

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 FOYER COFFEE CORNER OF THE KWAI TSING THEATRE

(Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01)

LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked "Tender for the Grant of Licence to Operate the Business at the Foyer Coffee Corner of the Kwai Tsing Theatre" and addressed to the Chairman, Government Logistics Department Tender Opening Committee, 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 25 October 2022. Late tenders will not be accepted.

Dated this 27 September 2022

Ms Paris CHAN
Government Representative

Part I – Tender Documents

The Tender Documents under the tender reference LC/CS/T/GR/PVMP/KTT/2022/01 consist of a complete set of :

- (a) Tender Form (Parts I to II);
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 7);
- (d) Terms of Tender (Sheets 8 to 30);
- (e) Conditions of Contract (Sheets 31 to 76);
- (f) Contract Schedules (Sheets 77 to 115):

- Contract Schedule 1 – Marking Scheme for Tender Evaluation
- Contract Schedule 2 – Working Background and Status of Tenderer
- Contract Schedule 3 – Business Plan
- Contract Schedule 4 – Menus, Service Packages, Marketing and Customer Service Plan
- Contract Schedule 5 – Hygiene Maintenance Plan
- Contract Schedule 6 – Waste Management Plan
- Contract Schedule 7 – Innovative Suggestions that can Bring Positive Values/Benefits to the Society
- Contract Schedule 8 – Years of Experience in Operating Catering Outlet(s)
- Contract Schedule 9 – Experience and Qualifications of Senior Manager(s)

Contract Schedule 10 – Valid and Relevant ISO and OHSAS Certifications
Contract Schedule 11 – Monthly Licence Fee
Contract Schedule 12 – Introduction of the Licence Area
Contract Schedule 13 – Technical Schedule
Contract Schedule 14 – Government Provisions Made Available to the Contractor at the Licence Area

- (g) Form of Security Deposit Election (Sheet 116);
- (h) Form of Bank Guarantee for the Performance of a Contract (Sheets 117 to 121);
- (i) Non-collusive Tendering Certificate (Sheets 122 to 124);
- (j) Memorandum of Contract (Sheets 125 to 127); and
- (k) Annexes (Sheets 128 to 135):
 - Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities
 - Annex B – Location Map of Kwai Tsing Theatre
 - Annex C – Plan Showing Facilities of the Venue and Location of the Licence Area
 - Annex D – Floor Plan of the Licence Area with Designated Location of Signage
 - Annex E – Designated Location of Signage for the Catering Outlet (Elevation Plan)
 - Annex F – Enrolment Form for the Tender Briefing Session

Part II – Offer to be Bound

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

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

– or –

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

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

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

– or –

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

Name of Tenderer : _____
 (Name in block letters)

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

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

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

Date : _____

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

<p>TENDER LABEL (1) Price Submission</p>
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**THE CHAIRMAN,
GOVERNMENT LOGISTICS DEPARTMENT
TENDER OPENING COMMITTEE**

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

**Tender for the Grant of Licence to Operate the Business
at the Foyer Coffee Corner of the Kwai Tsing Theatre**

Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01

Tender Closing Date: 25 October 2022 12:00 noon (Hong Kong Time)

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

- Contract Schedule 11 ONLY**

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

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

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Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong**

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at the Foyer Coffee Corner of the Kwai Tsing Theatre**

Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01

Tender Closing Date: 25 October 2022 12:00 noon (Hong Kong Time)

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

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

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

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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 Foyer Coffee Corner of the Kwai Tsing Theatre**

Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01

Tender Closing Date: 25 October 2022 12:00 noon (Hong Kong Time)

Note: The “Price Submission” and “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 these Tender Documents, the following shall have the meanings hereby assigned to them except when the context otherwise requires:

“Ad Hoc Catering Services”	has the meaning given to it in Clause 3.1(b) of the Conditions of Contract .
“Business”	means the business as set out in Clause 3.1 of the Conditions of Contract .
“Catering Outlet”	means the Foyer Coffee Corner, i.e. the premises within the Licence Area at or from which the Contractor shall operate the Business.
“Catering Services”	means the services to be provided from time to time on demand under Clause 3.4 of the Conditions of Contract .
“Companies Ordinance (Cap. 622)”	means Chapter 622 of the Laws of Hong Kong and includes the predecessor Companies Ordinance which has the meaning assigned to it in section 2 of the Companies Ordinance (Cap. 622).
“Conditional Acceptance of Tender”	has the meaning given to it in Paragraph 13.2 of the Terms of Tender .
“Contract”	means the contract entered into between the signatory of the Memorandum of Contract acting for and on behalf of the Government and the Contractor comprising the following parts of the Tender Documents and other items as specified below: (a) the “Memorandum of Contract”; (b) the “Tender Form”; (c) the “Interpretation”; (d) the “Terms of Tender”; (e) the “Conditions of Contract”; (f) the “Contract Schedules” (or “Schedules”) in the form as appearing in the Tender Documents and those which were submitted by the Contractor as part of its Tender, and accepted by the Government Representative; (g) the “Form of Security Deposit Election”; (h) the “Non-collusive Tendering Certificate”; (i) the “Annexes”; and (j) all other schedules, plans, drawings and other documents which form part of the Contractor’s Tender or are incorporated by reference herein or in any of the above documents,

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

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

“Contract Period”	means the period specified in Clause 2 of the Conditions of Contract .
“Contractor”	means the Tenderer whose Tender is accepted by the Government Representative.
“Contractor Responsible Group”	has the meaning given to the term in Clause 36 of the Conditions of Contract .
“Food and Beverages”	means (a) the list of proposed signature dishes/beverages for sale at the Catering Outlet as listed in the Contract Schedule 4 ; and (b) other items of food and beverages approved by the Government Representative in writing in advance to be sold by the Contractor at the Catering Outlet.
“Free Decoration Period”	means the maximum one (1)-month fitting out period commencing from the start of the Contract Period during which the Contractor may carry out fitting-out works at the Licence Area in accordance with Clause 12 of the Conditions of Contract .
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.
“Government Provisions”	all items belonging to the Government specified in the Contract Schedules 12, 13 and 14 and such other Government property (moveable or immovable) which are from time to time made available to the Contractor for use in the Business or at the Licence Area.
“Government Representative”	means the Director or Assistant Director of Leisure and Cultural Services or any public officer of LCSD authorised to act on his or her behalf.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.

“Inspection Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Business carried out by the Contractor under the Contract.
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising), and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Invitation to Tender”	means the invitation issued by the Government Representative to invite tenders for the Contract on the terms set out in the Tender Documents.
“LCSD”	means the Leisure and Cultural Services Department.
“Licence”	means the right to operate the Business.
“Licence Area”	means the total areas designated for the such purpose, as more particularly specified in the Contract Schedule 12 and as delineated in red and green in Annex C and Annex D .
“Materials”	means any and all works and materials of whatsoever nature (including their drafts and uncompleted versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for the Contractor, in relation to the Business or for the purposes of the Contract including without limitation, any reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Contractor, its employees, agents or sub-contractors in relation to the Business or for the purposes of the Contract, recorded or stored by whatever means;
“Monthly Gross Receipts”	has the meaning given to the term in Clause 6.10 of the Conditions of Contract .
“Monthly Licence Fee”	means the fixed amount payable by the Contractor for the operation of the Business on a monthly basis as stipulated in the Contract Schedule 11 – Monthly Licence Fee in accordance with Clause 6 of the Conditions of Contract .

“Original Tender Closing Date”	means the date specified in the Tender Form as the date for submission of tender notwithstanding any extension.
“Person”	includes any body of persons, corporate or unincorporated.
“Requisite Permits”	has the meaning given to it in Clause 10.1 of the Conditions of Contract .
“Security Deposit”	means the deposit which the successful Tenderer shall deposit with the Government in accordance in Paragraph 23 of the Terms of Tender with and as referred to Clause 8 of the Conditions of Contract .
“Tender (upper or lower case)”	means a tender submitted in response to this Invitation to Tender.
“Tender Closing Date”	means the date specified in the Tender Form as the latest date by which tenders must be lodged as the same may be extended.
“Tender Documents”	means the documents as specified in Paragraph 1 of the Terms of Tender .
“Tender Validity Period”	means the period of time as described in Paragraph 8 of the Terms of Tender during which the Tender is to remain open.
“Tenderer”	means the person or firm or company submitting this Tender.
“Venue”	means the Kwai Tsing Theatre, located at 12 Hing Ning Road, Kwai Chung, New Territories, Hong Kong as indicated in Annex B .
“working day”	means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal no. 8 or above is hoisted or a Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is in force for any duration during normal business hours in Hong Kong.

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

2.1 The following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;

- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporated (wherever established or incorporated); references to company include corporation;
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such 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; reference to a “Clause” in the Conditions of Contract are to a clause of the Conditions of Contract; references to a Clause, Sub-clause, Section or Paragraph in 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.
- 2.2 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or the Government Representative or any public officer.
- 2.3 All rights and powers of the Government under the Contract may be exercised by the Government Representative for the Government. All claims of the Government may be enforced by the Government Representative for the Government.
- 2.4 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.

