

TENDER FORM

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

TENDER FOR
THE GRANT OF LICENCE TO OPERATE THE BUSINESS
AT THE CATERING PREMISES OF THE KO SHAN THEATRE

(Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I)

LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked “**Tender for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre**” and addressed to the **Chairman, Tender Opening Committee, Government Logistics Department**, must be deposited in the **Government Logistics Department** Tender Box situated at **Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong** before **12:00 noon (Hong Kong Time)** on **18 February 2020**. Late tenders will not be accepted.

Dated this 24 January 2020

Ms. Marianna HO
Government Representative

Part I – Tender Documents

These documents under the tender reference LCSD/CS/T/GR/00/KST/2020/I consist of three (3) complete sets of :

- (a) Tender Form;
- (b) Tender Label 1 (Price Submission), Tender Label 2 (Technical Submission) and Tender Label 3 (Complete Tender Submission);
- (c) Interpretation (Sheets 1 to 5);
- (d) Part 1 – Terms of Tender (Sheets 6 to 15) and Appendices to Terms of Tender (Sheets 16 to 43);
- (e) Part 2 – Conditions of Contract (Sheets 44 to 59);
- (f) Part 3 – Contract Schedules (Sheets 60 to 91); and
- (g) Articles of Agreement (Sheets 92 to 93).

Part II – Offer to be Bound

This Offer to be Bound is submitted by the undersigned in response to the Government’s Invitation to Tender (Ref.: LCSD/CS/T/GR/00/KST/2020/I) for the operation of a catering business in the Licence Area within Ko Shan Theatre. Unless the context otherwise requires, terms and expressions appearing herein have the meanings given to them in the Tender Documents issued by the Government in connection with the Invitation to Tender.

To: The Government

1. I / We refer to the Invitation to Tender issued by the Government. I / We hereby warrant that all information given in or attached to my / our Tender is true, complete and correct.
2. Having read and understood all terms and conditions of the Tender Documents, I / we HEREBY OFFER (a) to pay a Monthly Licence Fee as set out in my / our Price Proposal for the grant of the Licence to access, use and occupy the Licence Area in the Ko Shan Theatre for the operation of a catering business on and subject to the terms and conditions set out in the Contract and (b) to be bound by all terms and conditions set out in the Contract.
3. I am / We are duly authorised to bind the Tenderer hereafter mentioned by my / our signature(s).

Authorised Signature and Company Chop : _____

Name and Title of Person Authorised to Sign Tender for and on behalf of the Tenderer : _____

Name of Tenderer in English : _____

Name of Tenderer in Chinese : _____

Registered office of the Tenderer : _____

Tel No.: _____ Fax No.: _____ Date: _____

<p style="text-align: center;">TENDER LABEL (1) Price Submission</p>
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**CHAIRMAN, TENDER OPENING COMMITTEE,
GOVERNMENT LOGISTICS DEPARTMENT**

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

**Tender for the Grant of Licence to Operate the Business
at the Catering Premises of the Ko Shan Theatre**

Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I

Tender Closing Date: 18 February 2020 12:00 noon (Hong Kong Time)

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

- Appendix 3 to the Terms of Tender ONLY

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

**CHAIRMAN, TENDER OPENING COMMITTEE,
GOVERNMENT LOGISTICS DEPARTMENT**

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

**Tender for the Grant of Licence to Operate the Business
at the Catering Premises of the Ko Shan Theatre**

Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I

Tender Closing Date: 18 February 2020 12:00 noon (Hong Kong Time)

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

- Tender Form (Part II – Offer to be Bound)
- Appendix 1 to the Terms of Tender
- Appendix 2 to the Terms of Tender
- Appendix 5 to the Terms of Tender

<p style="text-align: center;">TENDER LABEL (3) Complete Tender Submission</p>
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**CHAIRMAN, TENDER OPENING COMMITTEE,
GOVERNMENT LOGISTICS DEPARTMENT**

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

**Tender for the Grant of Licence to Operate the Business
at the Catering Premises of the Ko Shan Theatre**

Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I

Tender Closing Date: 18 February 2020 12:00 noon (Hong Kong Time)

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

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

INTERPRETATION

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

“Business”	means the operation of a catering business in the Licence Area from which Prescribed Food and Beverages are to be sold and served under the Contract.
“Catering Premises”	means the areas of : <ol style="list-style-type: none">(a) one Chinese restaurant (hereinafter referred to as the ‘Cafeteria’) as delineated and shaded in pink in Annex C (i) and Annex D (i) to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises;(b) one coffee corner (hereinafter referred to as the ‘Coffee Corner’) as delineated and shaded in pink in Annex C (ii) and Annex D (ii) to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises;(c) the function areas and storage area mentioned in Annex B to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises; and(d) Central Grease Trap as marked “Y” in Annex C (ii) and Annex D (ii) to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises.
“Catering Services”	means provision of food and beverages in a reception setting within the Venue such as provision of pre-performance reception or interval drinks for and at costs agreed with hirers of the hiring facilities of the Venue.
“Contract”	means the contract to be made between the Government and the Contractor for the operation of the Business on the terms set out in Part 1 – Terms of Tender (insofar as it is applicable), Part 2 – Conditions of Contract and Part 3 – Contract Schedules.
“Contractor”	means the Tenderer whose tender is accepted by the Government.
“Contract Period”	means the period specified in Clause 2.1 of the Conditions of Contract as the same may be earlier terminated or extended in accordance with the provision of the Contract.
“DFEH”	means the Director of Food and Environmental Hygiene.

“Electricity Deposit”	has the meaning given to it in Clause 4.3 of the Contract Schedule 6 – Covenants in respect of Use of the Licence Area .
“Free Decoration Period”	means a period of up to thirty (30) days commencing from the first day of the Contract Period during which fitting out of the Licence Area is to be carried out and completed by the Contractor.
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and includes the Chief Executive of Hong Kong.
“Government Provisions”	means all items belonging to the Government specified in Contract Schedule 4 – Government Provisions Made Available to the Contractor at the Licence Area and such other Government property (moveable or immovable) which are for the Contractor’s use solely for the purpose of operating the Business under and in accordance with the Contract.
“Government Representative”	means the Director of Leisure and Cultural Services or any public officer of LCSD authorised to act on his or her behalf for the purposes of the Contract.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Invitation to Tender”	means the invitation issued by the Government to invite tenders for the Contract on the terms and conditions set out in the Tender Documents.
“LCSD”	means the Leisure and Cultural Services Department.
“Licence”	means the licence to access, use and occupy the Licence Area referred to in Clause 1 of the Conditions of Contract .
“Licence Area”	means the areas as more particularly described in Annex B to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises and as delineated and shown edged pink and green also the marked “Y” in Annex C and Annex D to Contract Schedule 3 .

“Monthly Licence Fee”	means the fixed amount payable by the Contractor on a monthly basis for the operation of the Business as stipulated in Contract Schedule 1 – Price Schedule .
“Original Tender Closing Date”	means the date specified in the Tender Form as the date for submission of tender notwithstanding any extension.
“Prescribed Food and Beverages”	means (i) the menu items for sale in the Licence Area as listed in Contract Schedule 2 – Technical Schedule and (ii) other items as may be approved in writing in advance by the Government pursuant to Clause 6 of Contract Schedule 7 .
“Requisite Permits”	has the meaning given to it in Clause 8.1 of the Conditions of Contract .
“Security Deposit”	means the deposit which the Contractor deposits with the Government in accordance with Paragraph 12 of the Terms of Tender for the due and proper performance of the Contract.
“Tender (upper or lower case)”	means a tender submitted in response to this Invitation to Tender.
“Tender Closing Date”	means the date specified in the Tender Form as the latest date by which tenders must be lodged as the same may be extended.
“Tender Documents”	means : – (a) Tender Form; (b) Tender Label 1 (Price Submission), Tender Label 2 (Technical Submission) and Tender Label 3 (Complete Tender Submission); (c) Interpretation; (d) Part 1 – Terms of Tender; (e) Part 2 – Conditions of Contract; (f) Part 3 – Contract Schedules; and (g) Articles of Agreement. and includes all schedules, appendices, annexes and any other documents attached thereto and any amendment or addendum issued prior to the Tender Closing Date.
“Tenderer”	means the person or firm or company which has submitted Tender in response to this Invitation to Tender.
“Venue”	means Ko Shan Theatre, at 77 Ko Shan Road, Hung Hom, Kowloon, Hong Kong as shown in the Plan contained in Annex A to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises .
“working day”	means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal no. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration during normal business hours in Hong Kong.

2. In the Contract, unless the content otherwise requires, the following rules of interpretation shall apply –
- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
 - (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated); references to company include corporation;
 - (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
 - (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
 - (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them;
 - (f) references to “Government” and “Government Representative” shall include their respective assigns, successors-in-title, and persons deriving title under them, regardless of whether or not any of these persons are mentioned in the relevant provisions;
 - (g) references to a “Paragraph” in the Terms of Tender are to a paragraph in the Terms of Tender; references to a “Clause” in the Conditions of Contract are to a clause of the Conditions of Contract; references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
 - (h) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
 - (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
 - (j) a time of a day shall be construed as a reference to Hong Kong time;
 - (k) references to “normal business hours” mean 0900 to 1800 hours;
 - (l) references to a day mean a calendar day;
 - (m) references to a month mean a calendar month;

- (n) any negative obligation imposed on any party shall be construed as if it was also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it was also an obligation to procure that the act or thing in question be done;
 - (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
 - (p) words importing the whole shall be treated as including a reference to any part of the whole;
 - (q) the expressions “include” and “including” shall be construed without limitation to the words following;
 - (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
 - (s) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
 - (t) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
 - (u) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong). A reference to a public officer shall include a reference of any person for the time being lawfully discharging the functions of that office, or any part of such functions, and any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being.
3. Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or the Government Representative or any public officer.
 4. All rights and powers of the Government under the Contract may be exercised by the Government Representative for the Government. All claims of the Government may be enforced by the Government Representative for the Government.
 5. Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.
 6. References to **Contract Schedules 1 and 2** or any plan or proposal contained therein shall mean such Contract Schedule or such plan or proposal in the final form as approved by the Government before or after the award of the Contract.

PART 1
TERMS OF TENDER

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1. Invitation to Tender

- 1.1 Tenders are invited from Tenderers for the operation of the Business for a Contract Period of thirty-six (36) months, inclusive of the Free Decoration Period subject to and in accordance with the terms and conditions as set out in the Contract.
- 1.2 This tender exercise is not covered by the Agreement on Government Procurement of the World Trade Organization.

2. Site Visit and Briefing Session

- 2.1 (a) LCSD will arrange a site visit to Ko Shan Theatre on a date and time to be set by the Government. Potential Tenderers may attend the site visit during the appointed visit time. Tenderers are strongly advised to visit the Licence Area before submitting the tenders and the successful Tenderer shall accept the Licence Area in the state and condition in which it is at the date on which the possession is given (i.e. on the first date of the Contract Period).
- (b) Tenderers are invited to the following briefing session (conducted in Cantonese) on this Invitation to Tender –

Date – **6 February 2020 (Thursday)**

Time – **3:00 pm**

Venue – **Rehearsal Room (1), 1/F, Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon**

- 2.2 Tenderers who wish to attend the site visit and / or briefing session are invited to nominate representatives and send the completed **Appendix 7** hereto by fax to 2365 0295 on or before 5:00 pm of 5 February 2020 (Wednesday).

3. Tender Preparation

- 3.1 All tenders shall be completed in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for tender evaluation.
- 3.2 Tenderers shall prepare and submit a technical proposal and a price proposal as follows –

TECHNICAL PROPOSAL

- 3.3 The technical proposal shall, without any indication of the prices, contain the following together with any documentary proof and other information as therein required for tender evaluation –
 - (a) Offer to be Bound as set out in Part II of **Tender Form**;
 - (b) Tenderer's Profile in the form as set out in **Appendix 1** hereto;
 - (c) Technical Proposal in the form as set out in **Appendix 2**;

- (d) Form of Security Deposit Election in the form as set out in **Appendix 5** hereto;
- (e) Certificate of Incorporation and (where applicable) Certificate of Change of Name of the Tenderer;
- (f) Business Registration Certificate of the Tenderer (if any) valid as at the Tender Closing Date; and
- (g) A board resolution showing that the authorised person(s) who signed the Offer to be Bound has / have the authority to sign it for and on behalf of the Tenderer.

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

“Technical Submission – Tender for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre (Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I)” (Tender Label (2) provided).

PRICE PROPOSAL

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

“Price Submission – Tender for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre (Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I)” (Tender Label (1) provided).

- 3.11 Figures shall not be altered or erased; any alteration shall be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments shall be initialed by the Tenderer in ink.
- 3.12 Any counterproposal on any aspect of Part 1 – Terms of Tender or Part 2 – Conditions of Contract may, at the option of the Government, render a Tender not to be considered.
- 3.13 The Government reserves the right to disqualify a Tenderer if –
- (a) false, inaccurate or incorrect information is given in the Tender;
 - (b) complete information (including descriptive literature, catalogues and any other document required under any provision of the Tender Documents) is not given with the Tender; or
 - (c) any particulars or data requested for in the Invitation to Tender is not furnished in full in the Tender.
- 3.14 In the event of any calculation error on the part of a Tenderer, the Government reserves the right to seek clarification from such Tenderer and may bind the Tenderer(s) to the offers made in the Tender or as corrected. The scoring basis will be one that, in the opinion of the Tender Assessment Panel, best serve the interests of the Government.

4. Tender Submission

- 4.1 A Tender shall include both the technical proposal and the price proposal prepared in **THREE (3)** identical sets in accordance with **Paragraph 3** above and shall place the same in two separate sealed plain envelopes (which shall not bear any distinguishing matter, mark or advertisement to indicate the identity of the Tenderer).
- 4.2 Tenderers must note that a conforming tender must contain all the following documents and / or information and that failure to complete or submit any of the following before Tender Closing Date **will render its tender not to be considered further** : –
- (a) Part II of Tender Form – Offer to be Bound duly completed and signed;
 - (b) Appendix 1 – Tenderer’s Profile;
 - (c) Appendix 2 – Technical Proposal; and
 - (d) Appendix 3 – Price Proposal.
- 4.3 Part II of Tender Form “Offer to be Bound” shall be duly signed by
- (1) where the Tenderer is a sole proprietorship, the Tenderer;
 - (2) where the Tenderer is a partnership, a partner of the Tenderer; or
 - (3) where the Tenderer is a body corporate, one or more persons who are duly authorised by the Tenderer to sign and submit the Tender for and on behalf of the Tenderer.

