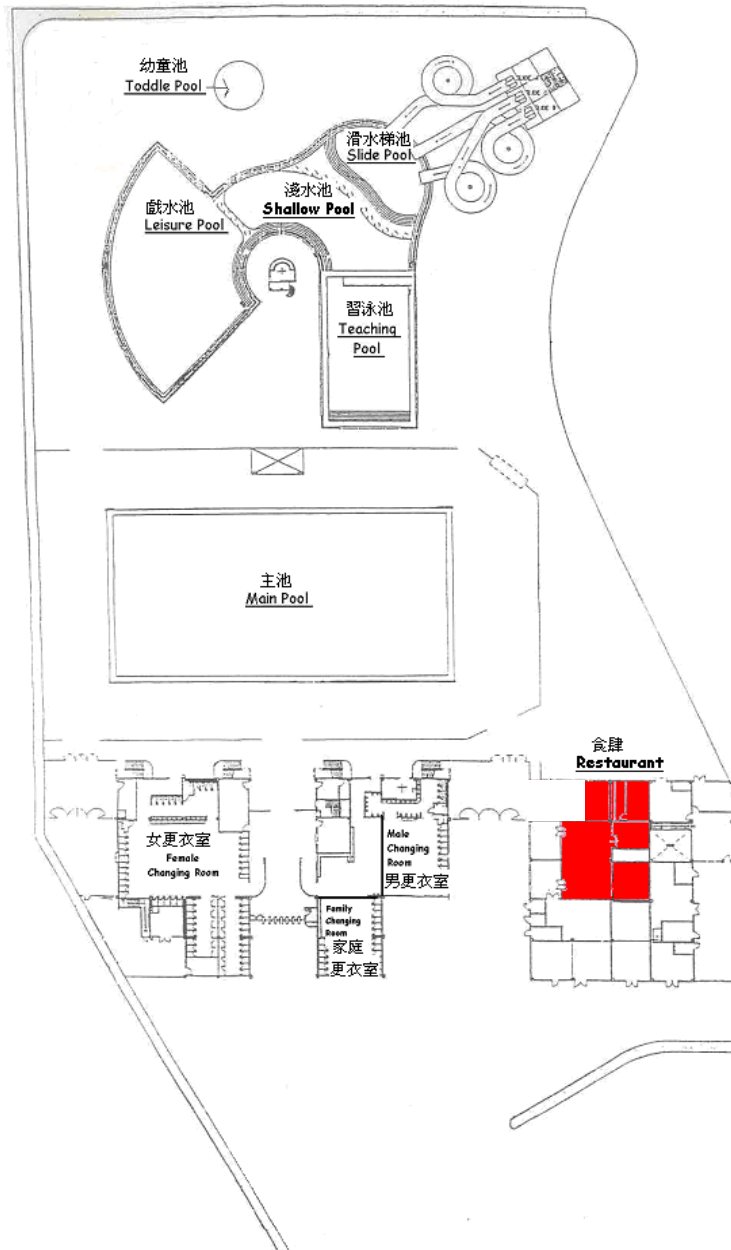
(Not to scale)

**ANNEXES**

**ANNEX B**

**Location Plan of the General Restaurant  
at Tsing Yi Swimming Pool**

The premises for the General Restaurant Business  
is delineated and shown coloured red