- 2.5 References to **Contract Schedule 2 - Working Background and Status of Tenderer, Contract Schedule 3 - Business Plan, Contract Schedule 4 - Menus, Service Packages, Marketing and Customer Service Plan, Contract Schedule 5 - Hygiene Maintenance Plan, Contract Schedule 6 - Waste Management Plan, Contract Schedule 7 - Innovative Suggestions that can Bring Positive Values/Benefits to the Society, Contract Schedule 8 - Years of Experience in Operating Catering Outlet(s), Contract Schedule 9 - Experience and Qualifications of Senior Manager(s) and Contract Schedule 10 - Valid and Relevant ISO and OHSAS Certifications** or any plan or proposal contained therein shall mean such Contract Schedule or such plan or proposal in the final form as approved by the Government before or after the award of the Contract.

PART 1
TERMS OF TENDER

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

PART 1
TERMS OF TENDER

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

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

1. Tender Documents

The Tender Documents consist of a complete set of:

- (a) Tender Form (Parts I and II);
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 7);
- (d) Terms of Tender (Sheets 8 to 30);
- (e) Conditions of Contract (Sheets 31 to 76);
- (f) Contract Schedules (Sheets 77 to 115):
 - Contract Schedule 1 – Marking Scheme for Tender Evaluation
 - Contract Schedule 2 – Working Background and Status of Tenderer
 - Contract Schedule 3 – Business Plan
 - Contract Schedule 4 – Menus, Service Packages, Marketing and Customer Service Plan
 - Contract Schedule 5 – Hygiene Maintenance Plan
 - Contract Schedule 6 – Waste Management Plan
 - Contract Schedule 7 – Innovative Suggestions that can Bring Positive Values/Benefits to the Society
 - Contract Schedule 8 – Years of Experience in Operating Catering Outlet(s)
 - Contract Schedule 9 – Experience and Qualifications of Senior Manager(s)
 - Contract Schedule 10 – Valid and Relevant ISO and OHSAS Certifications
 - Contract Schedule 11 – Monthly Licence Fee
 - Contract Schedule 12 – Introduction of the Licence Area
 - Contract Schedule 13 – Technical Schedule
 - Contract Schedule 14 – Government Provisions Made Available to the Contractor at the Licence Area
- (g) Form of Security Deposit Election (Sheet 116);

- (h) Form of Bank Guarantee for the Performance of a Contract (Sheets 117 to 121);
- (i) Non-collusive Tendering Certificate (Sheets 122 to 124);
- (j) Memorandum of Contract (Sheets 125 to 127); and
- (k) Annexes (Sheets 128 to 135):
 - Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities
 - Annex B – Location Map of Kwai Tsing Theatre
 - Annex C – Plan Showing Facilities of the Venue and Location of the Licence Area
 - Annex D – Floor Plan of the Licence Area with Designated Location of Signage
 - Annex E – Designated Location of Signage for the Catering Outlet (Elevation Plan)
 - Annex F – Enrolment Form for the Tender Briefing Session

2. Invitation to Tender

Tenders are invited for the operation of the Business at the Licence Area within the Venue for the Contract Period, inclusive of the Free Decoration Period of not more than one (1) month, on such terms and conditions as set out in these **Terms of Tender, Conditions of Contract, Contract Schedules** and **Annexes**. General information of the Venue and the Licence Area is at **Annexes A to E**. For the information of the Tenderers, the commencement date of the Contract Period is provided for in **Clause 2** of the **Conditions of Contract**.

3. Tender Preparation

- 3.1 All tenders must be completed and submitted in three (3) identical sets (one (1) original and two (2) photocopies) as more particularly described in **Paragraphs 4 and 5**.
- 3.2 Tenders shall be written in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for tender evaluation.
- 3.3 Tenderers shall complete and submit the following parts of the Tender Documents together with any necessary supporting information and documents in its tender:
 - (a) **Tender Form** – Part II – “Offer to be Bound”;
 - (b) **Contract Schedule 2** – Working Background and Status of Tenderer;
 - (c) **Contract Schedule 3** – Business Plan;
 - (d) **Contract Schedule 4** – Menus, Service Packages, Marketing and Customer Service Plan;
 - (e) **Contract Schedule 5** – Hygiene Maintenance Plan;
 - (f) **Contract Schedule 6** – Waste Management Plan;
 - (g) **Contract Schedule 7** – Innovative Suggestions that can Bring Positive Values/Benefits to the Society;

- (h) **Contract Schedule 8** – Years of Experience in Operating Catering Outlet(s);
- (i) **Contract Schedule 9** – Experience and Qualifications of Senior Manager(s);
- (j) **Contract Schedule 10** – Valid and Relevant ISO and OHSAS Certifications;
- (k) **Contract Schedule 11** – Monthly Licence Fee;
- (l) **Form of Security Deposit Election** – Security Deposit (**without** any indication on the Monthly Licence Fee); and
- (m) **Non-collusive Tendering Certificate.**

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

3.5 The Government may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:

- (a) false, inaccurate or incorrect information is given in the Tender; or
- (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.

4. Failure of Submission

4.1 Tenderers must submit the tenders containing the documents set out in **Paragraph 3.3** above before 12:00 noon (Hong Kong time) on the Tender Closing Date. Subject to **Paragraph 4.2** below, the Government may, but is not obliged to, exercise its discretion to request any document or information after the Tender Closing Date where they are found missing in accordance with **Paragraph 15**.

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

- (a) **the "Offer to be Bound" of the Tender Form duly signed by the Tenderer; and**
- (b) **the quotation for the Monthly Licence Fee as required in the Contract Schedule 11 – Monthly Licence Fee.**

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

- (a) **Contract Schedule 2 – Working Background and Status of the Tenderer; and**
- (b) **Non-collusive Tendering Certificate.**

The Tenderer shall provide all the above items specified in this **Paragraph 4.3** at the same time when it submits its Tender. The Government may, but is not obliged, exercise its discretion to request any of these items after the Tender Closing Date where they are found missing in accordance with **Paragraph 15**. However, if the same is not provided upon request, the Tenderer's tender will not be considered further.

4.4 In connection with **Paragraph 4.2(a)**, a Tender submitted will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted “Offer to be Bound” of the **Tender Form** is signed in the following applicable manner:

- (1) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
- (2) if the Tenderer is a partnership, one (1) or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
- (3) if the Tenderer is a company, a director of the Tenderer or one (1) or more person(s) who is/are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

A Tender will not be further considered if the “Offer to be Bound” of the **Tender Form** is not signed in the manner described in this **Paragraph 4.4**.

5. Two Envelopes System in Submission of Tender

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

- (a) The **price submission** (the original and two (2) photocopies of the **Contract Schedule 11 – Monthly Licence Fee**, fully completed, signed, stamped with the firm/company chop and dated) must be enclosed in a sealed envelope clearly marked “Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01 – Tender for the Grant of Licence to Operate the Business at the Foyer Coffee Corner of the Kwai Tsing Theatre – Price Submission” (Tender Label (1) provided); and
- (b) The **technical submission** (the original and two (2) photocopies of all other remaining information and documents required in this tender as stipulated in **Contract Schedules 2, 3, 4, 5, 6, 7, 8, 9 and 10** as well as the **Form of Security Deposit Election, Non-collusive Tendering Certificate** and the **Tender Form**, fully completed, signed, stamped with the firm/company chop and dated, but without any indication on the Monthly Licence Fee) must be enclosed in a sealed envelope clearly marked “Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01 – Tender for the Grant of Licence to Operate the Business at the Foyer Coffee Corner of the Kwai Tsing Theatre – Technical Submission” (Tender Label (2) provided).

- 5.2 A completed tender, i.e. the two (2) sealed envelopes as described in **Paragraph 5.1** above, shall be enclosed in another sealed envelope and addressed to the **Chairman, Government Logistics Department Tender Opening Committee** by using Tender Label (3) as provided. The tender must be deposited in the Government Logistics Department Tender Box (“**Specified Tender Box**”) located at the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon (Hong Kong time) on the Tender Closing Date specified in the **Lodging of Tender** on the **Tender Form**. **Late tenders or tenders not deposited in the Specified Tender Box will not be considered.**
- 5.3 In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the tender closing time will be postponed to 12:00 noon (Hong Kong time) on the first working day after the Tropical Cyclone Warning Signal No. 8 is lowered, or the Black Rainstorm Warning Signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force.
- 5.4 In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the Government will announce extension of the tender closing time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of the Information Services Department.
- 5.5 The Government Representative will not accept any tender submitted by methods other than as indicated in **Paragraphs 5.1 and 5.2.**
- 5.6 When completing a tender (including the “Offer to be Bound” of the **Tender Form**), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer; or
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer;
 - (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or
 - (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in **Paragraph 5.6 (a)(i), (a)(ii), (a)(iii) or (b)** above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

6. Monthly Licence Fee

- 6.1 Each Tenderer shall propose its Monthly Licence Fee in the **Contract Schedule 11**. Tenderers may refer to **Clause 6** of the **Conditions of Contract** in respect of payment of the Monthly Licence Fee under the Contract. Such Monthly Licence Fee shall be denominated in Hong Kong dollars.
- 6.2 Tenderers shall note the Monthly Licence Fee quoted by the Contractor and accepted by the Government shall remain valid and binding throughout the Contract Period. No request for price variation will be considered. A Tender with any proposed price variation mechanism will not be considered further.
- 6.3 The Monthly Licence Fee shall not include rates, Government rent and taxes payable in respect of the Licence Area. Apart from the Government Provisions, all assets required, and all liabilities to be incurred from carrying out the Business at the Licence Area shall be the responsibility of the Contractor with no recourse against the Government or the Government Representative.
- 6.4 Each Tenderer shall make certain that the Monthly Licence Fee quoted is accurate before submitting its tender. Without prejudice to the powers of the Government Representative to seek clarification or to negotiate with a Tenderer, the Government Representative is not obliged to accept any request for price adjustment on whatsoever ground.
- 6.5 Shall it be found on examination by the Government Representative after the Tender Closing Date that a Tenderer has made unintentional errors in the figures stated in its Tender, the Government Representative, may but is not obliged, seek clarification from the Tenderer or request the Tenderer to confirm in writing whether it is prepared to abide by what the Government Representative considers shall be the correct figures.