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

- 4.4 In the event of any discrepancy between the softcopy and the hard copy of any tender submission, unless the Government wishes to seek clarification, the original hard copy will prevail.
- 4.5 All tenders, bearing the **Tender Label (3)** as provided, must be addressed to the Chairman, Tender Opening Committee, Government Logistics Department and deposited in the Government Logistics Department Tender Box located on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong or at any other location as directed and announced by the Government. Tenders by e-mail or by facsimile will NOT be considered.
- 4.6 The Technical Proposal and the Price Proposal submitted by the Operator will, subject to any modification as may be agreed with the Government, be incorporated into and form part of the Contract.

5. Tender Closing Date

- 5.1 All tenders MUST be submitted on or before the Tender Closing Date. Late tenders will NOT be considered.
- 5.2 In case of a Black Rainstorm Warning Signal or Tropical Cyclone Warning Signal No. 8 or above is hoisted, or “extreme conditions after super typhoons” announced by the Government is in force at any time between 9:00 am and 12:00 noon (Hong Kong time) on the Tender Closing Date, the closing time of this tender will be extended to 12:00 noon (Hong Kong time) on the first working day after the Black Rainstorm Warning Signal has ceased to be in effect or Tropical Cyclone Warning Signal No. 8 or above is cancelled or lowered.

6. Tenders to Remain Open

- 6.1 All Tenders must remain valid and open for acceptance on these terms for a period of one hundred and eighty (180) days from the Tender Closing Date (“Tender Validity Period”).
- 6.2 Without prejudice to other rights and claims of the Government, if a tender is withdrawn before the expiry of the period referred to in **Paragraph 6.1** above, the Government will take notice of such withdrawal, and this may prejudice the Tenderer’s future standing as a Government service provider.

7. Tender Evaluation

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

8. Tenderers’ Responses to Government’s Enquiries

In the event that the Government determines that –

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

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the missing document or information. The Tenderer concerned shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A 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. Without prejudice to the foregoing, any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government will be ignored for the purposes of the evaluation or will entitle (but not oblige) the Government to disqualify the Tenderer concerned. 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.

9. **Offer to be Binding**

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

10. **Award of Contract**

10.1 The successful Tenderer will within the Tender Validity Period receive a letter of conditional acceptance (“Letter of Conditional Acceptance”), by fax or by post, from the Government notifying conditional acceptance of its tender subject to its punctual performance of the following –

- (a) submission of the Security Deposit as referred to in **Paragraph 12** below;
- (b) the Electricity Deposit as required under **Clause 4.3** of the **Contract Schedule 6 – Covenants in respect of Use of the Licence Area**; and
- (c) any other condition as the Government may specify in the Letter of Conditional Acceptance.

10.2 The Letter of Conditional Acceptance will lapse and be of no effect where the Tenderer fails to fulfil any of the conditions specified above.

10.3 Upon satisfactory completion of the conditions specified in **Paragraph 10.1** above, the Government will enter into the Contract with the successful Tenderer by signing the Articles of Agreement, whereupon a legally binding Contract will be constituted between the Government and the successful Tenderer.

10.4 Tenderers who do not receive any notification within the Tender Validity Period may assume that their tenders are not accepted.

11. **Savings**

11.1 The Government is not obliged to accept the Tender with the highest combined score or any Tender.

11.2 The Government reserves the right to negotiate with any Tenderer the terms of its Tender.

12. Security Deposit

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

13. Cancellation of Tender

The Government reserves the right to cancel this Invitation to Tender and the Government is not bound to give any reasons therefor.

14. Cost of Tender Preparation

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

15. Addendum

The Government may issue addendum to the terms and conditions set out in the Tender Documents before the Tender Closing Date. If any addendum is issued after the Tender Closing Date, Tenderers will be asked to confirm compliance with the addendum, failing which their Tenders may be disqualified.

16. Performance Monitoring

Tenderers are advised that should they be awarded the Contract, their subsequent performance will be monitored and may be taken into account when the Government evaluates any tenders or quotations that the successful Tenderer may submit in the future. A Tender will be rejected if at any time before the Tender Closing Date the Tenderer is under suspension from tendering for Government tenders.

17. Documents of Tenderers

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

18. Consent to Disclose

18.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer, particulars of the Business to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer, and the Monthly Licence Fee.

- 18.2 Nothing herein shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified herein) if the disclosure is made under any one of the following circumstances –
- (a) the disclosure of any information to any public officer or public body (as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong)) or any other person employed, used or engaged by the Government (including advisers and consultants);
 - (b) the disclosure of any information already known to the recipient;
 - (c) the disclosure of any information which is public knowledge;
 - (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction; or
 - (e) without prejudice to the power of the Government under **Paragraph 18.1**, to the extent the information relates to a Tenderer, with the prior consent of the Tenderer.

19. Personal Data Provided

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

20. Warranty against Bribery

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

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

21. Warranty against Collusion

21.1 By submitting a Tender, the Tenderer is regarded to have represented and warranted to the Government that in relation to the Invitation to Tender –

- (a) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its Tender;
- (b) it has not fixed and will not fix the amount of any price submitted in its Tender by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

21.2 In the event that a Tenderer is in breach of any of the representations and / or warranties in **Paragraph 21.1**, the Government will be entitled to, without compensation to any person or liability on the part of the Government –

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

21.3 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 and / or warranties in **Paragraph 21.1**.

21.4 A breach by a Tenderer of any of the representations and / or warranties in **Paragraph 21.1** may prejudice its future standing as a Government contractor or service provider.

21.5 **Paragraph 21.1** has no application to a Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.

21.6 The rights of the Government under **Paragraphs 21.2 to 21.4** are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

22. Enquiries

- 22.1 Any enquiries concerning the submission of tenders prior to the Tender Closing Date can be directed to the Manager (Ko Shan Theatre) Building and License Management, Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon or fax to facsimile number 2264 2872.
- 22.2 After lodging their Tenders with the Government, Tenderers shall not attempt to initiate any contact, whether direct or indirect, with the Government on their Tenders. The Government shall have the sole right to initiate any such further contact and all such contacts, and any reply of the Tenderer thereto shall normally be in writing.
- 22.3 Unless otherwise expressly stated by the Government, no statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Tenderer or Tenderer shall be deemed to negate, waive or otherwise limit any of the terms or conditions as set out in the Tender Documents.

23. Disclaimer

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

24. Complaints about Tendering Process or Contract Award

The tendering exercise is subject to internal monitoring to ensure that the process is proper and fair. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Director of Leisure and Cultural Services who will personally examine the complaint and refer it to the approving authority / relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

PART 1
APPENDICES TO TERMS OF TENDER

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APPENDICES TO TERMS OF TENDER

APPENDIX 1

Tenderer’s Profile

(To be inserted into the “Technical Submission” envelope)

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

The Tenderer is required to provide the following information:

1. (a) Name of Tenderer: _____ (in English)
_____ (in Chinese)

Registered address: _____

Telephone number: _____

Fax number: _____ E-mail address: _____

(b) Length of catering business experience: _____

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

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer or Authorised Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

* Delete as appropriate

APPENDIX 1

Tenderer’s Profile

(To be inserted into the “Technical Submission” envelope)

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

(e) where the Tenderer is a limited company incorporated under the laws of Hong Kong, its Memorandum (if any) and Articles of Association, a Certificate of Incorporation, Certificate of Change of Name (if any), and latest annual return filed with the Companies Registry, and all filings with the Companies Registry subsequent to such annual return, or equivalent documents where the Tenderer is not a limited company incorporated under the laws of Hong Kong:
 (Please specify document copy attached)

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

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

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

2. Present Business : _____

(*Please use separate sheet if required)

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* Delete as appropriate

APPENDIX 1
Tenderer's Profile
(To be inserted into the "Technical Submission" envelope)
(Information provided can be written in English, Chinese or both)

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

(a) Year of Establishment : _____

(i) Ownership : _____

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

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

Name : _____

Telephone number : _____

Fax number : _____ Email address : _____

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

Signature of Tenderer or Authorised Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 2
Technical Proposal
(To be inserted into the “Technical Submission” envelope)
(The list can be written in English or Chinese or both)

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

APPENDIX 2
Technical Proposal
(To be inserted into the “Technical Submission” envelope)
 (The list can be written in English or Chinese or both)

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

- (a) The Menus, Service Packages, Marketing and Customer Service Plan shall cover the following items:
- (i) a list of the major types of cuisine and regular and special festive menus including the proposed lists of foods, drinks and beverages including the signature dishes / beverages;
 - (ii) details of the proposed service packages for the events including corporate events (e.g. a boardroom luncheon, a conference refreshment, a farewell party, a company function, etc.);
 - (iii) details of the marketing strategies to promote the patronages of the Chinese restaurant and the coffee corner (e.g. advertising, customer outreaching programmes on traditional and internet social platforms);
 - (iv) details of other activities which will support the promotion of the programmes / activities of the Ko Shan Theatre (e.g. displaying posters and pamphlets at the prominent locations of the catering outlets, free Internet access available for use by patrons, etc.);
 - (v) details of the branding concept (e.g. an overview of marketing and communication methods to create a special brand identity) and clientele philosophy (e.g. the identification of target customer segment and formulation of various strategies to reach the target group); and
 - (vi) details of the customer services initiatives (e.g. membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Ko Shan Theatre and encouraging repeated visits of the customers.
- (b) Tenderers may also include other information as appropriate to facilitate consideration of their offer by the Government.

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 2
Technical Proposal
(To be inserted into the “Technical Submission” envelope)
 (The list can be written in English or Chinese or both)

Note :

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 2
Technical Proposal
(To be inserted into the “Technical Submission” envelope)
 (The list can be written in English or Chinese or both)

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

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

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 2
Technical Proposal
(To be inserted into the “Technical Submission” envelope)
 (The list can be written in English or Chinese or both)

4. Innovative suggestions (Maximum 20 marks)

- (a) Please list out any proposed innovative suggestions which can bring about positive values / benefits to the Government or public at large for promoting arts and culture.
- (b) Please list out innovative suggestions which shall bring immediate benefits to the operation of the Ko Shan Theatre for promoting arts and culture and contributing to any positive values including, inter alia, the following:
- (i) Technological development
Application of new technology or innovative application of existing technology for contributing to the audience building of the Ko Shan Theatre or promotion of arts appreciation (e.g. to equip with multi-media equipment for displaying trailers of cultural activities) and the development of Smart City (e.g. to adopt mobile apps for food ordering);
- (ii) Social well-being
Fostering a caring society (e.g. to provide job opportunity / on-the-job training for elderly, youth, or people with disabilities and / or rehabilitators);
- (iii) Environment protection
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling (e.g. to adopt green tableware); and
- (iv) Local arts development
Offering special packages or initiate joint collaborations with arts organizations to explore or enrich new visitors’ experiences and possibilities with a view to extending arts and culture to more people.
- (c) Tenderers may also include other information as appropriate to facilitate consideration of their offer by the Government.

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 2
Technical Proposal
(To be inserted into the Technical Submission envelope)
 (The list can be written in English or Chinese or both)

5. Years of experience in operating catering outlet(s) (Maximum 8 marks)

Assessment will be based on the aggregate number of years of experience within the past ten (10) years immediately preceding the original Tender Closing Date in running **catering outlet(s) with seating accommodation of at least one hundred (100) numbers of seats per catering outlet** as specified in **Appendix 4**. Tenderer must state clearly in its tender its relevant years of experience.

Note:

- (i) The original Tender Closing Date will be the cut-off date for calculation of years of experience, irrespective of any extension of the Tender Closing Date that may be made pursuant to **Paragraph 5.2** of the **Terms of Tender**.
- (ii) The overlapping periods of the claimed experience will only be counted once when counting the length of cumulative years of experience. Experience obtained by a holding company or subsidiary or shareholder of the Tenderer will not be taken into account.
- (iii) If the Tenderer is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the partners will be counted.
- (iv) A Tenderer is required to submit documentary proof, such as copies of contract to substantiate its claim of experience. Failure to do so will result in the claimed experience not being taken into consideration.

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

_____ (with firm / company chop)

* *Delete as appropriate*

APPENDIX 3
Price Proposal
(To be inserted into the Price Submission envelope)

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

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

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

- (a) no money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in the individual provisions of the Contract; and
- (b) the Business shall be operated by the Contractor as principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative; and
- (c) all rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs and deposits of utilities incurred in the operation of the Business including telephone line, electricity, and necessary cleansing and servicing work for the Licence Area shall be borne by the Contractor and will not be covered by or deducted from the Monthly Licence Fee.

Monthly Licence Fee	Amount (in figure)
	HK\$ _____ per month

Note

The Monthly Licence Fee submission must be enclosed in a sealed envelope clearly marked “**Price Submission** – Tender for the Grant of Licence to Operate the Business at the Catering Premises of the Ko Shan Theatre (Tender Ref.: LCSD/CS/T/GR/00/KST/2020/1)” (**Tender Label (1)** provided).

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

APPENDIX 4
Marking Scheme for Tender Evaluation

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

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 **Paragraph 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 will not be considered further**:

- (a) A duly completed and signed Part II of Tender Form – Offer to be Bound;
- (b) Appendix 1 – Tenderer's Profile;
- (c) Appendix 2 – Technical Proposal; and
- (d) Appendix 3 – Price Proposal.

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 8, 4 and 6 are set for Assessment Criteria 1, 2 and 3 respectively, which are 25% of the maximum mark of the respective Assessment Criteria. **Tenders that do not attain any of the above said passing marks for Assessment Criteria 1, 2 and 3 will not be considered further.**

APPENDIX 4
Marking Scheme for Tender Evaluation

Assessment Criteria	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)					Marks Scored (M x S)	Passing Mark
			4	3	2	1	0		
(A) Execution Plan									
(1) Menus, Service Packages, Marketing and Customer Service Plan (See Notes 2 and 5)	32	8							8
(2) Facilities and Decoration Plan (See Notes 3 and 5)	16	4							4
(3) Hygiene Maintenance, Waste and Green Management Plan (See Notes 4 and 5)	24	6							6
(4) Innovative suggestions (See Note 6)	20	5							–
Sub-total for (A)	92								–
(B) Experience and Qualification									
(5) Years of experience in operating catering outlet(s) (See Note 7)	8	2							–
Sub-total for (B)	8								–
Total Technical Mark = (A)+(B)	100								–

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

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

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

APPENDIX 4
Marking Scheme for Tender Evaluation

Explanatory Notes for Stage 2 – Technical Assessment**Note 1 : for Assessment Criteria (1) to (5)**

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

For Assessment Criteria (1) to (5)

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

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

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

- (a) a list of the major types of cuisine and regular and special festive menus including the proposed lists of foods, drinks and beverages including the signature dishes / beverages;
- (b) details of the proposed service packages for the events including corporate events (e.g. a boardroom luncheon, a conference refreshment, a farewell party, a company function, etc.);
- (c) details of the marketing strategies to promote the patronage of the Chinese restaurant and the coffee corner (e.g. advertising, customer outreaching programmes on traditional and internet social platforms);
- (d) details of other activities which will support the promotion of the programmes / activities of the Ko Shan Theatre (e.g. displaying posters and pamphlets at the prominent locations of the catering outlets, free Internet access available for use by patrons, etc.);
- (e) details of the branding concept (e.g. an overview of marketing and communication methods to create a special brand identity) and clientele philosophy (e.g. the identification of target customer segment and formulation of various strategies to reach the target group); and
- (f) details of the customer services initiatives (e.g. membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Ko Shan Theatre and encouraging repeated visits of the customers.