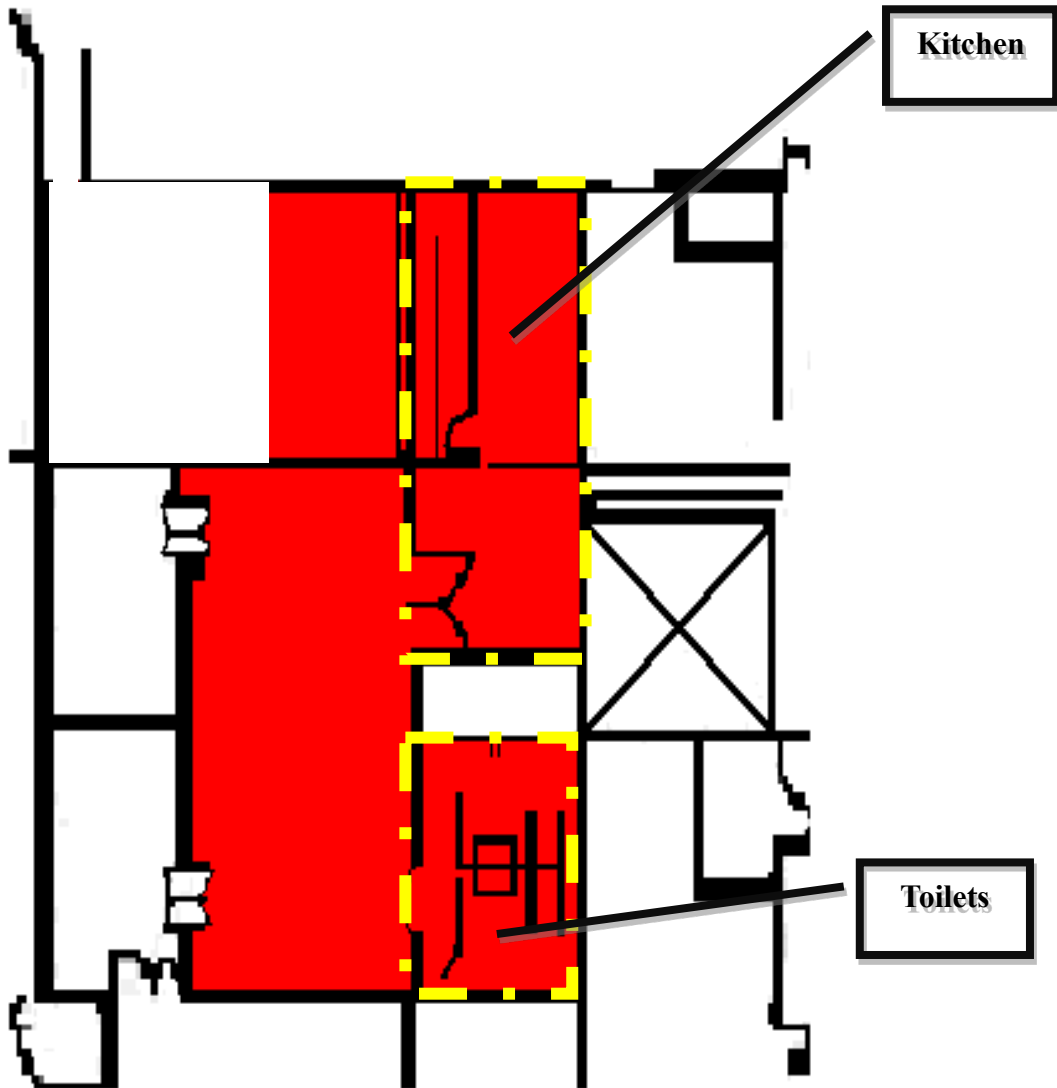
(Not to scale)

**ANNEXES**

**ANNEX C**

**Layout Plan of the General Restaurant  
at Tsing Yi Swimming Pool**

The premises for the General Restaurant is delineated and shown coloured red



(Not to scale)

## ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT are made the \_\_\_\_\_ day of \_\_\_\_\_ 2021 BETWEEN THE ASSISTANT DIRECTOR (LEISURE SERVICES)<sup>3</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 “**Permit Holder**”) of the other part.

### WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LC/LS/T/GR/KwT/TYSP/2021), the Government has invited tenders for the grant of a permit to conduct the General Restaurant Business at Tsing Yi Swimming Pool.
- (B) The Permit Holder’s tender for the Contract was accepted in principle by the Government by a notification of Conditional Acceptance of Tender to the Permit Holder pursuant to Clause 15(b) of the Terms of Tender.
- (C) The Permit Holder 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 Permit Holder 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 Ninth Schedules (in their original form as found in the Tender Documents)

**ARTICLES OF AGREEMENT**

- (vii) Second to Fifth, Eighth and Ninth Schedules (in the form as submitted by the Permit Holder 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

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

4. For the purposes of Clause 49 of the Conditions of Contract, the postal address and facsimile number of each party are as follows:

Government:

Postal Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Post Title): \_\_\_\_\_

Permit Holder:

Name of the Permit Holder: \_\_\_\_\_

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 PERMIT HOLDER / THE  
AUTHORISED REPRESENTATIVE for and  
on behalf of THE PERMIT HOLDER

)  
)  
)

Name of the Permit Holder / Authorised Representative: \_\_\_\_\_

(with Permit Holder's chop, if  
applicable)

Title of the Permit Holder / 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)3 OF LEISURE AND CULTURAL SERVICES )  
DEPARTMENT for and on behalf of THE )  
GOVERNMENT OF **THE HONG KONG SPECIAL**  
**ADMINISTRATIVE REGION**

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Name

In the presence of:

Name of witness:

Title of witness:

Signature of witness:

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