7. Information of the Tenderer

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

- (a) name and principal place of business of the Tenderer;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the Tenderer and their percentage of ownership;
- (d) names of the following:
 - (i) managing director and other directors;
 - (ii) partners; or
 - (iii) sole proprietor;

- (e) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (f) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (h) place and date of its incorporation or formation;
- (i) business profile information of the Tenderer including the number and location of full time / contract employees, core business strategies and strength, and industry expertise;
- (j) notwithstanding the deeming provision specified in **Paragraph 4.4**, a Tenderer shall provide a certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if the signatory of the “Offer to be Bound” of the **Tender Form** is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be);
- (k) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing Sub-paragraphs of this **Paragraph 7** may not apply and may not be available. The Government reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved; and
- (l) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

8. Tenders to Remain Open

- 8.1 It is an essential requirement that a Tender shall remain valid and open for acceptance for a period not less than one hundred and eighty (180) days from the Tender Closing Date (“**Tender Validity Period**”).
- 8.2 A Tenderer who counter-proposes a shorter Tender Validity Period than the period specified in **Paragraph 8.1** will be disqualified and its Tender will not be considered further.
- 8.3 Without prejudice to the Government’s rights and claims vis-à-vis any Tenderer who withdraws its Tender during the Tender Validity Period, due notice will be taken of any withdrawal during the Tender Validity Period and without prejudice to any other rights and remedies that the Government may have against the Tenderer, such withdrawal may prejudice the Tenderer’s future status as a Government supplier or service provider.

9. Compliance with Essential Requirements

A Tenderer shall comply with all the essential requirements (if any) stipulated in the Tender Documents. If a Tenderer fails to do so, its Tender will not be considered further.

10. Selection of Tender

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

11. Basis of Acceptance

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

12. Negotiation

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

13. Award of Contract

13.1 Unless and until the **Memorandum of Contract** have been executed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government Representative and any Tenderer. References to award of the Contract mean the signing of the **Memorandum of Contract**.

13.2 The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “**Conditional Acceptance of Tender**”). Within seven (7) working days of the date of such Conditional Acceptance of Tender, the successful Tenderer shall be obliged to fulfill all of the following conditions to the satisfaction of the Government Representative (or such later date as the Government Representative may allow):

- (a) provision of the Security Deposit as required under **Paragraph 23**;
- (b) payment of the Monthly Licence Fee in respect of the month immediately following the end of the Free Decoration Period;
- (c) such changes to the **Contract Schedule 4 – Menu, Service Packages, Marketing and Customer Service Plan** as the Government Representative considers appropriate; and
- (d) such other conditions as the Government Representative may stipulate in the Conditional Acceptance of Tender.

13.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Tenderer specified in **Paragraph 13.2** above to the satisfaction of the Government, the Government will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing the **Memorandum of Contract**. The Contract will incorporate, to the extent accepted by the Government Representative, the Tender submitted by the successful Tenderer. If a Tenderer fails to fulfill all or any of the conditions mentioned in **Paragraph 13.2** above (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the **Memorandum of Contract** upon notification by the Government (“**defaulting Tenderer**”), the Conditional Acceptance of Tender will become void and be of no further force. The Government shall be at liberty to award the Contract to another Tenderer or re-tender or take such other action as it deems appropriate.

13.4 The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. On the other hand, notwithstanding anything in the Tender Documents or in the Conditional Acceptance of Tender to the contrary, in the event that the Government exercises any of its discretion under **Paragraph 17** or **18**, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a Conditional

Acceptance of Tender and fulfilled all the conditions specified in **Paragraph 13.2** above.

- 13.5 Tenderers who do not receive any notification of acceptance within the Tender Validity Period shall assume that their tenders have not been accepted.

14. Counter-proposals

- 14.1 Tenderers must not submit any proposal that has the effect of varying or modifying all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and the award of the Contract.
- 14.2 If a Tenderer fails to comply with **Paragraph 14.1**, subject to any clarification which the Government may, but is not obliged to, make under **Paragraph 15**, its Tender will be disqualified and will not be considered further by the Government.
- 14.3 Counter-proposals by a Tenderer may, at the absolute discretion of the Government, render its Tender to be disqualified and not to be considered. Counter-proposals from a Tenderer in contravention of this restriction will entitle the Government to disqualify the Tenderer unless the Government in its absolute discretion elects to negotiate with the Tenderer concerning such counter-proposal. Following such negotiation, if the Tenderer is still unwilling to withdraw such counter-proposal, or otherwise revise it on terms acceptable to the Government, the Government may still disqualify the Tenderer. Any accepted counter-proposal following from a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.
- 14.4 Without prejudice to **Paragraph 14.1**, any Tenderer who submits a tender that directly or indirectly attempts to preclude or limit the effect of any provisions of these **Terms of Tender** may also be disqualified.

15. Request for Information

In the event that the Government determines that:

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

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

As an alternative to seeking clarification or further information or document, the Government may not consider the tender further or may proceed to evaluate the tender on an “as is” basis.

16. Tenderer’s Commitment

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

17. Government Discretion

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

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer (as defined in **Paragraphs 17.6 and 17.7** below);
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person (“**IPR infringement**”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (including those who were in such capacity any time within the same period, i.e. thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficienc(ies) in the performance of any requirement or obligation under any other Government

contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficienc(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficienc(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficienc(ies) has been remedied (“**Contract Default(s)**”); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;

- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one (1) or more serious offence(s) including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (g) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award.

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

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

- (a) details of any petition or proceeding mentioned in **Paragraph 17.1(a)** above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in **Paragraph 17.1(c)** above;

- (c) details of all Contract Defaults as mentioned in **Paragraph 17.1(d)** above;
- (d) details of conviction as mentioned in **Paragraph 17.1(e)** above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in **Paragraph 17.1(f)** above; and
- (f) details of any failure to pay taxes as mentioned in **Paragraph 17.1(g)** above.

If none of the events as mentioned in **Paragraphs 17.1(a) to 17.1(g)** above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the **Contract Schedule 2** at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to **Paragraph 17.3** below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 17.3 In addition to the information mentioned in **Paragraph 17.2** above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under **Paragraph 17.1** above.
- 17.4 If the Tenderer fails to comply with the request made by the Government pursuant to **Paragraph 17.3** above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to **Paragraph 15**. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to **Paragraph 17.1(b)** above.
- 17.5 In providing the information required under **Paragraphs 17.2 and 17.3** above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in **Paragraph 17.1** above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 17.6 If the Tenderer is a company, the expression "**related person**" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty percent (50%) or more of the issued share capital of the Tenderer ("**majority shareholder**");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or

- (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.

The expressions “**holding company**” and “**subsidiary**” have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

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

- (a) any partner of the Tenderer (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.

17.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-paragraph of **Paragraph 17.1** above include persons who were in such capacity at such time of the event referred to in that Sub-paragraph.

17.9 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

18. Cancellation of the Invitation to Tender

18.1 Notwithstanding anything to the contrary in the Tender Documents, if it is in the public interest to do so, (a) the Government reserves the right to cancel this Invitation to Tender, and not award the Contract; or (b) re-conduct the evaluation specified in **Paragraph 10** to identify the successful Tenderer.

18.2 After cancellation pursuant to **Paragraph 18.1** above, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Tender on such terms and conditions as the Government considers appropriate.

19. Consent to Disclosure

19.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer,

- (a) a brief description of the Business provided or to be provided by the successful Tenderer;
- (b) the Monthly Licence Fee payable by the successful Tenderer pursuant to the Contract;
- (c) the engagement by the Government of the successful Tenderer under the Contract and the name and address of the successful Tenderer; and
- (d) the date of award of the Contract.

19.2 Nothing in **Paragraph 19.1** above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its tender (whether or not the information is specified in **Paragraph 19.1** above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under **Paragraph 19.2(a)** above);
- (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 tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under **Paragraph 19.1** above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

20. Personal Data Provided

20.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract, resolution of any dispute arising from the Invitation to Tender, and the disclosure pursuant to **Paragraph 19**).

- 20.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in **Paragraph 20.1** above, or the disclosure pursuant to **Paragraph 19**.
- 20.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to 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 individual's personal data provided in the Tender.
- 20.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, shall be addressed to the Personal Data Privacy Officer of LCSD.

21. Licence, Permit and/or Certificate

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

22. Restrictions on Assignment and Sub-contracting

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

23. Security Deposit

- 23.1 The successful Tenderer shall pay the Government a deposit ("**Security Deposit**") as security for the due and faithful performance of the Contract either in cash or in the form of a bank guarantee and to be issued by a bank licensed under the provisions of

the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) in the **Form of Bank Guarantee for the Performance of a Contract**, and the bank guarantor shall be approved by the Government Representative and shall be subject to **Clause 8 of the Conditions of Contract**. Tenderers are therefore required to state their option in the **Form of Security Deposit Election**.