APPENDIX 4
Marking Scheme for Tender Evaluation

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

The Facilities and Decoration Plan shall cover the following items:

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

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

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

- (a) guidelines to staff on cleansing and food hygiene in their handling, safety, and on green management to promote environmental protection in respect of the service area;
- (b) guidelines to staff on cleansing and food hygiene in their handling, safety, and on green management to promote environmental protection and to prevent pollution from greasy fume, wastewater, waste and noise in respect of the kitchen area;
- (c) details of the monitoring system to ensure the staff's compliance with the proposed guidelines and performance standards on hygiene maintenance, waste and green management; and
- (d) details of training / refresher programmes for staff on hygiene maintenance, waste and green management.

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

- (a) Standard scores will be given to Assessment Criterion (1) in accordance with the following five-grade approach –
 - 4 – The proposed plan is **practical** with **detailed information** on **all six** items of the respective plan as required in Note 2 above.
 - 3 – The proposed plan is **practical** with **detailed information** on **any five or four** items and brief information covering the remaining item(s) of the respective plan as required in Note 2 above.

APPENDIX 4
Marking Scheme for Tender Evaluation

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

APPENDIX 4
Marking Scheme for Tender Evaluation

Note 6: for Assessment Criterion (4) – Innovative suggestions

- (a) Marks will be given if the proposed innovative suggestions can bring about positive values / benefits to the Government or public at large for promoting arts and culture.
- (b) Innovative suggestions shall bring immediate benefits to the operation of the Ko Shan Theatre for promoting arts and culture and contributing to any positive values including, inter alia, but not limited to the following –
- (i) **Technological development**
Application of new technology or innovative application of existing technology for contributing to the audience building of the Ko Shan Theatre or promotion of arts appreciation (e.g. to equip with multi-media equipment for displaying trailers of cultural activities) and the development of Smart City (e.g. to adopt mobile apps for food ordering);
 - (ii) **Social well-being**
Fostering a caring society (e.g. to provide job opportunity / on-the-job training for elderly, youth, or people with disabilities and/or rehabilitators);
 - (iii) **Environmental protection**
Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling (e.g. to adopt green tableware); and
 - (iv) **Local arts development**
Offering special packages or initiate joint collaborations with arts organisations to explore or enrich new visitors' experiences and possibilities with a view to extending arts and culture to more people.
- (c) Standard scores will be given in accordance with the following rule:
- 4 – **Four (4) practicable** innovative suggestions with details for implementation are proposed.
 - 3 – **Three (3) practicable** innovative suggestions with details for implementation are proposed.
 - 2 – **Two (2) practicable** innovative suggestions with details for implementation are proposed.
 - 1 – **One (1) practicable** innovative suggestion with details for implementation is proposed.
 - 0 – **No** practicable innovative suggestion is proposed.
- (d) Tenderers shall highlight the proposed innovative suggestions and explain clearly the benefits / positive values under which items as required in (b) above that their proposed innovative suggestions can bring about in their submissions to facilitate tender evaluation.

APPENDIX 4
Marking Scheme for Tender Evaluation

- (e) 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.
- (f) All practicable innovative suggestions accepted by the Government shall form part of the Agreement.

Note 7: for Assessment Criterion (5) – Years of experience in operating catering outlet(s)

- (a) Assessment will be based on the aggregate number of years of experience in operating catering outlet(s) each with a seating capacity not less than one hundred (100) persons in the past ten (10) years immediately preceding the original Tender Closing Date.
- (b) Standard scores will be given to Assessment Criterion (5) in accordance with the following five-grade approach –
- 4 – An aggregate of five (5) years' experience or more.
 - 3 – An aggregate of four (4) to less than five (5) years' experience.
 - 2 – An aggregate of three (3) to less than four (4) years' experience.
 - 1 – An aggregate of two (2) to less than three (3) years' experience.
 - 0 – An aggregate of less than two (2) years' experience,
or
failing to produce documentary proof to support its claim of experience.
- (c) A 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.
- (d) Catering outlet(s) refer to licensed restaurant(s), e.g. general restaurant(s) and light refreshment restaurant(s).
- (e) Local and / or outside Hong Kong experience will be counted.

APPENDIX 4
Marking Scheme for Tender Evaluation

- (f) 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 (Chapter 622 of the Laws of Hong Kong).
- (g) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the partners, will be counted.
- (h) 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.
- (i) 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.
- (j) For the purpose of tender assessment, the relevant experience in operating catering outlet(s) could be gained under the same catering outlet or different catering outlets. However, a Tenderer's experience under different catering outlets will not be double-counted for those overlapping periods. A Tenderer's experience under different catering outlets with overlapping periods is to be counted in accordance with the following examples:

Example:

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

APPENDIX 4
Marking Scheme for Tender Evaluation

Stage 3 – Price Assessment

5. Failure to submit a Price Proposal in the form of **Appendix 3** with price information duly completed will render a tender invalid and will not be considered further. The price assessment is based on the tendered Monthly Licence Fee which has passed Stage 2 assessment.
6. A maximum weighted price score of 50 will be allocated to the conforming tender with the highest fixed monthly fee, while the weighted price score for other conforming tenders will be calculated by the following formulae –

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

[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 –
- Weighted Technical Score + Weighted Price Score
8. Normally, the tender with the highest combined score will be recommended for acceptance 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.

APPENDIX 5**Form of Security Deposit Election**
(To be inserted into the “Technical Submission” envelope
without any indication on the Monthly Licence Fee)

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

To : The Chairman
Tender Opening Committee, Government Logistics Department

If my / our Tender is accepted, I / we shall elect, pursuant to **Paragraph 12** of the **Terms of Tender**, to deposit with the Government of the Hong Kong Special Administrative Region, not later than seven (7) working days after the notification of award of Contract or at such time as shall be directed by the Government, a sum equivalent to a maximum of two (2) months' tendered Monthly Licence Fee, as security for the due and faithful performance of the Contract –

- * (a) In cash, or
- * (b) In the form of a Banker's Guarantee approved and accepted by the Government and issued by a bank that holds a valid banking license under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) in the form set out in **Appendix 6**.

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

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

** Delete as appropriate*

APPENDIX 6
Form of Banker's Guarantee

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

IN FAVOUR OF

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

WHEREAS

- (A) By a contract (“Contract”) to be made
between
of (“Contractor”) of the
one part and the Government of the Hong Kong Special Administrative Region of the
People’s Republic of China of the other part (designated as Leisure and Cultural Services
Department Contract No. of), the Contractor agrees and
undertakes to operate business at the Licence Area in the Ko Shan Theatre upon the terms
and conditions of the Contract.
- (B) It is a condition precedent to the Government agreeing to grant the Contract that, inter
alia, the Contractor shall pay to the Government the Security Deposit. The Guarantor
executes this Guarantee in favour of the Government.

THIS GUARANTEE EXECUTED AS A DEED WITNESSES as follows:

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

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

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

arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;

- (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligations by the Government or the Government Representative.
- (6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling three (3) months after the expiry or early termination of the Contract Period; or
 - (b) upon early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract or there is any outstanding right or claim of the Government or the Government Representative, the date on which all such obligations and liabilities, right and claim have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing which confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

whichever is the applicable.

- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government or the Government Representative may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government or the Government Representative without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government or the Government Representative specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, to the Leisure and Cultural Services Department marked for the attention of the Manager (Ko Shan Theatre) Building and License Management, Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon, facsimile number (+852) 2264 2872;
 - (b) upon the Guarantor, at _____, marked for the attention of _____, facsimile number _____.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or facsimile addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

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

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

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

In the presence of:

Signature of witness: _____

Name of witness: _____

Title of witness: _____

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

[Name and Title]) _____

In the presence of:

Signature of witness: _____

Name of witness: _____

Title of witness: _____

* *Delete as appropriate.*

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

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

APPENDIX 7

To: Assistant Manager (Ko Shan Theatre) License Management
(Fax: 2365 0295)

ENROLMENT FORM FOR THE TENDER BRIEFING SESSION ON
6 February 2020 (Thursday) at 3:00 pm at Rehearsal Room (1), Ko Shan Theatre

**Tender for the Grant of Licence to Operate the Business
at the Catering Premises of the Ko Shan Theatre**

(Please return this form by fax on or before 5 February 2020 5:00 pm)

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

Name and title of representatives attending the Briefing Session (maximum of 2)

- 1. _____
- 2. _____

Details of the Organisation / Company:

Contact person : _____
Post : _____
Address : _____

Telephone number : _____
Fax number : _____
E-mail address : _____

Name of Tenderer : _____ Date : _____

Name of Authorised Representative : _____

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

(with firm / company chop)

* Delete as appropriate

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PART 2
CONDITIONS OF CONTRACT

1. The Licence

- 1.1 The Government grants the Contractor, during the Contract Period, the non-exclusive, non-transferable, non-assignable right and licence to access, use and occupy the Licence Area for the operation of the Business in accordance with the Contract.
- 1.2 The Contractor acknowledges that the Government, as the owner of the Licence Area, has all rights and powers to access, use and occupy the Licence Area in common with the Contractor for any purpose whatsoever.
- 1.3 For the avoidance of doubt, neither the Licence nor any of the provisions of the Contract confers on the Contractor any tenancy, lease or any other right, estate or interest in the Licence Area.

2. Contract Period

- 2.1 Subject to any early termination or extension pursuant to any provisions of the Contract, the Contract Period shall be for a term of thirty-six (36) months (which includes the Free Decoration Period) from **16 May 2020** or such later date as may be determined by the Government Representative in consultation with the Contractor provided always that such later date shall in no event fall after 16 August 2020.
- 2.2 Notwithstanding any other provisions, where the accumulated number of days of closure of the entire Licence Area under **Clause 12** exceeds thirty (30) days, the Contract Period will be extended by the same number of days of closure.

3. The Obligation to Carry on the Business

- 3.1 The Contractor shall operate the Business in accordance with stipulations in the Technical Schedule subject to all terms and conditions of the Contract.
- 3.2 In addition to operating the Business, the Contractor shall, from time to time during the Contract Period, provide Catering Services at such time and in such manner as may be required by the Government.
- 3.3 The Contractor shall operate the Business between 9:00 am and 11:00 pm daily throughout the year provided that the Contractor may suspend the operation of the Business or any part thereof for such periods as it considers reasonable if in the opinion of the Contractor such suspension of operation is necessary to ensure the safety of any person (including but not limited to members of the public, employees or agents of the Contractor).
- 3.4 The Contractor shall start the Business forthwith upon the earlier of completion of fitting out works or the expiry of the Free Decoration Period. The Contractor shall as soon as practicable advise the Government Representative of the date of commencement of the Business.
- 3.5 The Contractor may only operate the Business in the Licence Area.

- 3.6 The Contractor shall use the Licence Area only for the purpose of operating the Business and shall not use or cause, suffer or permit to be used the Licence Area or any part thereof for any other purposes save with the written consent of the Government.
- 3.7 The name of restaurant / coffer corner operated under the Business shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government may consider reasonable to prescribe.

4. Payment of Monthly Licence Fee

- 4.1 Subject to **Clause 4.3**, in consideration of the Government's grant of the Licence, the Contractor shall pay to the Government in advance on or before the first day of each calendar month the Monthly Licence Fee in respect of each month during the Contract Period, without any deduction or set-off whatsoever provided that no such Fee shall be payable for any part of the Free Decoration Period during which no Business is being conducted by the Contractor.
- 4.2 Notwithstanding anything to the contrary herein, the Monthly Licence Fee shall be immediately payable during the Free Decoration Period on a pro-rata basis upon the Contractor's commencement of operation of the Business, whether in whole or in part.
- 4.3 In the event that:
- (a) the second month of the Contract Period starts otherwise than on the first day of a calendar month;
 - (b) the last month of the Contract Period ends otherwise than on the last day of a calendar month; or
 - (c) there is any temporary closure of the entire Licence Area under **Clause 12** for consecutive seven (7) days or more

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

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

where

“A” is the Monthly Licence Fee; and

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

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

- 4.4 The Contractor shall perform, comply with and observe all provisions of the Contract at its own costs and expenses.
- 4.5 If the Contractor fails to pay the Monthly Licence Fee in accordance with **Clause 4.1**, the Contractor shall pay a surcharge on the Monthly Licence Fee calculated at a rate equivalent to the average of the best lending rates of the three note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made.

5. Non-exclusive Right of the Contractor

Nothing in this Contract shall preclude the Government from authorising any other person to supply any food or drink or other catering or hosting services at the Venue other than the Licence Area.

6. Security Deposit

- 6.1 Prior to the commencement of this Contract, the Contractor has paid to the Government the Security Deposit as security for the due and proper performance of the Contract.
- 6.2 The Security Deposit, if in the form of cash, shall be retained by the Government, or if in the form of a bank guarantee, shall come into effect on the date of commencement of the Contract Period and remain in force until the date specified in (a) or (b) below, whichever is applicable:
- (a) the date falling three (3) months after the expiry or early termination of the Contract Period; or
 - (b) if at the time of early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding claim and right of the Government, the date on which all such obligations and liabilities have actually been carried out, completed and discharged or such claim or right having been wholly satisfied or exercised (as confirmed by the Government in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

The aforesaid period (as the case may be) is hereinafter referred to as the “Guarantee Period”.

- 6.3 Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash and if any is remaining) be refunded to the Contractor without interest; or, if in the form of a bank guarantee, be discharged or released.