23.2 The amount of the Security Deposit shall be two (2) times the Monthly Licence Fee quoted in the **Contract Schedule 11**.

23.3 If the successful Tenderer elects to pay the Security Deposit by way of a bank guarantee, the bank guarantee shall come into effect on the commencement date of the Contract Period unless another date is specified in the Conditional Acceptance of Tender. In the event that another date is so specified, the bank guarantee shall take effect no later than such date.

23.4 The Security Deposit, whether paid by way of cash (if any is remaining) or a bank guarantee, shall be returned to the Contractor or released in accordance with **Clause 8.2 of the Conditions of Contract**.

24. Free Decoration Period

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

25. State of Premises

25.1 Tenderers are strongly advised to visit the Licence Area before submitting the tenders and the Contractor shall accept the Licence Area in the state and condition in which it is at the date on which the possession is given (i.e. on the first date of the Contract Period).

25.2 Subject to the due execution of the **Memorandum of Contract**, occupancy of the Licence Area will be given to the Contractor upon commencement of the Contract Period or such other date as specified by the Government in the **Memorandum of Contract**.

26. Tenders of the Unsuccessful Tenderers

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

27. Costs of Preparation of Tender

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

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

28. Contractor's Performance Monitoring

The Contractor's performance under the Contract will be monitored and may be taken into account when its future offers for other tender/quotation exercises are evaluated.

29. New Information

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

30. Tender Addenda

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

31. Disclaimer

- 31.1 Tenderers shall study all attachments to the Tender Documents (including the **Annexes** and **Contract Schedules**) carefully before submitting their tenders. Tenderers shall note that all information and statistics provided by the Government and the Government Representative in connection with this Invitation to Tender are for reference only.
- 31.2 Forecast or estimation and all other information, statistics and forecast set out in the Tender Documents or any information or clarification provided from time to time or given at the briefing session (collectively "**briefings**"), are provided purely for the Tenderer's information on an "as is" basis without warranty of any kind. Neither the Government nor the Government Representative gives any warranty, representation or undertaking that any information, statistics and forecast provided in the Tender Documents or any information or clarification provided from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.
- 31.3 To the maximum extent permitted by laws, neither the Government nor the Government Representative accepts any liability or responsibility for (a) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving); (b) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (c) any cost or expense, suffered or incurred by any Tenderer arising from the use of, or reliance on, any information, statistics or forecast provided in the Tender Documents, or any

information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Business do not meet the expectation or projection of the successful Tenderer or do not recoup the investment cost incurred or by any margin.

32. Offering Gratuities

Each Tenderer shall not and shall ensure that his officers and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) to any public officer or employee of the Government. Any breach of or non-compliance with this Paragraph by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer, the Government Representative shall be entitled to terminate the Contract under **Clause 42.1(i)** of the **Conditions of Contract**.

33. Authentication of Documents

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

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

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

34. Communication with the Government

- 34.1 All communications given or made by the Government Representative or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in **Clause 52** of the **Conditions of Contract**, save that the Government Representative may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. The Tenderer shall note that the Government Representative will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- 34.2 All communications in relation to the Invitation to Tender shall be conducted directly between the Government Representative and the Tenderer.

35. Tenderer's Enquiries

- 35.1 Any enquiries from Tenderers concerning these Tender Documents up to the date of lodging its tender with the Government Representative shall be in writing and submitted to Manager (New Territories South) Building Management, Kwai Tsing Theatre, 12 Hing Ning Road, Kwai Chung, New Territories, Hong Kong or fax to (852) 2944 8743.
- 35.2 After lodging the tender with the Government, the Tenderer shall not attempt to initiate any contact, whether direct or indirect, with the Government Representative on its tender or the Tender Documents. The Government Representative shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 35.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

36. Tender Briefing Session / Site Visit

- 36.1 Tenderers are invited to attend a tender briefing session cum site visit to be held by the Government Representative on **11 October 2022 (Tuesday) at 10:00 a.m. at the Lecture Room of the Venue** before submitting their tenders in order to acquaint themselves with the requirements of the Government Representative.
- 36.2 Each Tenderer may send no more than two (2) representatives to attend the tender briefing session / site visit.
- 36.3 Tenderers are required to fill in **Annex F – Enrolment Form for the Tender Briefing Session** and send it by fax to the addressee and to the facsimile number mentioned in that Annex on or before **10 October 2022 (Monday)** for registration.

37. Licence to Use the Materials Submitted by Tenderers

A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed in accordance with **Paragraph 26**. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender for the

purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

38. Warranty against Collusion

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

38.6 The rights of the Government under **Paragraphs 38.3 to 38.5** above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

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

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

40. Survival

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

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PART 2
CONDITIONS OF CONTRACT

1. Nature of Contract

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

2. Contract Period

- 2.1 Subject to all rights and powers of the Government Representative under the Contract, and any early termination or extension pursuant to any applicable provisions of the Contract, the Contract Period shall be for a term of thirty-six (36) months to commence from the date specified in **Clause 2.2**, inclusive of a Free Decoration Period for fitting out the Licence Area upon the commencement of the Contract Period.
- 2.2 The commencement date of the Contract Period shall be **16 December 2022** or such later date as set out in **Clause 3** of the **Memorandum of Contract** provided always that the later date shall in no event fall after 16 March 2023.
- 2.3 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 26** exceeds thirty (30) days, notwithstanding **Clauses 2.1 and 2.2**, the Contract Period will be extended accordingly by the same number of days equivalent to the accumulated period of suspension or closure with the other terms and conditions of the Contract remaining unchanged. Partial closure of some part(s) but not the entire Licence Area will not lead to any extension of the Contract Period.

3. The Obligation to Carry on the Business

- 3.1 Subject to the terms and conditions of the Contract, the Government Representative grants the entitlement to the Contractor to operate the following business:
- (a) supply and sell the Food and Beverages at the Licence Area; and
 - (b) provide ad hoc catering or refreshment services at such other areas of the Venue as the Government Representative at its absolute discretion may set aside and the Contractor shall upon such request provide the said services at the time and in the manner set forth in the request (“**Ad Hoc Catering Services**”).
- 3.2 The Contractor shall carry on the Business in compliance with all requirements set out in the Contract.

- 3.3 The Contractor shall carry on the Business which is commensurate with services, image, functions and activities of the Venue and to satisfy the needs of Venue's core clients including performance patrons of various ages and styles, overseas and local performers, production crew, sponsors and VIP guests, ancillary facilities users, holding of celebrative feasts, tourists, casual visitors as well as Venue staff.
- 3.4 The Contractor shall carry on the Business at the Licence Area throughout the opening hours of the Venue as set out in **Annex A** except when otherwise authorised by the Government Representative in writing, and at such additional or alternative opening hours as may be approved or prescribed by the Government Representative in writing.
- 3.5 The Business shall be operated by the Contractor as the principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative.
- 3.6 The Contractor shall start the Business forthwith upon the end of the Free Decoration Period. The Contractor shall as soon as practicable advise the Government Representative the date of commencement of the Business.

4. Government's Right

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

- (a) authorise and permit any caterer or organisation other than the Contractor to provide catering or refreshment services to persons at the Venue on not more than twenty-four (24) occasions in any twelve (12) calendar month period; and
- (b) distribute or cause, suffer or permit to be distributed any food, drinks and refreshments whatsoever free of charge at any of the functions and/or activities at the Venue or any part thereof, and the Government shall in no circumstances be liable to the Contractor in respect of any liabilities, losses or damages, if any, occasioned by the Government's exercise of any of the aforesaid rights.

5. Conduct of Business

- 5.1 Subject to **Clauses 5.2 and 5.3**, this Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other area within or outside the Venue or otherwise (unless for the provision of Ad Hoc Catering Services as demanded by the Government Representative). The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Venue other than the Licence Area.
- 5.2 The Contractor shall use the Licence Area as the venue for the operation of the Business.
- 5.3 The Contractor shall maintain at the Licence Area for the purpose of the Business an efficient and adequate service of a style, type and quality to the satisfaction of the Government Representative.

- 5.4 The Contractor shall operate the Business only within the Licence Area. The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Licence Area for other purpose without the prior written consent of the Government Representative.
- 5.5 The name of the Catering Outlet shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government Representative at its absolute discretion may consider reasonable to prescribe, at any time and from time to time. Save and except as permitted or directed by the Government Representative, such name shall not be changed.

6. Payment of Monthly Licence Fee

- 6.1 For each month of the Contract Period (apart from the Free Decoration Period), the Contractor shall pay to the Government the Monthly Licence Fee (exclusive of rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs of utilities incurred in the operation of the Business such as water, waste discharge, and electricity) in respect of each month during the Contract Period without any deduction or set-off whatsoever.
- 6.2 In respect of payment of the Monthly Licence Fee for an incomplete month, the Monthly Licence Fee shall be calculated on a pro rata basis.
- 6.3 Without prejudice to anything to the contrary under this **Clause 6**, the Monthly Licence Fee shall be payable on or before the first day of each and every month of the Contract Period (after the Free Decoration Period) without any deduction or set-off whatsoever except that the Monthly Licence Fee in respect of the month immediately following the end of the Free Decoration Period shall have been paid in accordance with **Paragraph 13.2** of the **Terms of Tender**.
- 6.4 In respect of the Free Decoration Period:
- (a) no Monthly Licence Fee shall be payable whilst fitting out work is being carried out by the Contractor at the Licence Area but the Contractor shall pay and bear all outgoing and charges, including but not limited to electricity, water and gas charges, in respect of the Licence Area; and
 - (b) the entire Monthly Licence Fee shall be payable as soon as the Free Decoration Period has ended even if the fitting out works continue beyond the Free Decoration Period.
- 6.5 If the Contractor fails to pay a Monthly Licence Fee by the due date specified in a demand note issued by the Government Representative or any other amount payable by the Contractor under the Contract, the Contractor shall pay a surcharge on the Monthly Licence Fee or such other amount calculated at a rate equivalent to the average of the best lending rates from time to time of all of the note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made.

- 6.6 In each of the following cases of (a) to (d), (each a “**relevant period**”), there shall be adjustment of the Monthly Licence Fee to be arrived at by multiplying the daily rate with the actual number of days of the relevant period (or in the case of any temporary closure, the actual number of days of that month which is unaffected by the temporary closure). The daily rate shall be arrived by dividing the Monthly Licence Fee by the actual number of days in the month in which the relevant period falls:
- (a) if the first day of the second month of the Contract Period does not start on the first day of a calendar month, there shall be adjustment of the Monthly Licence Fee for the second month of the Contract Period;
 - (b) if the remaining period of the Contract Period after the last complete month is not a complete month, there shall be adjustment of the Monthly Licence Fee for such remaining period;
 - (c) if there is any temporary closure of the whole of the Licence Area under **Clause 26** within a month of the Contract Period, there shall be pro rata adjustment of the Monthly Licence Fee for that month; or
 - (d) if the Free Decoration Period shall be less than one (1) month and the Business shall commence thereafter, the Monthly Licence Fee shall be calculated on a pro rata basis.
- 6.7 The Contractor shall, within one (1) month after the expiry of each month during the Contract Period (including the Free Decoration Period, if applicable) and within one (1) month after the termination or expiry of the Contract Period, submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the Monthly Gross Receipts generated from the Business at the Licence Area. The statement of accounts shall be certified as being accurate and complete by the managing director of the Contractor or such other person as the Government Representative may from time to time approve or prescribe in writing.
- 6.8 Upon the request of the Government Representative, the Contractor shall within one (1) month from the date of such request submit a statement of accounts in the form as the Government Representative may approve. The statement of accounts shall show the Monthly Gross Receipts generated from the Business at the Licence Area as stipulated in the request. Such statement of accounts shall be audited and certified as being accurate and complete by a professional accountant holding practicing certificate or a corporate practice within the meaning of the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong) in accordance with the Hong Kong Standard on Assurance Engagements 3000 “Assurance Engagements Other Than Audits or Reviews of Historical Financial Information” issued by the Hong Kong Institute of Certified Public Accountants.
- 6.9 The Contractor shall throughout the Contract Period maintain and keep proper accounts and all the receipts and appropriate vouchers in relation to all Monthly Gross Receipts and retain the same for at least three (3) years. Such accounts including the supporting receipts and vouchers shall be made available for inspection at all times by the Government Representative or its authorised person.

- 6.10 **“Monthly Gross Receipts”** in respect of a month shall mean the gross proceeds or revenue received or receivable by the Contractor in respect of the Business in respect of that month without any deduction whatsoever (except as expressly allowed under (a) below) and which include:
- (a) the gross proceeds derived from the sale of food and beverages (including Food and Beverages) at the Licence Area within that month (**“Menu Proceeds”**); and all service charges and tips (regardless of the mode of payment) but less ten percent (10%) of the Menu Proceeds;
 - (b) the gross proceeds derived from the Ad Hoc Catering Services provided within the Venue; and
 - (c) any other income (except profits arising from the sale of capital assets belonging to the Contractor) deriving from or in respect of the Business.

7. Non-exclusive Right of the Contractor

- 7.1 The Contractor shall have, during the continuance of the Contract Period, but subject always to all rights and powers of the Government Representative under the Contract, the non-exclusive, non-transferable, non-assignable right to access and to occupy the Licence Area for the operation of the Business within the Licence Area in accordance with all requirements and restrictions set out in the Contract and performance of all other obligations under the Contract which are required to be performed at the Licence Area.
- 7.2 The Government as the owner of the Licence Area, whether acting through the Government Representative or otherwise, reserves all rights and powers to enter into the Licence Area for any purpose whatsoever without any notice or reference or consent from the Contractor.
- 7.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Venue.
- 7.4 Nothing in this Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorise any person to supply any food or drink or other catering or hosting services at the Venue. The Contractor is not entitled to claim any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorisations.
- 7.5 Notwithstanding anything to the contrary herein, and without prejudice to the overriding principles specified in **Clauses 7.3 and 7.4**, the Government Representative will normally authorise and permit other caterer or organisation other than the Contractor to provide services similar to the Catering Services to persons in the Venue for up to twenty-four (24) occasions in any twelve (12) calendar month period.

8. Security Deposit

8.1 The Security Deposit, if in the form of cash, shall be retained by the Government, or if in the form of a bank guarantee, shall remain in force, in either case, from the date of the commencement of the Contract Period until the date specified in (a) or (b) below, whichever is applicable:

(a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or

(b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing).

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

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

8.3 The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Security Deposit (whether in cash or in the form of the bank guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.

8.4 If any deduction is made by the Government from the Security Deposit in cash or a call is made on the bank guarantee during the Guarantee Period, the Contractor shall, within twenty-one (21) days on demand in writing by the Government, deposit a further sum or provide a further bank guarantee in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue of and form part of the Security Deposit.

9. Assignment and Sub-contracting

9.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it. Any person

purportedly appointed by the Contractor as agent shall be treated as sub-contractors for the purpose of this **Clause 9** and for the whole of the Contract.

- 9.2 Acceptance of the Tender does not signify the Government's acceptance of any sub-contracting proposal set out in the Tender.
- 9.3 The Government may impose conditions either to be complied with by the Contractor and/or any proposed sub-contractors before giving any approval under **Clause 9.1** above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of the Government in such form and substance to be prescribed by the Government. Where the Government requests the same, a certified copy of the sub-contract shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.
- 9.4 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees and agents of any such sub-contractor as if they were its own.

10. Licence, Permit and/or Certificate

- 10.1 The Contract does not confer any licence, permit, certificate, waiver or exemption which the Contractor is obliged to apply for under all applicable laws and regulations in order to operate the Business in the Licence Area ("**Requisite Permits**"). Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.
- 10.2 The Contractor shall apply for and successfully obtain a provisional licence to operate the Business at the Licence Area under section 33C of the Food Business Regulation (Chapter 132X of the Laws of Hong Kong) ("**Cap. 132X**") ("**Provisional Licence**") before commencement of the operation of the Business.
- 10.3 After having obtained such Provisional Licence for the Business, the Contractor shall obtain a full licence under section 31 of Cap. 132X to operate the Business at the Licence Area before the Provisional Licence expires ("**Full Licence**") or renew the Provisional Licence once more under section 33C(4) of Cap. 132X and shall obtain a Full Licence before the renewed Provisional Licence expires. In the event that the Contractor fails to do so, the Government shall be at liberty to terminate the Contract under **Clause 42.1(i)** or suspend the Contract under **Clause 25.1**.
- 10.4 Notwithstanding **Clauses 10.2 and 10.3**, if the Contractor so chooses, it may apply directly for a Full Licence instead of a Provisional Licence provided that it can successfully obtain such Full Licence within three (3) months from the date of commencement of the Contract Period in order that it can commence the Business no later than three (3) months after the date of commencement of the Contract Period. If the Contractor opts to apply for a Full Licence instead of a Provisional Licence but fails to obtain such Full Licence within the aforesaid period, the Government shall be at liberty to terminate the Contract under **Clause 42.1(i)** or suspend the Contract under

Clause 25.1.

- 10.5 Apart from the Provisional Licence and Full Licence as specified in **Clauses 10.2 and 10.3** or where applicable **Clause 10.4**, the Contractor shall apply for and obtain all other Requisite Permits for the operation of the Business at the Licence Area including without limitation the necessary licences or permits as required under the Dutiable Commodities Ordinance (Chapter 109 of the Laws of Hong Kong) for the sale of alcoholic liquor.
- 10.6 The entitlement to operate the Business at the Licence Area is conditional on the Contractor having obtained all Requisite Permits, and that they remain valid and in force throughout the Contract Period and that the Contractor complies with all conditions and requirements stated therein. A Provisional Licence and/or Full Licence to be obtained under the aforementioned provisions must be for the kind of food business which legally entitles the Contractor to operate the Business at the Licence Area. Obtaining a licence for the incorrect kind of food business would be treated as breach of these provisions.
- 10.7 Without affecting the generality of the foregoing, the Contractor shall make no claim of any kind whatsoever against the Government or the Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any Requisite Permits.
- 10.8 Without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business no later than the beginning of the second month of the Contract Period, the Contractor agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor cannot operate its Business pending the consideration of its applications and issuance or renewal of the Requisite Permits. The non-issuance of any of the Requisite Permits by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 10.9 The Contractor shall produce copies of all Requisite Permits, including but not limited to the Business Registration Certificate upon demand by the Government Representative.