- 6.4 The Government shall have the right to deduct from time to time from the Security Deposit in cash or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Security Deposit (whether in cash or in the form of the bank guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 6.5 If any deduction is made by the Government from the Security Deposit in cash or a call is made on the bank guarantee during the Guarantee Period, the Contractor shall, within fourteen (14) days on demand in writing by the Government, deposit a further sum or provide a further bank guarantee in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue of and form part of the Security Deposit. If the Contractor is required to provide a further banker's guarantee under this **Clause 6.5**, the further banker's guarantee must comply with the requirements in **Paragraph 12** of the **Terms of Tender**, and shall come into operation on the date of its execution and remain in force until the date specified in **Clause 6.2(a) or (b)**, whichever is applicable.
- 6.6 In the event that this Contract is early terminated under **Clause 17**, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government upon such termination without prejudice to the Government's claims and demands under the Contract which cannot be satisfied by the Security Deposit.

7. Restriction on Assignment and Sub-contracting

- 7.1 Save with the prior written consent of the Government, the Contractor shall not, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract (including without limitation the parting possession of the Licence Area in any manner whatsoever or the sub-contracting of the operation of the Business or any part thereof). The performance of the Contract by the Contractor shall be personal to it.
- 7.2 The Contractor shall remain fully responsible and liable for all of its obligations under the Contract, and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any such obligations. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees, officers and agents of any such sub-contractor as if they were its own.

8. Licence, Permit and / or Certificate

- 8.1 The Contract shall comply with all applicable laws and regulations in the operation of the Business and shall obtain and maintain throughout the Contract Period all licence, permit, certificate, waiver or exemption which are required for the operation of the Business under all applicable laws and regulations of Hong Kong ("Requisite Permits").

- 8.2 The Contractor shall obtain a provisional licence to operate the Business under section 33C of the Food Business Regulation (Chapter 132X of the Laws of Hong Kong) (“Cap. 132X”) (“Provisional Licence”) before commencement of the Business.
- 8.3 After having obtained such Provisional Licence, the Contractor shall:
- (a) obtain a full licence under section 31 of Cap 132X to operate that Business before the first Provisional Licence expires (“Full Licence”); or
 - (b) renew the Provisional Licence once more under section 33C(4) of Cap 132X and then obtain a Full Licence before the renewed Provisional Licence expires.

In the event that the Contractor fails to do so, the Government shall be at liberty to terminate the Contract under **Clause 17** or suspend the Business under **Clause 11.1**.

- 8.4 Notwithstanding **Clauses 8.2** and **8.3**, if the Contractor so chooses, it may apply directly for a Full Licence instead of a Provisional Licence before commencement of the Business. In the event that the Contractor opts to apply for a Full Licence instead of a Provisional Licence but fails to obtain such Full Licence before the commencement of the Business, the Government shall be at liberty to terminate the Contract under **Clause 17** or suspend the Business under **Clause 11.1**.
- 8.5 In addition to the Provisional Licence and / or Full Licence, the Contractor shall apply for and obtain all other Requisite Permits including without limitation the necessary licences or permits as required under the Dutiable Commodities Ordinance (Chapter 109 of the Laws of Hong Kong) for the sale of alcoholic liquor, if permission for sale of such has been given by the Government Representative.
- 8.6 The Contractor shall ensure that all Requisite Permits remain valid and in force throughout the Contract Period and the Contractor shall comply with all conditions and requirements stated therein. A Provisional Licence and / or Full Licence to be obtained under the aforementioned provisions must be for the kind of food business which legally entitles the Contractor to operate the Business.
- 8.7 The Contractor shall produce copies of all Requisite Permits, including but not limited to Business Registration Certificate, from time to time upon demand by the Government Representative.

9. Warranties, Representations and Undertakings

- 9.1 The Contractor warrants, represents and undertakes to the Government that: –
- (a) it shall comply with all reasonable instructions and directions on all matters relating to the Business and the Catering Services as the Government Representative may from time to time issue to the Contractor;
 - (b) it has and shall ensure that its officers, employees, agents, sub-contractors have the necessary skill, experience and expertise to operate the Business and provide the Catering Services in accordance with the stipulations set out in the Contract;

- (c) it shall operate the Business and provide the Catering Services with all due diligence and in a proper, skilful and professional manner;
- (d) it shall, through the Government Representative, keep the Government informed of all matters relating to the Business and the Catering Services and shall answer all reasonable enquiries made by the Government Representative;
- (e) it has the full power, capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;
- (f) the entry into this Contract, the performance of the Contractor's obligations under the Contract, and the Contractor's operation of the Business will not conflict with or result in breach of:
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum (if any) and articles of association);
 - (ii) any contract or arrangement to which the Contractor is a party or by which it is bound;
 - (iii) any order, judgment or decree of any court or government agency to which the Contractor is a party or by which it is bound; or
 - (iv) any applicable laws and regulations;
- (g) it will comply with and observe all applicable laws and regulations in the operation of the Business in the Licence Area and in the performance of its obligations under this Contract, including the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong), the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong) and the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legislation pertaining to the health and safety of its own staff, the employees or agents of the Government and any other parties who may be affected by the Contractor's operation of its Business; and
- (h) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete.

10. Fitting Out

- 10.1 The Government gives and the Contractor takes possession of the Licence Area and the Government Provisions on an "as is" basis.
- 10.2 The Contractor may at its option and during the Free Decoration Period fit out the Licence Area before commencement of the Business Provided that the Contractor shall before carrying out such fitting out: –

- (a) submit for the approval of the Government plans, drawings and specifications of the fitting out works compliant with relevant stipulations in **Contract Schedule 2 – Technical Schedule**;
- (b) install proper sound insulation at the Licence Area to minimize disturbance caused by fitting out works to activities held at the Venue;
- (c) carry out in a good and proper workmanlike fashion fitting out works in accordance with the Government approved plans, drawings and specification and stipulations in **Contract Schedule 5 – Fitting-out Schedule**.

11. Suspension of the Business for Default

- 11.1 In the event that the Contractor is in breach of any term and condition of the Contract and has failed to remedy such breach within the time prescribed by the Government, the Government shall be entitled to suspend the Contractor's right to operate the Business ("Suspension for Default") by notice in writing to the Contractor for a period as specified in such notice.
- 11.2 Upon a Suspension for Default, the Contractor shall cease to operate the Business during the period of such Suspension for Default. The Contractor shall remain liable to pay the Monthly Licence Fee in respect of the period of Suspension for Default and remain liable to perform and observe all other obligations under the Contract.
- 11.3 Upon the Contractor having remedied the default to the satisfaction of the Government Representative, the Government Representative may cancel the Suspension for Default by notice in writing to the Contractor ("notice of resumption") whereupon the Contractor shall resume the Business by such date as specified in the notice of resumption. No extension to the Contract Period shall be made by reason of any Suspension for Default.

12. Government May Require Temporary Closure

- 12.1 The Government may at any time during the Contract Period require a temporary closure of the Licence Area or any part thereof by giving the Contractor prior written notice of not less than –
 - (a) one (1) month where such closure is due to building repair, modification or maintenance works;
 - (b) seven (7) days where such closure is due to any other reason save for an emergency;where upon the Contractor shall suspend its operation of the Business for such duration as may be specified.
- 12.2 Notwithstanding any other provisions herein, the Licence Area may be closed by the Government with or without prior notice as the circumstances may permit or require when such closure is, in the opinion of the Government, required for the safety of the Contractor and the general public.

13. Liability and Indemnity

- (a) None of the Government, its employees or agents shall be liable in any way for or in respect of:
- (i) any loss of or damage to any of the Contractor's property or that of its employees or agents howsoever caused whether by any act, omission, default or Negligence of the Government or any of its employees or agents or otherwise; or
 - (ii) any injury to or death of the Contractor's employees or agents save and to the extent any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- (b) Without prejudice to sub-clause (a) above, the Contractor shall indemnify the Government and keep the Government fully and effectively indemnified from and against (1) all and any claims (whether or not successful, compromised or settled), actions, proceedings, threatened, brought or instituted against the Government; and (2) all liabilities (including liability to pay compensation or damages), damages, costs, losses, charges and expenses (including all legal and other costs and expenses, on a full indemnity basis, which the Government may pay or incur in initiating or defending any claim, counter-claim, action or proceeding), which in any case arise directly or indirectly from, or in connection with, or out of, or which relate in any way to:
- (i) the negligence, recklessness or wilful misconduct of the Contractor or any of its employees or agents or its working partners;
 - (ii) the failure of the Contractor to comply with or observe any terms or conditions of this Contract;
 - (iii) any warranties or representations made by the Contractor in this Contract or from time to time to the Government during the continuance of this Contract being untrue or inaccurate;
 - (iv) failure of the Contractor or any of its employees or agents or its working partners to comply with or observe any law and regulation in the performance of the Services;
 - (v) any act, omission, neglect, recklessness, wilful default or misconduct of the Contractor or any of its employees or agents or its working partners in the performance of the Services;
 - (vi) any loss, damage, injury or death referred to in sub-clause (a) above save and except injury or death caused by the Negligence of the Government or any of its employees or agents or its working partners; or
 - (vii) any injury or death of any third party, or any loss of or damage to property sustained by any third party, in consequence of any act, omission, default or negligence of the Contractor or any of its employees or agents or its working partners.

- (c) For the purposes of sub-clause (a) and sub-clause (b)(vi) above, but not otherwise “Negligence” shall have the same meaning given to it in section 2 (1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong). Each of sub-clauses (b)(i) to (b)(vii) above shall be construed independently and shall not be limited or restricted by reference to or inference from the terms of any other sub-clauses.

14. Public Liability Insurance

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

- 14.6 The Public Liability Insurance Policy shall include a cross liability clause so that it shall be treated that a separate policy has been issued to each of the Contractor and the Government.
- 14.7 The Contractor shall take out and maintain the employees' compensation insurance as required under the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong).
- 14.8 The Contractor is responsible for lodging all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage, provided that the Government shall have the right to liaise with the insurance company on any matter of such claims.
- 14.9 If the Contractor fails to effect or to keep in force the Public Liability Insurance Policy or any other insurance which it may be required to effect under the terms and conditions of the Contract, the Government may effect and keep in force any such insurance and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with **Clause 6** or may recover the same as a debt due from the Contractor.
- 14.10 The Contractor shall conform to the terms and conditions of the Public Liability Insurance Policy and Product Liability Insurance Policy, and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby these policies shall be rendered void or voidable, or which would otherwise amount to a breach of these. The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against everything stated in **Clauses 14.2(a) and (b)** which may arise from any failure of the Contractor to observe and comply with this Clause.

15. Government to Recover Cost

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

16. Set-off

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

17. Termination

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

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract or in the case of a breach capable of being remedied, the Contractor fails within fourteen (14) days (or such longer period as the Government Representative may allow) to remedy the breach following from the issue of a notice from the Government Representative requiring it to do so (such notice shall contain a warning of the Government's intention to terminate the Contract); or
- (b) if the Contractor is at any time adjudged bankrupt, or has a receiving order or orders for administration of its estate made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Chapter 6 of the Laws of Hong Kong) for the time being in force, or makes any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports to do so, or suffers any execution to be levied on its goods and assets in the Licence Area, or a petition is filed for the bankruptcy or winding up of its Business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government in writing; or
- (c) if the Contractor, being a company, passes a resolution, or the court makes an order for the liquidation of its assets, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances which have arisen entitle the court or debenture holders to appoint a receiver or manager; or
- (d) if the Contractor assigns or transfers or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government; or
- (e) if the Contractor or officer of the Contractor is convicted of any offence under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong), the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong), or an offence under the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong) for employing a person who is not lawfully employable in Hong Kong or for aiding and abetting another person to breach his condition of stay, whether or not such conviction relates to this Contract; or
- (f) any event or circumstance occurs which enables the Government to terminate the Contract under any provision of the Contract.

18. Effect of Termination or Expiry

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

- 18.2 In the event that the Contract is terminated under **Clause 17**, the Security Deposit shall be forfeited in its entirety absolutely to the Government without prejudice to the Government's other remedies and claims.
- 18.3 (a) The Contractor shall immediately deliver up vacant possession of the Licence Area in a clean and tidy condition, and return to the Government all Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government in good repair (fair wear and tear excepted) and in clean and hygienic condition. Provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government's consent, the Government may at its option require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government may specify and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government's fixtures and installations thereof by such date as specified by the Government Representative (whether to fall before or after the Termination) before delivering up the Licence Area to the Government. Alternatively, the Government may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area without any compensation to the Contractor whatsoever. For the avoidance of doubt, the Contractor shall be entitled to remove its own trade fixtures and trade equipment;
- (b) the Contractor shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at his own expense make good any damage to the Licence Area arising from such removal;
- (c) the Contractor shall vacate and shall procure the evacuation of the Licence Area and deliver up all keys and access cards to the Licence Area;
- (d) if the Contractor fails to comply with **Clause 18.3(a)** or **(b)** or **(c)**, the Government may forthwith enter the Licence Area to remove any fixtures and fittings or reinstate any alterations so installed or erected, or dispose of any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in a good repair and clean and serviceable condition. The Government reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor any fixtures and fittings so installed or erected and any chattels not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government Representative as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due from the Contractor.

19. Corrupt Gifts

If the Contractor or any employee or agent of the Contractor is found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government may terminate the Contract under **Clause 17(f)**.

20. Disclosure of Information

The Government may disclose whenever it considers appropriate or upon request (in writing or otherwise) by any third party all or any information of the Business, including but not limited to financial information relating to the Business obtained from the Contractor. Without prejudice to the generality of the foregoing, the Government may disclose such information to prospective tenderers for the operation of the Business, or any other contract.

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

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

22. Mediation

22.1 Any dispute or difference arising out of or in connection with the Contract shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then each of the parties hereto submits to the exclusive jurisdiction of the courts of Hong Kong for resolving such dispute or difference.

22.2 The Contractor shall be obliged to carry on the Business in accordance with the Contract irrespective of a notice of mediation having been served by either party or whether mediation is in progress.

23. Service of Notice

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

23.2 The Government Representative's details are as follows:

Address: Ko Shan Theatre, 77 Ko Shan Road, Hung Hom, Kowloon

Attention: Manager (Ko Shan Theatre), Building and License Management

Fax number: 2365 0295

Email address: mkstblm@lcsd.gov.hk

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

24. Waiver of Remedies

- 24.1 No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party. Nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power, or remedy shall be cumulative.
- 24.2 Acceptance of any payment by the Government shall not be deemed to operate as a waiver by the Government of any right to proceed against the Contractor in respect of any breach, non-observance or non-performance by the Contractor of any of the terms and conditions of the Contract on the Contractor's part to be observed and performed.
- 24.3 No condoning, excusing or overlooking by the Government of any default, breach, non-observance or non-performance by the Contractor of any of the obligations of the Contractor under the Contract shall operate as a waiver of the Government's right under the Contract in respect of any continuing or subsequent default, breach, non-observance or non-performance.