11. Warranties and Representations

- 11.1 The Contractor warrants, represents and undertakes that:
- (a) the Contractor and any permitted sub-contractors of the Contractor, their respective employees and agents shall have the necessary training, skill, experience, qualifications and expertise to operate the Business on the terms and conditions set out in the Contract;
 - (b) the Contractor shall operate the Business with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
 - (c) the Business shall conform in all respects to the schedules and conditions under the Contract;

- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
 - (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform all its obligations under the Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, its authorised users, assigns and successors-in-title in accordance with **Clause 47**;
 - (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
 - (g) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
 - (h) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
 - (i) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (j) throughout the Contract Period, no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and
 - (k) throughout the Contract Period, it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.
- 11.2 The warranties, representations and undertakings, expressed or implied, contained in **Clause 11.1** above and in **Clause 47.1** and in other provisions of the Contract (including without limitation **Paragraph 38.1** of the **Terms of Tender**), and those made by the Contractor in its Tender for the Contract including all schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as "**Warranties**", and each, a "**Warranty**".
- 11.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

- 11.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) apply to bind the Contractor and the Government respectively.
- 11.5 (a) The Contractor shall throughout the Contract Period keep and maintain proper books and records and all the receipts and appropriate vouchers in respect of the Business including inter alia records of the Monthly Gross Receipts and cause all such books and records to be made up on a monthly basis and retain the same for at least three (3) years. The Contractor shall allow such person or persons as may be authorised by the Government at all reasonable times upon prior notice access to all books and records of the Contractor, and if required, to make copies of the same.
- (b) The Contractor shall allow the Government to disclose whenever it considers appropriate or upon request (in writing or otherwise) by any third party all or any information of the Business, including but not limited to releasing information related to the Monthly Gross Receipts and other financial information relating to the Business obtained from the Contractor including disclosure to prospective tenderers for the contract following this Contract or any other contract.

12. Fitting Out

- 12.1 The Contractor shall accept the Licence Area and the Government Provisions in the state and condition when possession is given. However, the Government Representative shall make good any defects (whether structural and/or non-structural) of the Licence Area and ensure the Government Provisions specified in the **Contract Schedules 12 to 14** are in good working order when possession is given to the Contractor. The Contractor shall be responsible for carrying out necessary alterations and other works at Contractor's own cost in order to suit the proposed usage and relevant licence requirements.
- 12.2 The Contractor warrants and undertakes to perform all of the following:
- (a) during the Free Decoration Period, to fit out the Licence Area at the Contractor's own cost and expense in accordance with such plans, drawings, specifications and other details as shall have been first submitted to and approved in writing by the Government (including the **Business Plan** set out in the **Contract Schedule 3**) in a good and proper workmanlike fashion and in all respects in a style and manner appropriate to the Venue and to maintain the same throughout the Contract Period in good repair and condition to the satisfaction of the Government. For the purposes of fitting-out, the Contractor shall observe and comply with all such procedures and stipulations in accordance with the **Technical Schedule** in the **Contract Schedule 13**. In particular, the Contractor shall be responsible for any fitting-out / alteration / maintenance works to the building structure / building elements / building services installations within the Licence Area for the purpose of obtaining relevant Requisite Permits (including the Provisional Licence and the Full Licence) at its own cost and expense;

- (b) prior to the commencement of any work, to submit to the Government for prior written approval all such plans, drawings, specifications and other details as the Government may require of all the works which are required to be carried out by the Contractor under **Clause 12.2(a)**. Unless otherwise approved by the Government, these plans, drawings, specifications shall not deviate from the Business Plan submitted in the **Contract Schedule 3**, but such plan shall equally be subject to the approval of the Government even if the tender containing such plan has been accepted;
 - (c) during the Free Decoration Period, to decorate the Licence Area in a décor approved in advance in writing by the Government and to a standard satisfactory to the Government and to maintain the standard of décor at all times to the Government's satisfaction. The Contractor shall ensure that the design and supervision requirements set out under the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) and the subsidiary legislation made thereunder and any amendments thereto are compiled with in the design and construction of the works; and
 - (d) prior to the commencement of the operation of the Business, to provide sound isolation for the Licence Area to minimise the disturbance of the noise level to the activities held at the Venue.
- 12.3 The Contractor shall furnish and provide all such equipment, furniture utensil and all other materials of whatsoever nature necessary for the efficient operation of the Business including those facilities as specified in the **Business Plan** in the **Contract Schedule 3** and **Menus, Service Packages, Marketing and Customer Service Plan** in the **Contract Schedule 4**. All such equipment and furniture and utensil shall be of a design and standard to the satisfaction of the Government.
- 12.4 The Contractor shall perform all work as specified in the **Technical Schedule** of the **Contract Schedule 13** whether during the Free Decoration Period or otherwise throughout the Contract Period.
- 13. Maintenance and Repair**
- 13.1 The Contractor shall keep and maintain at all times all Government Provisions and all other Government properties located at the Licence Area (moveable or immovable) or otherwise from time to time provided to the Contractor for use (if any) 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 and/or at the time of expiry or early termination of the Contract Period.
- 13.2 The Contractor shall keep and maintain at all times at the expense of the Contractor the Licence Area including the internal face of structural elements such as concrete ceiling / concrete flooring / internal side of external walls, interior plaster or other finishing material to walls, floors and ceilings, plumbing, drainage and all fixtures and fittings therein including all interior doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatus in good clean and proper

- repair condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 13.3 The Contractor shall pay or reimburse to the Government the cost incurred by the Government in replacing all broken and damaged windows in the Licence Area irrespective of by whom or under whatever circumstances the same be broken or damaged.
- 13.4 The Contractor shall repair or replace at the expense of the Contractor all the electrical wiring installations and fittings within the Licence Area and all such electrical wiring installations and fittings of equipment/system belonging to the Contractor, if any, in any other part of the Licence Area if so required by the Government Representative and the relevant authority.
- 13.5 The Contractor shall keep and maintain at all times all the equipment and furniture used in the course of carrying the Business in good repair and condition to the Government's satisfaction and to replace the same or any of the same with new ones whenever necessary or when the Government reasonably demands.
- 13.6 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 and shall not carry out the repairs to the same without first obtaining the prior approval of the Government. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government and of a standard acceptable to the Government.
- 13.7 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's fixtures and fittings or to install any plant apparatus or machinery therein without having first obtained the written consent of the Government. Any application by the Contractor for the Government's consent under this Clause shall be accompanied by a plan showing the proposed changes. The Government shall be entitled to prescribe the maximum weight and location of any safe and other heavy equipment and to require that the same stand on supports of such dimensions and material to distribute the weight as the Government may deem necessary.
- 13.8 The Contractor shall be liable to the Government for any damage or loss to the Licence Area or any of the Government Provisions. If the Licence Area or any Government Provisions is found damaged or lost, as the case may be in whatsoever scale and from whatsoever cause while in the occupation or possession or control of the Contractor, the Government or the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government or the Government Representative all losses, liabilities, costs and expenses that it has incurred in the execution of such repair or replacement together with all costs and expenses incurred by the Government and the Government Representative for procuring such repair or replacement service, monitoring such repair or replacement service and in taking all other necessary actions in the light of the Contractor's breach of this Clause.

- 13.9 All Government Provisions shall remain the property of the Government and the Government Representative reserves the right to take stock checking of the same at any time and the Contractor shall provide every assistance to the Government Representative for this purpose.
- 13.10 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 continuance of the Contract. The Contractor shall indemnify each of the Government and the Government Representative fully from and against everything stated in **Clauses 37.2(a) and 37.2(b)** including claims arising from any incident occurring within the Licence Area which constitutes as a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in section 3 of Cap. 314. To the extent permitted under Cap. 314, neither the Government nor the Government Representative shall be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under section 5 of Cap. 314.
- 13.11 The Contractor shall keep proper record showing the details of the maintenance and repairs and shall provide such record to the Government within the time frame specified by the Government upon request.

14. Services

- 14.1 The Contractor shall ensure that during the opening hours of the Licence Area, an efficient and adequate supply of the Food and Beverages of a style, type and quality to the satisfaction of the Government shall be provided and maintained at the Licence Area. The Contractor shall ensure that the Business operated at the Licence Area meet the reasonable needs of the users of the Venue and its facilities including but not limited to members of the general public, persons attending the functions and activities being held at the Venue and group visitors to the Venue.
- 14.2 The Contractor shall carry out the Business which is commensurate with the services, image, functions and activities of the Venue and to satisfy the needs of the Venue’s core clients including performance patrons of various ages and styles, overseas and local performers, production crew, sponsors and VIP guests, ancillary facilities users, holding of celebrative feasts, tourists, casual visitors as well as Venue staff.
- 14.3 The Contractor shall provide seating accommodation at the Licence Area not in excess of the number as permitted by the Government Representative and the relevant authority and to comply with the seating layout as approved by the Government Representative and the relevant authority thereof in writing.
- 14.4 The Contractor shall become an EatSmart restaurant under the EatSmart@restaurant.hk Campaign run by the Department of Health, within six (6) months of commencement and for the remaining part of the Contract Period.
- 14.5 The Contractor shall not request or receive any charges for admission to the Licence Area or its surroundings, nor request or receive any other additional charges whatsoever other than service charges and/or tips, if any, levied up to ten percent (10%) of the menu price (or such increased rate as the Government may from time to

time approve in writing).

- 14.6 The Contractor shall accept payment for all items sold at the Licence Area by all internationally recognised credit cards.
- 14.7 The Contractor shall ensure that a high standard of customer service is maintained and all staff conducts themselves in a courteous manner to the satisfaction of the Government.
- 14.8 In conducting the Business, the Contractor shall observe and comply with the **Business Plan** as set out in the **Contract Schedule 3**, **Menus, Service Packages, Marketing and Customer Service Plan** as set out in the **Contract Schedule 4**, **Hygiene Maintenance Plan** as set out in the **Contract Schedule 5**, **Waste Management Plan** as set out in the **Contract Schedule 6** and **Innovative Suggestions that can Bring Positive Values/Benefits to the Society** as set out in the **Contract Schedule 7** and in the final form as approved by the Government.

15. Other Covenants

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

- (a) not to cause, suffer or permit any floor show or other entertainment whatsoever to be staged at or from the Licence Area without the prior written approval of the Government which approval may be revoked at any time by the Government at its absolute discretion;
- (b) not to use any gramophone, radio, television, loudspeaker, musical instrument or karaoke instrument or similar apparatus or equipment in such a way that the same shall be audible outside the Licence Area;
- (c) not to cause, suffer or permit any smoking whatsoever to take place in or at the Licence Area;
- (d) if the Government so requires, the Contractor shall display in a prominent position at the Licence Area a sufficient number of signs to indicate that smoking is prohibited in the area and such signs shall be of a design and size as approved or prescribed by the Government and shall be maintained at all times by the Contractor in good and legible condition;
- (e) not to cause, suffer or permit the preparation, heating or re-heating of food in areas of the Licence Area which are not approved by the Government;
- (f) not to use the Licence Area or any part thereof, or cause, permit or suffer the same to be used, for any illegal or immoral purpose, gambling or any other purpose not permitted under the Contract;
- (g) not to cause, suffer or permit any games to be played at the Licence Area; 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 Representative at its absolute discretion may permit or require.

16. Green Measures Relating to Disposable Tableware

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

Contract under **Clause 42.1(i)**.

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

17. Air-conditioning and Ventilation System

- 17.1 As more particularly stipulated in **Paragraph 9** of the **Technical Schedule** of the **Contract Schedule 13**, the Government shall use its best endeavors to provide the Licence Area with air-conditioned ventilation from 9:00 a.m. to 10:00 p.m. daily during the opening hours on each day and to maintain the same in good repair and condition. Provided always that the Government shall in no event whatsoever be held responsible for any failure or interruption of any such central air-conditioning service from any cause whatsoever or for any damage or loss (direct or indirect) whatsoever caused thereby. Provided further that notwithstanding any failure or interruption as aforesaid, all payments payable under this Contract shall remain payable in full at all times.
- 17.2 In the event of the Contractor wishing to install its own air-conditioning units in the Licence Area or any part thereof with the prior written consent of the Government, the Contractor shall comply with the directions and instructions of the Government regarding installation and shall at its own expense be responsible for their periodic 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 further that in the event of undue noise, vibration or dripping of water or heat being caused or generated by any air-conditioning units installed hereunder, the Government may require the Contractor to remove or replace such installations forthwith and to make good any loss or damage caused to the Licence Area or the Venue thereby.

18. Premises Hygiene, Food Hygiene and Safety

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

18.9 The Contractor shall cleanse and immerse crockery, cutlery and utensils used in the preparation or serving of food and beverages in boiling water for no less than one (1) minute and dry the same by evaporation before each use, and store the same in vermin-proof and dust-proof cupboards when not in use.

19. Outgoings

19.1 The Contractor shall pay all the installation costs and costs and deposits of electricity, gas, fuel, sewage services, telephones and water consumed at the Licence Area (including but not limited to electricity charges for electricity consumed by air-conditioning fan-coil units and any other air-conditioning equipment, machinery and installation whatsoever installed in the Licence Area under **Clause 17** or otherwise, air-condition ventilation made available to the Licence Area under **Clause 17**, charge for water and sewage services, all charges for telephones installed in the Licence Area and all costs of installation of all meters in connection therewith). The Contractor shall at its own cost arrange the relevant utility companies to install separate meters in its own name for measurement of the utilities consumed by the Contractor and settle the charges, deposits, and installation charges directly with the utility companies. In the event that any such supply is not metered, such amount in respect of electricity, gas, fuel and water (including sewage services) consumption shall be assessed or estimated by the Government and the Contractor agrees to accept such assessment or estimate.

19.2 The Contractor shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons.

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

20. Cleansing, Collection and Disposal of Refuse and Litter

20.1 The Contractor shall maintain to the satisfaction of the Government the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition. If the Government in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof, the Government may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government in its reasonable opinion may allow the necessary cleaning and servicing works at the Licence Area. In the event that the Contractor fails to carry out the works as directed, the Government may without further notice suspend the right of the Contractor to carry out the Business at the Licence Area under **Clause 25.1** in order to cause the Licence Area and its immediate 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 without any deduction.

- 20.2 The Contractor shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government and shall collect all refuse and litter therein.
- 20.3 The Contractor shall comply with the latest Municipal Solid Waste Charging Scheme (information of which can be found at the Government website <https://www.mswcharging.gov.hk/>). The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government at any time and from time to time for the removal and disposal of all refuse and litter collected in the course of the Business, or which is otherwise deposited by customers of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Licence Area nominated by the Government at any time and from time to time in such manner as approved or prescribed by the Government.
- 20.4 The Contractor shall arrange cleaning of the refuse collection point and all passage ways leading from the Licence Area to the refuse collection point on daily regular basis or at a frequency as prescribed by the Government.
- 20.5 The Contractor shall carry out cleansing and clearing of all grease traps in relation to the Licence Area for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes/facilities in relation to / connected to the Licence Area for which the Contractor is liable at frequent intervals to the Government's reasonable satisfaction to prevent choking and blockage of the installations. For reducing the likelihood of recurrent choking and blockage of the installations, the Contractor shall arrange at the expense of the Contractor professional pipe cleaning at least on half-yearly basis or at a frequency as prescribed by the Government at any time and from time to time for clearing clog in the course of the Business. Where the Government reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government undertake at its own expense either an emulsifying or a neutralizing effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government.
- 20.6 The Contractor shall thoroughly clean the kitchen and other permitted food preparation areas, at least, on a daily basis, and at least twice a year employ a specialist cleaning contractor as may be approved or prescribed by the Government Representative to deep clean the kitchen exhaust and ventilation systems at the Licence Area to the satisfaction of the Government.
- 20.7 The Contractor shall take all reasonable steps to prevent the accumulation of any stains, dirt, grease or other matter discharged from the Licence Area through the kitchen exhaust or ventilation system on any part of the exterior of the Venue and in the event of such stains, dirt, grease or other matter accumulating on any part including but not limited to the external wall, the Contractor shall at such regular intervals as may be approved or prescribed by the Government undertake the cleaning of such parts to the satisfaction of the Government using a contractor approved or prescribed by the Government. The Contractor shall ensure that waste water that comes out from the Licence Area is free of grease and shall not cause, suffer or permit

to be caused the waste water discharging onto areas surrounding the Licence Area and the Venue.

- 20.8 In the event of failure to comply with this **Clause 20**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government if the removal and disposal of such refuse and litter is being carried out by the Government or in cleansing and clearing any of the drains, sewers, grease traps, kitchen exhaust and ventilation systems choked or blocked due to the act, default or negligence of the Contractor.
- 20.9 At the sole cost of the Contractor, the Contractor shall employ or use only such cleaner or cleaning agent within the Licence Area as the Government shall approve or prescribe, provided always that such approval may be withdrawn by the Government upon notifying the Contractor that it has reasonable grounds for such withdrawal.

21. Water Supply and Electricity Supply

- 21.1 The Contractor shall at its own expense install and provide all necessary water supply required for its Business and pay all fees and charges in connection herewith.
- 21.2 All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out by qualified personnel approved in writing by and to the satisfaction of the Government, and such installation shall thereupon become the property of the Government free of any costs and charges. The Contractor shall be responsible for maintaining and repairing such installation at its own expense as well as removing the same shall the Government so direct.
- 21.3 The Contractor shall ensure all water pipe installation of the cooking equipment will interface with the approved water supply plan by the Water Supplies Department (“WSD”). Separate application to WSD might be required for any cooking apparatus which involved connection to the main water supply system of the Venue, to ensure no contamination to the system will be affected.
- 21.4 The Contractor, if so permitted by the Government, may consume electricity from supply points which are available at the Licence Area to operate its Business as more particularly specified in **Paragraph 6** of the **Technical Schedule** in the **Contract Schedule 13**. All consumption of electricity from such supply points must be separately metered by the Contractor applying for the meters from the power company. If the Contractor may not apply for separate meter from the power company due to technical reason, separate meter(s) shall be installed by the Government for this purpose for metering the electricity consumed. 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 with respect to the utilities.

21.5 Any installation, alteration and addition of wiring and lighting fittings to the existing Government provisions, and all other electrical works, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out by a Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Chapter 406D of the Laws of Hong Kong) and to the satisfaction of the Government. The Contractor shall be responsible for maintaining and repairing such fittings at its own expense as well as removing the same shall the Government so direct. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports shall be submitted to Government for retention.

22. On-site Personnel

22.1 In deploying staff for operating the Business, the Contractor shall comply with the details of staffing structure and staff training in the **Contract Schedule 3** to the extent as accepted by the Government.