25. Severability

Any terms and conditions of the Contract which is declared by any court or tribunal or competent jurisdiction to be illegal, invalid or unenforceable in any respect under the applicable law shall be severed from the Contract to the maximum extent permissible by the applicable law without in any manner affecting the legality, validity or enforceability of the remaining terms and conditions of the Contract, all of which shall continue in full force and effect.

26. Entire Agreement

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

27. Amendment

- 27.1 Unless where expressly specified which confers on the Government Representative the unilateral power to make amendments, no amendment to any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by each of the Government Representative and the Contractor.
- 27.2 In addition to its other powers, the Government may at any time review the plans in **Contract Schedule 2 – Technical Schedule** even after approval by the Government. Where the Government finds on reasonable grounds that any of these plans should be revised, the Contractor shall, upon request by the Government, make such revisions to these plans to ensure compliance and observance of the Contract to the satisfaction of the Government. The Contractor shall not implement the revised plans unless and until it has obtained the Government's approval to do so. Where the Government has given approval for the revised plans, the Contractor shall implement the revised plans forthwith or on such date specified by the Government.
- 27.3 The Contractor may not initiate any revision to the plans set out in **Contract Schedule 2 – Technical Schedule** without seeking the prior written approval of the Government.

28. Further Assurance

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

29. Relationship of the Parties

- 29.1 The Contractor enters into the Contract with the Government as an independent Contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, a relationship of landlord and tenant, or a joint venture between the Government and the Contractor.
- 29.2 Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

30. Governing Law and Jurisdiction

The Contract shall be governed by and construed according to the laws of Hong Kong and, subject to **Clause 20**, the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising from or in connection with or in relation to the Contract.

31. Contracts (Rights of Third Parties) Ordinance

The parties hereby declare that nothing in the 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 (Chapter 623 of the Laws of Hong Kong).

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CONTRACT SCHEDULES

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PART 3
CONTRACT SCHEDULES

Contract Schedule 1

Price Schedule

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

PART 3
CONTRACT SCHEDULES

Contract Schedule 2

Technical Schedule

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

PART 3
CONTRACT SCHEDULES

Contract Schedule 3

General Information on Ko Shan Theatre and its Catering Premises

1. Introduction

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

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

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

2. Catering Premises at Ko Shan Theatre

- 2.1 The Catering Premises at the Ko Shan Theatre consist of one Cafeteria (serving as a Chinese Restaurant) and one Coffee Corner to provide wide range of catering services to patrons of the Venue and the general public. The locations of these facilities are in **Annex C** and **Annex D** with the locations as delineated and shaded in pink in respective annexes.
- 2.2 The standard of the catering service should be in keeping with the Venue's status as a performing venue of Cantonese Opera, Cantonese operatic songs and other art forms and geared to serve patrons comprise mainly elderly citizens and other ages. The Contractor should be able to offer reasonably priced food and drinks of a quality commensurate with the prestige of the Venue.

3. Opening Hours of the Catering Premises

- 3.1 **The opening hours of the Catering Premises, although negotiable, should be compatible with that of the Venue's opening hours which may be changed as and when required. The opening hours of the Ko Shan Theatre are from 9:00 am to 11:00 pm daily throughout the year, subject to change at Government's sole discretion.**
- 3.2 Programmes and activities will be presented at the hiring facilities including but not limited to the 1 031-seat Theatre, the 596-seat Auditorium and other ancillary facilities. The Government Representative may request the Contractor to conduct Business (may be outside the normal opening hours of the Venue) to the users, presenters, hirers, performers, audiences and participants of the programmes and activities by giving notice to the Contractor two (2) weeks in advance for such arrangement.

- 3.3 When Typhoon signal No. 8 or above is hoisted, the Venue will be closed until the Signal is cancelled or lowered. The Venue will remain closed if Typhoon Signal No. 8 is cancelled / lowered less than two (2) hours before the normal closing hours.
- 3.4 The Venue will open as usual when Amber Rainstorm Warning or Red Rainstorm Warning is issued. If Black Rainstorm Warning is issued during the Venue's opening hours, the Venue will remain open to provide shelters to the visitors and staff. If the Black Rainstorm Warning is issued before the Venue's opening hours, the Venue will be closed until the warning is cancelled less than two (2) hours before the normal closing hours.

4. **Usage Rates and Audiences**

Statistical information on the daily usage rates, number of performances and audience numbers of the Theatre at Ko Shan Theatre and the Auditorium at Ko Shan Theatre New Wing in 2016/17, 2017/18 and 2018/19 are listed below for reference.

Ko Shan Theatre (Theatre)

Year	Daily usage rate	No. of performances	Number of audiences
2016/17	100%	341	227 467
2017/18	100%	347	226 862
2018/19	100%	351	227 587

Ko Shan Theatre New Wing (Auditorium)

Year	Daily usage rate	No. of performances	Number of audiences
2016/17	100%	285	114 186
2017/18	100%	282	108 840
2018/19	100%	298	112 508

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

PART 3
CONTRACT SCHEDULES

Annex A to Contract Schedule 3

Location Map of Ko Shan Theatre and New Wing



PART 3
CONTRACT SCHEDULES

Annex B to Contract Schedule 3

Introduction of Licence Area

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

Cafeteria: A gross floor area of 265m² as delineated and shaded in pink in **Annex C (i)** and **Annex D (i)**, the portion of the Licence Area for operation of the Chinese Restaurant with a seating capacity of approximately 100 persons

Coffee Corner: A gross floor area of 20m² as delineated and shaded in pink in **Annex C (ii)** and **Annex D (ii)**

2. **Room / area to which Contractor is given access**

(a) Main Refuse Room at ground floor as shaded in green in **Annex C (ii)** and **Annex D (ii)**

(b) Balcony attached to the Cafeteria at first floor as shaded in green in **Annex C (i)** and **Annex D (i)**

3. **Room / area to which Contractor is given exclusive use**

(a) Cafeteria's function areas such as seating area, servery, kitchen, scullery, toilets, staircase and Hopper Room

(b) Storage area in Coffee Corner under the staircase leading up to the Cafeteria

(c) Central grease trap (marked as "Y" in **Annex C (ii)** and **Annex D (ii)**)

4. **Toilet Provision for Catering Premises**

Male toilet inside Cafeteria : 4 urinals, 2 cubicles and 3 wash-hand basins

Female toilet inside Cafeteria : 4 cubicles and 3 wash-hand basins

5. Provisions given by the Government for the Licence Area are shown on **Contract Schedule 4 – Government Provisions Made Available to the Contractor at the Licence Area.**

Note: The attached plans are approximate and for the purpose of identification only. The figures as to the respective areas of the Catering Premises referred to in this Schedule are approximates and subject to final measurement. The layouts of the Catering Premises in the attached plans are also approximate and subject to the final adjustment as may be shown in the final as-built plan(s) of the Catering Premises.

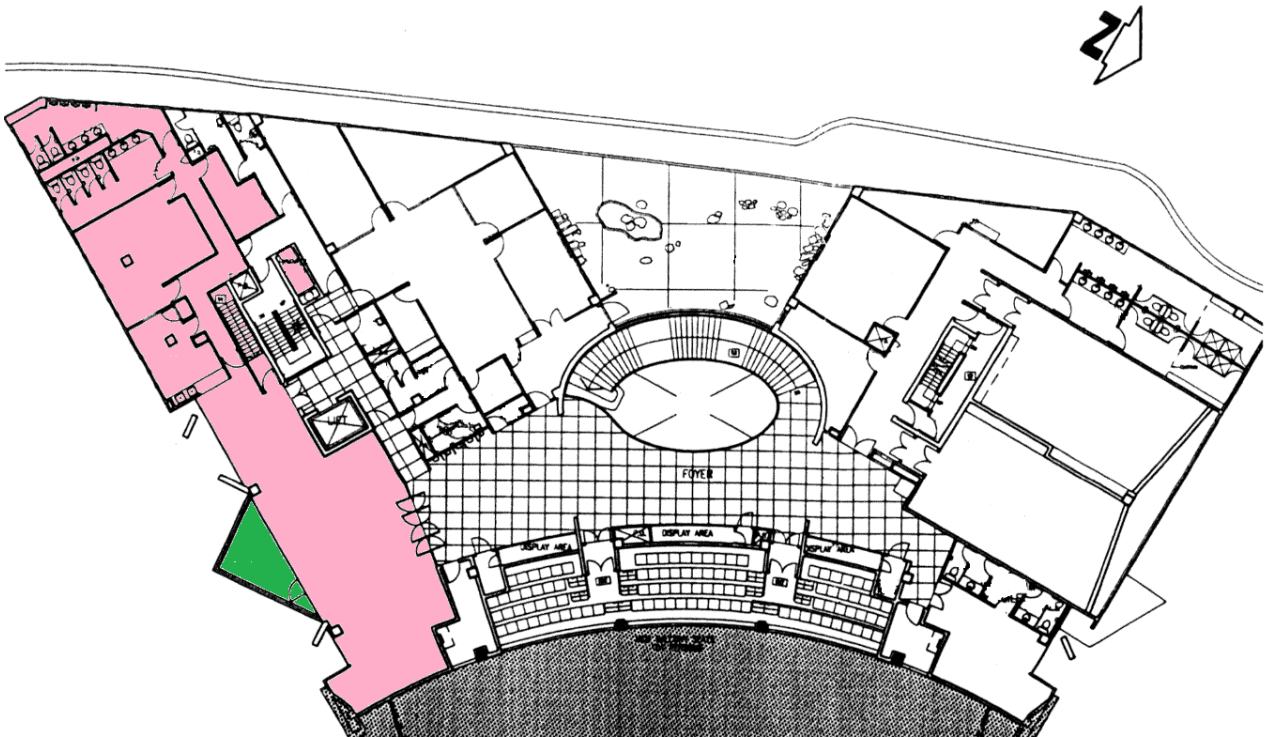
The Contractor is allowed to conduct Business for provision of other services at such other areas as the Government Representative at its absolute discretion may at any time and from time to time set aside.

PART 3
CONTRACT SCHEDULES

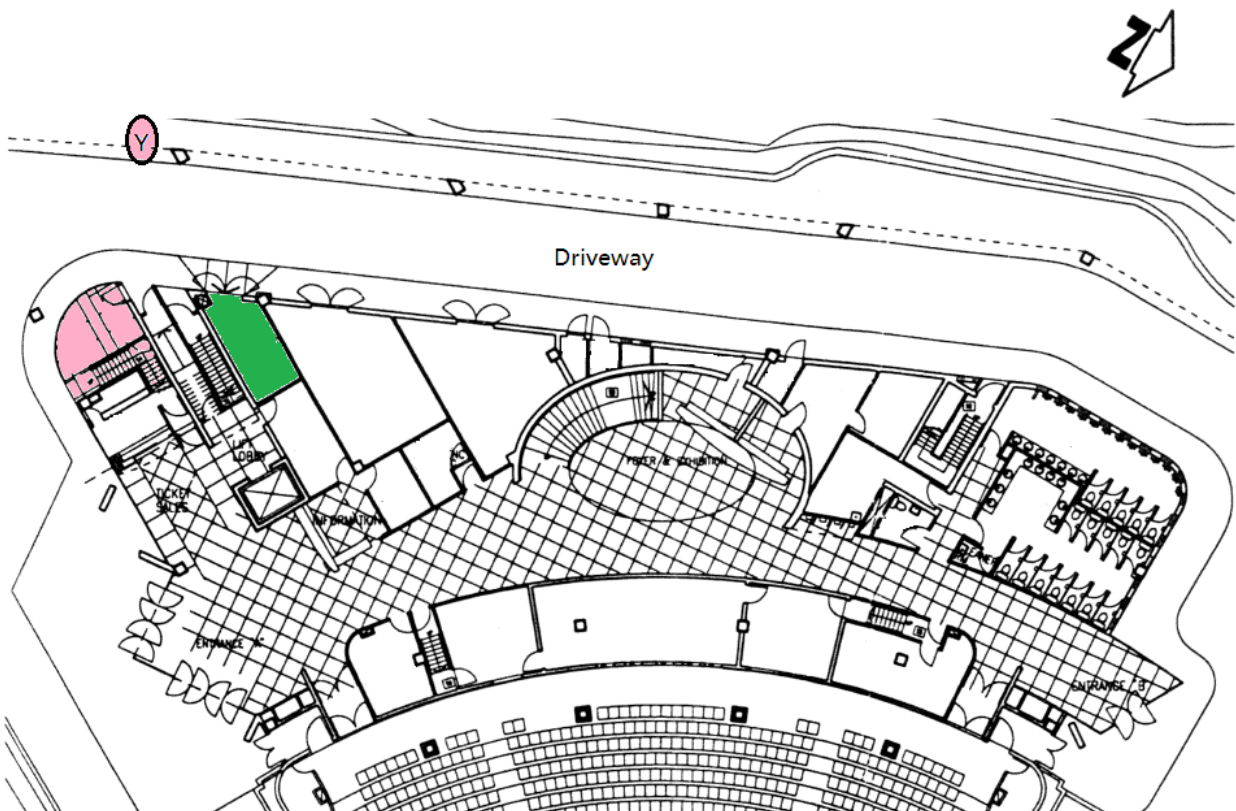
Annex C to Contract Schedule 3

Location of Licence Area

(i) First Floor



(ii) Ground Floor

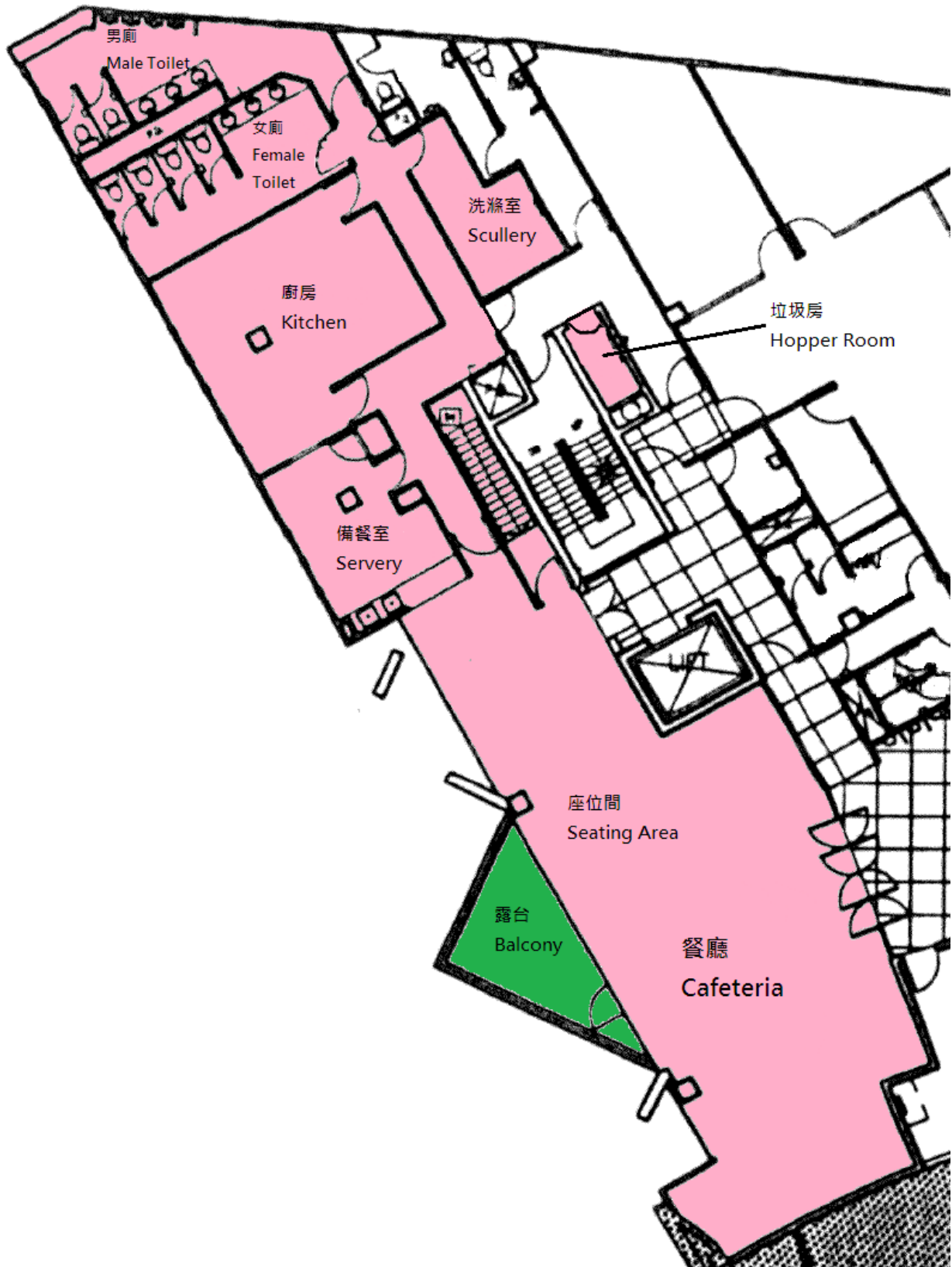


PART 3
CONTRACT SCHEDULES

Annex D to Contract Schedule 3

Floor Plan of Licence Area

(i) First Floor

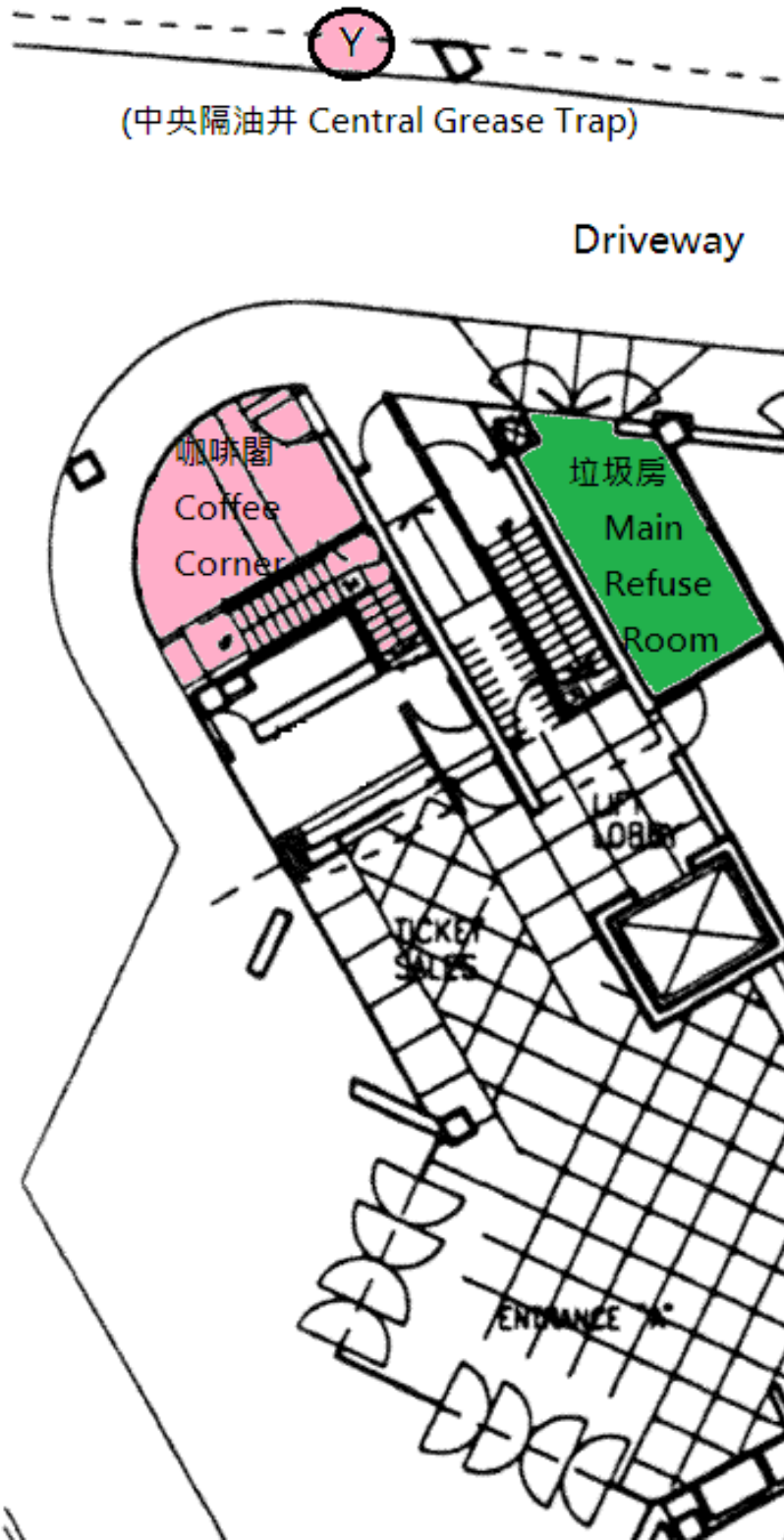


PART 3
CONTRACT SCHEDULES

Annex D to Contract Schedule 3

Floor Plan of Licence Area

(ii) Ground Floor



PART 3
CONTRACT SCHEDULES

Contract Schedule 4

Government Provisions Made Available to the Contractor at the Licence Area

I. Cafeteria

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
<u>General</u>		
1.	Toughened glass panels fixed at top and bottom with butt joint and sealant between panels for shop front of the Cafeteria and side facing the Ko Shan Road Park	1 lot
2.	Glass door fixed with stainless steel hinges at top and bottom with concealed door locks	2
3.	Glass door leading to Balcony	1
4.	Tiled floor (except seating area)	1 lot
5.	Stainless steel sink in kitchen	2
6.	Floor drain	1 lot
7.	In male toilet –	
	(a) walls and floor finished in ceramic tiles	1 lot
	(b) water closet with laminated plastic cubicle partition	2
	(c) wash-hand basin	3
	(d) urinal	4
	(e) electrical hand dryer	2
8.	In female toilet –	
	(a) walls and floor finished in ceramic tiles	1 lot
	(b) water closet with laminated plastic cubicle partition	4
	(c) wash-hand basin	3
	(d) electrical hand dryer	2
9.	50mm diameter town gas supply pipe	1 set
10.	Fire resistant door	4
<u>Ventilation and Electricity</u>		
11.	Ceiling mounted Primary Air Unit (PAU) in scullery serving seating area and servery, with supply air duct connected with fresh air fan in kitchen	1 lot
12.	Fan coil unit serving seating area and servery, with individual fused connection unit, complete with local hour-run meter and chilled water pipes	10 sets

13.#	Hydro-vent system located in kitchen, consists of kitchen hood (with drain point), baffle fans, water filter, spray nozzles, circulation pump and associated control panel, exhaust air duct connected and terminated on ceiling of kitchen, exhaust air fan (1.43m ³ /s) and control panel	1 lot
14.#	Fresh air fan (0.93m ³ /s) in kitchen with air duct connected and terminated on the ceiling of kitchen, completed with motor control panel	1 lot
15.	Manual control panels for PAU and ventilation fan in scullery	1 lot
16.	Exhaust air fan with air duct connected in scullery	1 lot
17.	Fresh air fan and exhaust air fan with air duct connected for male toilet	1 lot
18.	Fresh air fan and exhaust air fan with air duct connected for female toilet	1 lot
19.	200A TPN power supply for electrical installations	1 lot
	(i) 200A TPN switch and MCCB board in duct room of servery	
	(ii) 18-way TPN MCB boards for lighting and power in seating area, servery and kitchen	

Fire Services

20.	Sprinkler heads and smoke detectors	1 lot
21.#	Fire dampers	1 lot

II. Coffee Corner

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
<u>General</u>		
1.	Toughened glass panels fixed at top and bottom with butt joint, stone and sealant between panels as shop front	1 lot
2.	Stone floor	1 lot
3.	Metallic false ceiling composed of fixed framework and removable ceiling pieces	1 lot
4.	Roller shutter of size 110cm (W) x 338cm (H) with electrical control as door for entrance / exit	1
5.	Marble and stone counter of approximate size 308cm (W) x 74cm (D) x 98cm (H) with wooden cupboard containing four (4) drawers	1 set
6.	Wooden door with stainless steel handle and lock	1

Ventilation and Electricity

7.	Fan coil unit	1 set
8.	60A 8-way TPN MCB board	1
9.	General and essential lighting with light switch	1 lot
10.	13A general socket outlet	8

Fire Services

11.	Sprinkler heads	1 lot
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III. Others

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
1.	General lighting with weather-proofed light switch in Hopper Room	1 lot
2.	Central grease trap	1

shall be maintained by the Contractor

PART 3
CONTRACT SCHEDULES

Contract Schedule 5

Fitting-out Schedule

1. Ceiling

- 1.1 No false ceiling will be provided in the Cafeteria. If false ceiling is required, the Contractor shall be responsible for any alteration works and getting the approval for such alteration work from the Government Representative, and reinstate the original ceilings at the end of the Contract Period or sooner termination of the Contract.
- 1.2 False ceiling is provided in the Coffee Corner. If false ceiling is not required, the Contractor shall be responsible for any alteration works and getting the approval for such alteration work from the Government Representative, and reinstate the original ceilings at the end of the Contract Period or sooner termination of the Contract.

2. Doors, Floor and Walls

Cafeteria

- 2.1 No coating or painting on the glass panels will be permitted.
- 2.2 No fixing on the glass panels and structural frames will be permitted.
- 2.3 Internal wall of seating area shall be finished with plaster and emulsion paint. It may be covered up with plasterboard or plywood with decoration, which shall be removed at the end of the Contract Period or sooner termination of the Contract.
- 2.4 Internal wall and floor in the kitchen area are finished with glazed ceramic tiles. Any alteration work is not allowed without prior permission of the Government Representative.
- 2.5 The permitted superimposed loading on the floor is 3.8 Kilonewton/m².

Coffee Corner

- 2.6 No coating or painting on the glass panels will be permitted.
- 2.7 No fixing on the glass panels and structural frames will be permitted.
- 2.8 Floor is laid with natural stones.
- 2.9 No drilling, coating or painting on the walls and floor will be permitted.

3. Electricity Supply

- 3.1 250A 3-phase power supply from the main switch room of the Venue is provided for the Catering Premises.

- 3.2 The Contractor must engage Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) to conduct electrical work and shall be responsible for all the costs involved. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to the Government Representative for retention. All alteration works must be removed and all original provisions restored at the end of the Contract Period or sooner termination of the Contract.
- 3.3 The Catering Premises must be lit in such a way that other building users will not be adversely affected by any glare or reflection.
- 3.4 The Contractor must take down all electrical alteration works and reinstate the original electrical works and light fittings provided by the Government Representative at the Catering Premises at the end of the Contract Period or sooner termination of the Contract.

4. Water Supply

Fresh water supply with stainless steel sink is provided in the kitchen area of the Cafeteria. Separate meter for fresh water supply to the Cafeteria is provided. The Contractor shall make his own application to the Water Authority for the water supply to the Catering Premises. Any alteration work for operational needs shall be approved by the Water Authority with the prior permission of the Government Representative.

5. Drainage

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

6. Air-conditioning System

Please refer to **Contract Schedule 4 – Government Provisions Made Available to the Contractor at the Licence Area.**

7. Kitchen Exhaust System

Contractor shall maintain the hydro-vent system in the kitchen of the Cafeteria in good condition, which include but is not limited to the proper use of cleansing agents for the system.

8. Fire Services Installations

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

9. Town gas

50mm diameter town gas supply pipe is provided for the Cafeteria.

10. Signage

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

11. Toilet Provision in Cafeteria

No alteration on the number of sanitary fittings for the Catering Premises as stipulated in **Clause 4 of Annex B to Contract Schedule 3 – General Information on Ko Shan Theatre and its Catering Premises** is allowed. Any interior refurbishment works inside the toilets of the Cafeteria should not be undertaken unless prior approval is given by the Government Representative.

12. Fitting Out Methods

- 12.1 In conducting fitting-out works, the Contractor shall maintain the work place in a clean, safe and decent condition to the satisfaction of the Government Representative. The fitting-out works must be carried out in such a way that the public and other users of the Venue are protected from excessive risks, noise and dirt.
- 12.2 The works area is to be completely sealed off from the remaining first floor foyer of the Venue by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 12.3 Before any welding work is carried out, the Government Representative must be informed. Precautionary measures must be applied to the smoke detectors to prevent activating the fire alarm system unnecessarily.
- 12.4 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative.
- 12.5 The Contractor shall, at its own cost, pay all required cost for the fitting-out works.
- 12.6 The fitting-out works should comply with the updated Barrier Free Access Design Manual.

13. Working Hours for Fitting Out

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

Monday to Friday	5:00 pm to 8:30 am on next day
Saturday	1:00 pm to 8:30 am on next Monday
Public Holiday and Sunday	All day

- 13.2 The Contractor is responsible to apply for permission from Director of Environmental Protection if special arrangement is deemed necessary.

13.3 The Government Representative shall reserve its right to halt any fitting-out works undertaken by the Contractor at any time during the period of the fitting-out works if such works are deemed to have impaired or interrupted the operation or use of the Venue or the activities of the users of the Venue.

13.4 During the period of the fitting-out works, the Contractor shall keep a registrar of daily attendance of all the workmen working on site for periodic inspection by the Government Representative.

14. General

14.1 The Contractor should appoint an Authorized Person (AP) and / or Registered Structural Engineer (RSE) to implement the construction works in the Licence area which shall fully comply with the Buildings Ordinance / Regulations and other relevant statutory requirements as well as the latest licensing requirements. The AP / RSE shall bear the full responsibility of his / her design, planning and supervision of the construction works. No part of the works may have any adverse effect, structurally or in any other ways, on the existing building.

14.2 The Contractor should undertake to implement all necessary improvement works in the Licence Area those do not comply with the Buildings Ordinance / Regulations and other relevant statutory requirements as well as the latest licensing requirements, at his own cost.

14.3 The Contractor's AP / RSE should advise on any improvement works necessary for the area(s) outside the Licence Area to meet the latest licensing requirements.

14.4 No claims should be allowed where the improvement works is necessary in either the Licence Area or outside the Licence Area, to comply with the Building Ordinance / Regulations and other relevant statutory requirements as well as the latest licensing requirements.

14.5 The maintenance of the internal building elements inside the Licence Area except the structure of the building should be undertaken by the Contractor.

PART 3
CONTRACT SCHEDULES

Contract Schedule 6

Covenants in respect of Use of the Licence Area

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

1. Seating Accommodation, Maintenance and Repair

- 1.1 The Contractor shall keep and maintain at all times all Government Provisions in good repair, clean and serviceable condition to the Government's satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Provisions in good repair, clean and serviceable condition at any time upon request by the Government Representative and / or at the end or sooner termination of the Contract.
- 1.2 The Contractor shall keep and maintain at all times at the expense of the Contractor the Licence Area including the internal face of structural elements such as concrete ceiling / concrete flooring / internal side of external walls, interior plaster or other finishing material to walls, floors and ceilings and all fixtures and fittings therein including all interior doors, windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatus in good repair, clean and serviceable condition (fair wear and tear excepted) and to this end shall, if appropriate, from time to time paint and decorate the Licence Area.
- 1.3 The Contractor shall repair or replace all the electrical wiring installations and fittings within the Licence Area and all such electrical wiring installations and fittings of equipment / system belonging to the Contractor, if any, outside the Licence Area if so required by the Government and / or the relevant authority.
- 1.4 The Contractor shall provide seating accommodation in the Licence Area in accordance with the seating layout as approved by the Government and the relevant authority thereof in writing.
- 1.5 The Contractor shall keep and maintain at all times all the equipment and furniture used in the course of operating the Business in good repair and condition to the Government's satisfaction and to replace the same or any of the same with new ones whenever necessary or when the Government Representative reasonably demands.
- 1.6 Except for the fitting-out work and other work expressly required under the Contract, the Contractor shall not make any alteration or addition to the Licence Area or any Government Provisions without the prior permission in writing by the Government Representative and shall not carry out the repairs to the same without first obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government Representative and of a standard to the Government's satisfaction.

- 1.7 The Contractor shall not make or permit any alteration or addition to the Licence Area or to the electrical wiring installation or to the Government Representative's fixtures and fittings or to install any plant apparatus or machinery therein without having first obtained the written consent of the Government. Any application by the Contractor for the Government's consent under this Clause shall be accompanied by a plan showing the proposed changes. The Government shall be entitled to prescribe the maximum weight and location of any safety equipment and heavy equipment and to require that the same stand on supports of such dimensions and material to distribute the weight as the Government may deem necessary.
- 1.8 If the Licence Area is damaged or any Government Provisions is found damaged or lost from whatsoever cause whilst in the occupation, possession or control of the Contractor, the Government shall be entitled to recover from the Contractor as a debt due to the Government all losses, liabilities, costs and expenses that it has incurred in the execution of any repair or replacement (including costs and expenses for procuring or monitoring such repair or replacement service) and in taking all other necessary actions as a result of any such damage or loss.
- 1.9 All Government Provisions shall remain the property of the Government and the Government Representative shall be entitled to conduct stocktaking of the same at any time and the Contractor shall provide every assistance to the Government Representative for this purpose.
- 1.10 For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Licence Area under the Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong) ("Cap 314") during the Contract Period. The Contractor shall indemnify the Government from and against everything stated in Clause 13 of Conditions of Contract including claims arising from any incident occurring within the Licence Area which constitutes as a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in section 3 of Cap 314. To the extent permitted under Cap 314, the Government shall not be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under section 5 of Cap 314.

2. Other Covenants

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

- (a) not to cause, suffer or permit any floor show or other entertainment whatsoever to be staged in or from the Licence Area without the prior written approval of the Government which approval may be revoked at any time by the Government at its absolute discretion;
- (b) not to use any gramophone, radio, television, loudspeaker, musical instrument or karaoke instrument or similar apparatus or equipment in such a way that the same shall be audible outside the Licence Area;
- (c) not to cause, suffer or permit any smoking activities by:
 - (i) patrons in the Licence Area; or
 - (ii) officers, employees, agents or sub-contractors of the Contractor in the Licence Area or non-smoking area of the Venue;

- (d) if the Government so requires, the Contractor shall display in a prominent position in the Licence Area a sufficient number of signs to indicate that smoking is prohibited in the Licence Area and such signs shall be of a design and size as approved or prescribed by the Government and shall be maintained at all times by the Contractor in good and legible condition;
- (e) not to cause, suffer or permit the preparation, cooking, heating or re-heating of food in the Licence Area which are not approved by the Government Representative;
- (f) not to use the Licence Area or any part thereof, or cause, permit or suffer the same to be used, for any illegal or immoral purpose, gambling or any other purpose not permitted under the Contract;
- (g) not to cause, suffer or permit any games to be played in the Licence Area including but not limited to “mahjong” and “tin kau” whether for gambling purposes or otherwise; and
- (h) not to set aside or reserve the whole or any part of the Licence Area for the exclusive use of any person or organisation or for any other purpose or function, save and except where the Government at its absolute discretion may permit or require.

3. Outgoings for Licence Area

- 3.1 The Contractor shall pay all the costs (such as installation costs) and deposits for electricity, sewage services, telephone line installed in and water consumed on or in the Licence Area (including but not limited to electricity charges for electricity consumed by air-conditioning equipment and any other equipment, machinery and installation whatsoever installed in the Licence Area or otherwise but excluding air-condition ventilation made available to the Licence Area). The Contractor must at its cost arrange the relevant utility companies to install separate meters in its own name for measurement of the utilities consumed by the Contractor and settle the charges, deposits and installation charges directly with the utility companies.
- 3.2 The Contractor shall pay all Government rates and rent, fees, charges and outgoings whatsoever now or hereafter payable in respect of the Licence Area throughout the Contract Period including the Free Decoration Period or any period of suspension of the Business for whatsoever reasons.

4. Air-conditioning

- 4.1 As more particularly stipulated in **Contract Schedule 4 – Government Provisions Made Available to the Contractor at the Licence Area**, air-conditioned ventilation will be provided to such parts of the Catering Premises as specified therein (“Government Supplied Ventilation”). The Government Representative shall use its best endeavors to provide the Catering Premises with the Government Supplied Ventilation during the daily opening hours on each day and to maintain the same in good repair and condition. Provided always that the Government Representative shall in no event whatsoever be held responsible for any failure or interruption of any such Government Supplied Ventilation due to any cause whatsoever or for any damage or loss (direct or indirect) incurred or suffered by the Contractor arising from such failure or interruption.

- 4.2 Due to technical reasons, the Contractor may not apply for separate meters from the power company for the metering of electricity consumed by the Government Supplied Ventilation and that by the Contractor's electrical equipment. Separate meters shall be installed by the Government Representative for this purpose ("Government Meters"). The Government will pay the entire amount of the monthly electricity bill for all electricity consumed within the Venue (including fuel clause adjustment) ("Gross Electricity Charge"). The Contractor shall throughout the Contract Period be obliged to reimburse the Government its share of the Gross Electricity Charge ("Contractor Electricity Share") each month for the period to which the monthly electricity bill relates. The Contractor Electricity Share based on each monthly electricity bill shall be paid by the Contractor to the Government within fourteen (14) days upon presentation of a demand note from the Government together with a copy of that electricity bill. Each amount of the Contractor Electricity Share shall be calculated in accordance with the following formula:

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

- 4.3 In addition to the Contractor Electricity Share payable under **Clause 4.2**, the Contractor shall pay a deposit to the Government Representative as security for its obligation under **Clause 4.2** in the amount of Hong Kong Dollars Sixteen Thousand only (HK\$16,000) ("Electricity Deposit"). The Electricity Deposit shall be payable within seven (7) working days from the date of the notification of conditional acceptance of tender in cash or cashier order under **Paragraph 10.1** of the **Terms of Tender**.
- 4.4 In the event that the Contractor shall fail to pay a Contractor Electricity Share under **Clause 4.2**, without prejudice to other rights and claims of the Government, the Government shall be entitled to make deduction from the Electricity Deposit and / or from the Security Deposit in satisfaction of such Contractor Electricity Share in such order as the Government in its absolute discretion deems fit. The Electricity Deposit may be deducted, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 4.5 If any deduction is made by the Government from the Electricity Deposit, the Contractor shall, within fourteen (14) days on demand in writing by the Government, deposit a further sum in a sum equal to the amount so deducted, which further sum shall be added to the residue of and form part of the Electricity Deposit.

- 4.6 The Electricity Deposit (if any amount is remaining) will only be refunded to the Contractor without interest when the Contractor has duly discharged its obligations under **Clause 4.2** in respect of all Contractor Electricity Shares payable throughout the Contract Period.
- 4.7 In the event of the Contractor wishing to install its own air-conditioning units in the Catering Premises or any part thereof with the prior written consent of the Government Representative, the Contractor shall comply with the directions and instructions of the Government Representative regarding installation and shall at its own expense be responsible for their periodic inspection, maintenance and repair and for the replacement of defective wiring. The Contractor shall be strictly liable for any damage caused by the installation, operation or removal of such units. Provided that in the event of undue noise, vibration, heat or dripping of water being caused or generated by any air-conditioning units installed hereunder, the Government Representative may require the Contractor to remove or replace such installations forthwith and to make good any loss or damage caused to the Catering Premises or the Venue. The Contractor shall be responsible for applying for the installation of meters from the power company and pay for the electricity consumed by such air-conditioning units direct to the power company.

5. Cleansing, Collection and Disposal of Refuse and Litter

- 5.1 The Contractor shall maintain to the reasonable satisfaction of the Government the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition. If the Government in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area and its immediate vicinity or any part thereof, the Government may give a written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government Representative in its reasonable opinion may allow the necessary cleaning and servicing works in the Licence Area and its immediate vicinity. In the event that the Contractor fails to carry out the works as directed, the Government may without further notice suspend the right of the Contractor to carry out the Business under **Clause 11.1 of Conditions of Contract** in order to cause the Licence Area and its immediately vicinity to be cleaned and serviced and the Contractor shall pay the costs thereof to the Government on demand and shall remain liable to pay the Monthly Licence Fee to the Government Representative without any deduction.
- 5.2 The Contractor shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government and shall collect all refuse and litter therein.
- 5.3 The Contractor shall comply with the Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) as replaced, amended, modified or re-enacted from time to time. The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government Representative at any time and from time to time for the removal and disposal of all refuse and litter collected in the course of the Business, or which is otherwise deposited by customers of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government and shall be properly disposed of at least once every day to such refuse collection point inside or outside the Licence Area nominated by the Government at any time and from time to time in such manner as approved or prescribed by the Government.

- 5.4 The Contractor shall arrange cleaning of the refuse collection point and all passage ways leading from the Licence Area to the refuse collection point on a daily basis or at a frequency as prescribed by the Government.
- 5.5 The Contractor shall carry out cleansing and clearing of all grease traps in the Licence Area used in the operation of the Business on, at least, a daily basis and of all the drainage and sewerage pipes in the Licence Area used in the operation of the Business at frequent intervals to the Government Representative's reasonable satisfaction to prevent choking and blockage of the installations. Where the Government Representative reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government Representative undertake at its own expense either an emulsifying or a neutralizing effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government Representative.
- 5.6 The Contractor shall thoroughly clean the food preparation room and other permitted food preparation areas, at least, on a daily basis. The Contractor shall at least twice a year employ a specialist cleaning contractor as may be approved or prescribed by the Government Representative to deep clean the exhaust and ventilation systems in the Licence Area to the satisfaction of the Government Representative.
- 5.7 The Contractor shall take all reasonable steps to prevent the accumulation of any stains, dirt, grease or other matter discharged from the Licence Area through the kitchen exhaust or ventilation system on any part of the exterior of the Venue and in the event of such stains, dirt, grease or other matter accumulating on any part including but not limited to the external wall, the Contractor shall at such regular intervals as may be approved or prescribed by the Government undertake the cleaning of such parts to the satisfaction of the Government using a contractor approved or prescribed by the Government. The Contractor shall ensure that the waste water that comes out from the Licence Area is free of grease and shall not cause, suffer or permit waste water to be discharged into areas surrounding the Licence Area or the Venue.
- 5.8 In the event of failure to comply with this **Clause 5**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government in the removal and disposal of such refuse and litter or in cleansing and clearing any of the drains, sewers, grease traps, exhaust and ventilation systems choked or blocked or otherwise due to the act, default or negligence of the Contractor.
- 5.9 The Contractor shall employ or use only such cleaner or cleaning agent within the Licence Area as the Government shall approve or prescribe, provided always that such approval may be withdrawn by the Government upon notifying the Contractor that it has reasonable grounds for such withdrawal.
- 6. Water Supply, Electricity Supply and Fuel Supply**
- 6.1 The Contractor shall at its own expense install and provide all necessary water supply equipment or facilities required for its Business and pay all fees and charges in connection herewith.

- 6.2 All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out by qualified personnel approved in writing by and to the satisfaction of the Government, and such installation shall thereupon become the property of the Government free of any costs and charges. The Contractor shall be responsible for maintaining and repairing such installation at its own expense as well as removing the same should the Government so direct.
- 6.3 The Contractor, if so permitted by the Government, may consume electricity from supply points which are available in the Licence Area to operate its Business as more particularly specified in **Contract Schedule 5 – Fitting-out Schedule**. All consumption of electricity from such supply points must be separately metered by meter(s) arranged by the Contractor with the power company. The Contractor shall pay all deposits, fees and charges in connection therewith. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatuses associated therewith in or serving the Licence Area in safe and proper condition and to comply in all respects with the Electricity Ordinance (Chapter 406 of the Laws of Hong Kong) and its subsidiary legislations and / or the Government Representative's reasonable instructions with respect to the utilities.
- 6.4 Without prejudice to the generality of **Clause 10 of Conditions of Contract**, any installation, alteration and addition of wiring and lighting fittings to the existing Government provisions, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative previously in writing and the works shall be carried out by a Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Chapter 406D of the Laws of Hong Kong) and to the satisfaction of the Government Representative. The Contractor shall be responsible for maintaining and repairing such fittings at its own expense as well as removing the same should the Government Representative so direct. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to Government Representative for retention.
- 6.5 The Contractor shall use town gas as fuel in the Cafeteria.

7. Erection of Structure

- 7.1 Subject to other terms of the Contract, the Contractor shall not allow or permit any structure to be erected in or on the Licence Area and its immediate vicinity except those stipulated in **Clause 7.1 of Contract Schedule 7 – Service Specifications** or signboard(s) bearing the trade name for the Business, which shall be in both English and Chinese and have been approved in writing by the Government.
- 7.2 The number, size and location of, and the ways of erecting, the signboards stipulated in **Clause 7.1** shall be approved or prescribed by the Government in writing.

8. Store of Dangerous Goods and Prohibited Goods

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

9. Fire Precautions

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

10. Watchman

10.1 No watchman deployed by the Contractor shall be permitted to remain in the Licence Area or other part of the Venue outside the opening hours of the Licence Area. The Contractor shall not allow any person including but not limited to any person purportedly serving as watchman to remain in the Licence Area outside such opening hours without the prior permission in writing by the Government. The Contractor shall immediately remove such person from the Licence Area if the Government Representative notifies the Contractor in writing of the withdrawal of its approval for such person to stay overnight in the Licence Area.

10.2 The Contractor shall ensure that each of the watchmen possesses a valid security personnel permit issued under the Security and Guarding Services Ordinance (Chapter 460 of the Laws of Hong Kong) and submit to the Government for prior written approval the name and Hong Kong Identity Card number of such watchmen.

11. Access by the Government for Repair

The Government or any of its servants or agents (with or without workmen) may, at all reasonable times, enter upon the Licence Area or any part thereof to carry out repairs and works thereto and to any fixtures, fittings, installations and equipment whatsoever therein owned by the Government and to view the condition and state of repair thereof.

12. Inconvenience or Annoyance Caused at the Venue

12.1 The Contractor shall ensure that On-site Personnel, suppliers, and permitted sub-contractors perform their duties in the Licence Area in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

12.2 The Contractor shall not do anything in or upon the Licence Area or any part of the Venue or in the immediate vicinity thereof which may be or become a nuisance or annoyance (including but not limited to the making of excessive noise or sound) or cause damage or inconvenience or discomfort to the users of the Venue, the Government, its employees or agents working in the Venue. The Government shall be entitled to suspend the Contractor's right to carry on the Business under **Clause 11.1 of Conditions of Contract** for non-compliance with this **Clause 12.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.

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

13. Monies or Valuables Found

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

14. Publicity and Advertisement

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

14.2 Save and except where the Government at its discretion may permit or require, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Catering Premises any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature, including but not limited to any such materials relating to any tobacco or tobacco related products.

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

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

PART 3
CONTRACT SCHEDULES

Contract Schedule 7

Service Specifications

The Contractor shall throughout the Contract Period: –

1. Services

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

2. Green Measures relating to Disposable Tableware

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

- (d) If requested by take-away customers, the Contractor may provide non-plastic disposable cutlery (e.g. soft wood or bamboo) and non-plastic disposable food / drink containers (e.g. paper, plant fibre or metal foil) on a need basis for take-away food or drinks provided that such non-plastic disposable cutlery is not provided in sets. The Contractor shall charge and fully recover the cost of the non-plastic disposable tableware item(s) from those customers in line with the “user pays” principle. In any event, the Contractor shall not provide disposable plastic tableware.
 - (e) **Clauses 2.1(c)** and **(d)** shall also apply to any food / drink not consumed by a dine-in customer which the customer wishes to take away and for this purpose the customer shall be regarded as a take-away customer of the food / drink to be taken away.
 - (f) For clarity purpose, plastic includes poly-foam, polyethylene, poly-lactic acid (PLA), oxo-plastic and all other types of plastic. It does not include paper coated with plastic or wax. “Tableware” includes straws and stirrers, cutlery (e.g. stirrer, fork, knife, spoon and chopsticks), food / drink containers (e.g. cups, bowls, dishes, plates and boxes) and individually packed wet tissues.
 - (g) The Contractor shall comply with the requirements and conditions as stipulated in **Clauses 2.1(a) to (f)** to the satisfaction of the Government and the decision of the Government as to whether the Contractor has complied with those requirements and conditions to the satisfaction of the Government shall be final, conclusive and binding on the Contractor.
 - (h) In the event that the Contractor fails to comply with the requirements and conditions as stipulated in **Clauses 2.1(a) to (f)** in relation to disposable tableware-free measures to the satisfaction of the Government, without prejudice to any other right or remedy which the Government may have in relation to any breach, non-compliance and non-performance of the conditions of the Contract on the part of the Contractor, the Government shall have the right to institute appropriate actions against the Contractor, including but not limited to applying lower marks in the future assessment of, or barring applications for, renewal of existing contract, and / or quotation for new contract by the Contractor; and / or terminate the contract.
- 2.2
- (a) The Contractor may provide disposable plastic tableware when warranted by genuine service / operational needs and with prior approval in writing by the Government under exceptional circumstances, such as delivery of public service in emergency situations (e.g. special / ad-hoc operations, rescue missions, emergency responses, opening of temporary shelters in community halls) and special operational requirements (e.g. security requirements of correctional facilities, special hygiene measures required during disease outbreaks, prolonged outdoor work).
 - (b) The Contractor may provide disposable (including plastic) straws free-of-charge on request to meet special needs arising from the medical requirements or physical conditions of individual customers.
 - (c) The Contractor may provide plastic lids for cups and bowls for take-away food or drinks.
 - (d) The decision of the Government as to whether **Clauses 2.2(a) to (c)** apply shall be final, conclusive and binding on the Contractor.

3. Premises Hygiene, Food Hygiene and Safety

- 3.1 The Contractor shall not keep or permit or suffer to be kept in the Licence Area or any part thereof any animals or pets, and shall take all such steps and precautions to the reasonable satisfaction of the Government to prevent the Licence Area or any part thereof from becoming infested with any pests or vermin.
- 3.2 The Contractor shall not do, or cause or suffer or permit to be done, any act or thing whereby the policy or policies of insurance in respect of the premises of which the Licence Area forms part against damage by fire or liability to third parties for the time being subsisting may become void or voidable or whereby the rate of premium or premiums thereon may be increased, and shall repay to the Government on demand all sums paid by the Government by way of increased premium or premiums thereon and all expenses incurred by the Government in and about any renewal of such policy or policies rendered necessary by a breach of this Clause.
- 3.3 The Contractor shall take all reasonable precautions to protect the Licence Area from damage by fire, storm, typhoon or the like and shall install and provide suitable equipment and systems and so on to protect the Licence Area and Government Provisions from any such damage, and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government. Such installation shall thereupon become the property of the Government free of any costs or charges. The Contractor shall be responsible for maintaining and repairing such installation in safe and proper condition at its own expense as well as removing the same should the Government so direct.
- 3.4 The Contractor shall be responsible for the safety of any vehicle which it uses or brings alongside or onto the Venue and it shall indemnify each the Government from and against everything specified in **Clause 13 of Conditions of Contract** arising from the use of such vehicles.
- 3.5 The Contractor shall provide and maintain at all times proper insulated and refrigerated containers solely for the storage of frozen confections and shall store in such insulated and refrigerated containers all frozen confections available for sale in the Licence Area.
- 3.6 The Contractor shall keep all articles of food and beverages stored or offered for sale in the Licence Area effectively protected against flies, cockroaches, vermin, dust and dirt.
- 3.7 The Contractor shall not sell or offer for sale any liquid refreshment other than in sterile drink cups or in the original containers supplied by the manufacturers of such refreshment.
- 3.8 The Contractor shall cleanse and immerse crockery, cutlery and utensils used in the preparation or serving of food and beverages in boiling water for no less than one minute and dry the same by evaporation before each use, and store the same in vermin-proof and dust-proof cupboards when not in use.

4. On-site Personnel

- 4.1 The Contractor shall require all persons employed or appointed to work in the Licence Area (whether by the Contractor or by any of its sub-contractors of whatever tier) (collectively, “On-site Personnel”) to submit to such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ and shall cease to employ in the Licence Area any person found by the medical practitioner to be likely to spread a communicable disease.
- 4.2 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance in the Licence Area at all times to supervise On-site Personnel.
- 4.3 The Contractor shall be responsible for the good conduct of all On-site Personnel while they are in the Licence Area or any other parts of the Venue and shall ensure that they will behave accordingly.
- 4.4 The Contractor should establish strategies, including but not limited to provision of customer services training to staff engaged for the Business, for enhancing customer services to encourage repeat visits to the Venue.
- 4.5 The Contractor should set up policies on refund / exchange of substandard goods and handling of customers’ complaints, etc.
- 4.6 The Government shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any member of On-site Personnel.
- 4.7 The Government shall be entitled to refuse to admit to the Licence Area or any part thereof any member of On-site Personnel, whose admission will be, in the reasonable opinion of the Government, undesirable.
- 4.8 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of its Business and of a type approved by the Government for the use of all On-site Personnel. The Contractor shall ensure that at all times when On-site Personnel are at work or on duty in the Licence Area they shall wear such clothes and uniforms in a clean and tidy manner.
- 4.9 The Contractor shall provide lockers for On-site Personnel to store their clothing and personal effects and not allow personal effects such as clothing, footwear, luggage, umbrellas and other articles to be stored or left in any other places inside or outside the Licence Area.
- 4.10 The Contractor shall ensure that all On-site Personnel shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor’s obligations under the Contract.
- 4.11 The Contractor shall ensure that a high standard of customer service is maintained and all On-site Personnel conduct themselves in a courteous manner to the satisfaction of the Government.

- 4.12 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for operating the Business. Such record shall include the name, the Hong Kong Identity Card number and a photograph of such On-site Personnel and shall be produced for inspection by the Government Representative on request. All personal data submitted by the Contractor will be used by the Government for the purpose of this Contract only.

5. Arrangement during Epidemic Illness

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

6. Stock and Sale of Food Commodities

- 6.1 The Contractor may not sell or offer to sell any item in the Licence Area other than the Prescribed Food and Beverages as stipulated in **Contract Schedule 2 – Technical Schedule** and such other food and beverages from time to time approved by the Government Representative.
- 6.2 Any addition or deduction of items to or from the Prescribed Food and Beverages may only be made after obtaining the prior written approval of the Government Representative.
- 6.3 The Contractor shall provide to customers upon request receipts for any food and beverage sold in the Licence Area.
- 6.4 Notwithstanding any prior approval by the Government Representative, the Contractor shall remove forthwith from display and not sell or continue to sell, stock or display in the Licence Area any food, beverage, services or any other items whatsoever used in connection with the performance of this Contract:
- (a) to which the Government Representative has notified its objection to the Contractor as being inconsistent with the objectives of the Business or the objectives or images of the Venue or the Government or the Government Representative; or
 - (b) of which there is allegation of infringement of Intellectual Property Rights of any person; or
 - (c) which consists of or contains any materials that infringe or are alleged to infringe the Intellectual Property Rights of any person.
- 6.5 The Contractor shall not stock, sell or provide in the Licence Area any cigarettes, cigars or tobacco products whatsoever.
- 6.6 The Contractor shall submit to the Government for information the menu containing a list of all items sold in the Licence Area together with their prices to be supplied and sold in the Licence Area not less than seven (7) days prior to the coming into force of the prices.

- 6.7 The Contractor shall not sell drinking water in plastic bottles measuring 1 litre (L) or less at the Catering Premises.
- 6.8 The Contractor shall abide by any directions as to the quality of the Prescribed Food and Beverages sold or offered for sale in the Licence Area as may be given by the Hong Kong Consumer Council.

7. Display of Commodity Prices

- 7.1 The Contractor shall prominently display at all times the prices of all items sold in the Licence Area. The displays shall be in both Chinese and English and shall be put up in such form, manner and at such locations as shall be approved or prescribed by the Government.
- 7.2 (a) In the case of items which have a wholesaler or manufacturer recommended Hong Kong retail price, the Contractor shall sell the items at a price not higher than the recommended price; and where such recommended prices are stated in foreign currencies, the Contractor shall adopt such prices after applying the Hong Kong Dollar exchange rates for the foreign currencies. The Contractor shall make available for inspection the exchange rates applied by the Contractor to the Government Representative and any customer who so requests, and notify the Government Representative of any changes to the said exchange rates.
- (b) Where no recommended Hong Kong retail price is available, the items shall be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlet, or in the case where such goods are not sold by the Contractor at its other retail outlet, within the range of prices charged in similar types of retail outlet in Hong Kong.
- 7.3 The Government Representative reserves the right to question the price of any item for sale in the Licence Area at any time and the Contractor shall provide justification for the price being charged.

ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT are made the _____ day of _____, 2020 BETWEEN The DIRECTOR OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1–3 Pai Tau Street, Sha Tin, N.T., Hong Kong (“Director”) acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (“Government”) of the one part,

AND _____

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

WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LCSD/CS/T/GR/00/KST/2020/I), the Government has invited tenders to operate the Business at the Licence Area within the Venue.
- (B) The Contractor’s tender for the Contract was accepted in principle by the Government by a notification of conditional acceptance of tender to the Contractor pursuant to **Paragraph 10** of the **Terms of Tender**.
- (C) The Contractor has apparently fulfilled all conditions specified in the notification of conditional acceptance of tender.
- (D) Pursuant to **Paragraph 10** 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 Contractor is hereby constituted and shall comprise the following documents:
 - (i) Tender Form (Parts I to II)
 - (ii) Interpretation
 - (iii) Part 1 – Terms of Tender and Appendices to Terms of Tender
 - (iv) Part 2 – Conditions of Contract
 - (v) Part 3 – Contract Schedules 1 to 7
 - (vi) These Articles of Agreement

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

4. For the purposes of **Clause 23** of the **Conditions of Contract**, the address and facsimile number of the Contractor are as follows:

Name of the Contractor: _____

Address: _____

Facsimile number: _____

Email address: _____

Attention (Post Title): _____

IN WITNESS whereof the parties hereto have entered into these Articles of Agreement on the day and year first above written.

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

Name of the Authorised Representative:

Title of the Authorised Representative: _____

in the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____

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

Name of the Authorised Representative:

Title of the Authorised Representative: _____

in the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____