22.2 The Contractor shall require all persons employed or appointed to work at the Licence Area (whether by the Contractor or by any of its sub-contractors of whatever tier) (collectively, “**On-site Personnel**”) to submit to such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Licence Area any person found by the medical practitioner to be likely to spread a communicable disease.

22.3 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance at the Licence Area at all times to supervise On-site Personnel.

22.4 The Contractor shall be responsible for the good conduct of all On-site Personnel while they are at the Licence Area or any other parts of the Venue, and shall ensure that they will behave accordingly.

22.5 The Government shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any member of On-site Personnel.

22.6 The Government shall be entitled to refuse to admit to the Licence Area or any part thereof any member of On-site Personnel, whose admission will be, in the reasonable opinion of the Government, undesirable.

22.7 Any removal demanded or refusal made under **Clauses 22.5 and 22.6** shall not be construed as a breach of the Contract by the Government and the Contractor shall continue to carry out its obligations under the Contract.

22.8 The Government shall in no circumstances be liable either to the Contractor or any of its sub-contractors or any member of On-site Personnel in respect of any liabilities, losses or damages occasioned by such removal demanded or refusal made as stipulated in **Clauses 22.5 and 22.6** and the Contractor shall fully indemnify the Government against everything stated in **Clauses 37.2(a) and 37.2(b)** arising from any such removal or refusal.

- 22.9 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of its Business and of a type approved by the Government for the use of all On-site Personnel.
- 22.10 The Contractor shall provide lockers for the staff 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.
- 22.11 The Contractor shall ensure that at all times when On-site Personnel are at work or on duty at the Licence Area they shall wear such clothes and uniforms in a clean and tidy manner.
- 22.12 The Contractor shall ensure that all On-site Personnel shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 22.13 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for conducting the Business. Such record shall include name, Hong Kong Identity Card number, grade/post title, age and photograph of such On-site Personnel and shall be produced for inspection by the Government upon request. All personal data submitted by the Contractor will be used by the Government for the purpose of this Contract only.
- 22.14 The Contractor shall comply with the Employment Ordinance (Chapter 57 of the Laws of Hong Kong). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(i)** if the Contractor is convicted of any offence under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong).
- 22.15 The Contractor shall comply with the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(i)** if the Contractor is convicted of any offence under the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong).
- 22.16 The Contractor shall comply with the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(i)** if the Contractor is convicted of any offence under the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong).
- 22.17 The Contractor shall comply with the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong). If the Contractor is convicted of an offence under the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong) for employing a person who is not lawfully employable in the Hong Kong, or is convicted of an offence for aiding and abetting another person to breach his condition of stay, without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause**

42.1(i).

- 22.18 The Contractor shall comply with the requirements of 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/or the Government Representative and any other parties who may be affected by the Contractor's operation of its Business. Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(i)** if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong).
- 22.19 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong). Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, the Government may terminate the Contract under **Clause 42.1(i)** if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong).
- 22.20 Any conviction mentioned in **Clauses 22.14 to 22.19** or any other provision of this Contract does not have to relate to this Contract. The conviction of a related person (as defined in **Clauses 22.21 and 22.22** below) or officer of the Contractor or any person being such officer during any part of the Contract Period may also be taken as the conviction of the Contractor and gives the same rights and remedies including the power to terminate under **Clause 42.1(i)**.
- 22.21 If the Contractor is a company, the expression "**related person**" of the Contractor includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty percent (50%) or more of the issued share capital of the Contractor ("**majority shareholder**");
 - (b) a holding company or a subsidiary of the Contractor;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Contractor; or
 - (d) a company in which a majority shareholder (being an individual) of the Contractor directly or indirectly beneficially owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.

The expressions "**holding company**" and "**subsidiary**" have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

- 22.22 If the Contractor is a sole proprietor or partnership, the expression "**related person**" includes any one of the following:
- (a) any partner of the Contractor (if it is a partnership);

- (b) the spouse, parent, child, brother or sister of the Contractor, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
- (c) a company in which the Contractor or any partner of the Contractor beneficially directly or indirectly owns fifty percent (50%) or more of its issued share capital or controls the composition of its board of directors.

23. Admission of Contractor Personnel to Government Premises

- 23.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "**Relevant Personnel**") who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.
- 23.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 23.3 The Contractor shall require all Relevant Personnel, save for those exempted, to present vaccination record showing dosage(s) complying with such dosage schedule requirements set out in the Vaccine Pass website prior to their entry into indoor government premises which are their places of work, or for work-related purposes (including for meetings and for fulfillment of duties). The number of vaccine doses required may be revised by prior written notice through the publication on the aforesaid website.
- 23.4 Exemption from the requirement to present vaccination record will be granted to (a) those who are medically unfit for COVID-19 vaccination as supported by a valid medical certificate; and (b) pregnant staff with prior exemption to be granted by the Government on a case-by-case basis. The exempted categories of the Relevant Personnel mentioned in this Clause may be revised by prior written notice from the Government to the Contractor.
- 23.5 For the purpose of **Clauses 23.3 and 23.4**, the Contractor shall comply with the entry requirement of Government premises, implementation approaches, requirement on the vaccination record and other relevant documentations to be presented, consequence of non-compliance, maintenance and updating of the register of vaccination status, and all other necessary requirements as determined by the Government by prior written notice from the Government to the Contractor.

- 23.6 The Contractor shall ensure that the Relevant Personnel will have given consent to the Contractor to pass the personal data in relation to **Clauses 23.3 and 23.4** above to authorised persons of the Government for the purposes of the provisions of this **Clause 23** and other provisions of the Contract.
- 23.7 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.
- 23.8 In the event that the Contractor fails to comply with this **Clause 23** and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith pursuant to **Clause 42.1(i)**.

24. Arrangement during Epidemic Illness

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

25. Suspension of the Business

- 25.1 In the event that the Contractor is in breach of any term and condition of the Contract, the Government shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area ("**Suspension for Default**") by notice in writing to the Contractor for a period as specified in such notice and the Suspension for Default may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice. Without prejudice to the generality of the foregoing, the Government may suspend the Contractor's right to carry on the Business at the Licence Area upon the default of the Contractor as mentioned in **Clause 20.1** or **Clause 34.2** or the failure of the Contractor to obtain the Requisite Permits as mentioned in **Clause 10.3** or **Clause 10.4** where applicable.
- 25.2 Upon a Suspension for Default, the Contractor shall have no right to operate the Business at the Licence Area 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 perform and observe all other obligations under the Contract.
- 25.3 In the event that any default leading to the Suspension for Default has been remedied to the satisfaction of the Government, the Government may cancel the Suspension for Default by notice in writing to the Contractor ("**notice of resumption**"). Upon receipt of such notice, the Contractor shall resume the Business at the Licence Area by such date as specified in the notice of resumption. The Contract Period will not however be correspondingly extended due to any suspension under **Clause 25.1**.

25.4 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any Suspension for Default under **Clause 25.1**.

26. Closure of the Licence Area

26.1 Without prejudice to the rights and powers of the Government (including under **Clause 25** to effect a Suspension for Default), the Government may require a temporary closure of the Licence Area or any part thereof for any operational or other reason (including any of the reasons as specified in **Clause 26.2**) which is otherwise than due to any default of the Contractor by giving not less than seven (7) days' notice to the Contractor specifying the period of the temporary closure. The Contract Period may or may not be correspondingly extended after the temporary closure in accordance with **Clause 2.3** depending on whether the temporary closure affects the entire Licence Area or just parts thereof. In the event of former, the Contract Period may be extended in accordance with **Clause 2.3** but not in the case of latter.

26.2 Without prejudice to the generality of **Clause 26.1**, the Government reserves the right to require a temporary closure of the Licence Area in whole or in part, by reason of fire or storm or damage or spread of epidemic as mentioned in **Clause 24** (not being the result of wilful default or misconduct or negligence of the Contractor, its employees or agents) or a force majeure within the meaning given in **Clause 42.3** or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Contract Period. The renovation of other parts of the Venue shall not entitle the Contractor to claim or request temporary closure of the Licence Area or deduction of the Monthly Licence Fee.

26.3 Where the demand of such closure or suspension of the Business by the Government is due to any repair or maintenance or building modification, notwithstanding **Clause 26.1**, the Government will give the Contractor at least one (1) month's prior notice before the commencement date of such closure and suspension, if it is practicable in the circumstances.

26.4 During the period of temporary closure of the entire Licence Area (including all such parts of the Licence Area designated for the operation of the Business) for seven (7) days or more (on a single occasion basis but not on an accumulative basis), no Monthly Licence Fee shall be payable in respect of such period, and there shall be a pro rata deduction of the Monthly Licence Fee as stated in the **Contract Schedule 11**, based on the number of days of temporary closure and based on the calculation as stated in **Clause 6.6**. In the event that there is only temporary closure of part(s) of the Licence Area designated for the operation of the Business, the Contractor shall pay the Monthly Licence Fee in full as stated in the **Contract Schedule 11**.

26.5 Upon any temporary closure of the entire Licence Area pursuant to this **Clause 26**, the Contractor shall cease carrying on the Business at the Licence Area for so long as the temporary closure continues.

- 26.6 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any temporary closure or cessation of the Business under this **Clause 26**.
- 26.7 Notwithstanding anything herein to the contrary, the Government reserves the right to give less than seven (7) days' notice for urgent closure due to emergency events which are beyond its reasonable control.
- 26.8 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof for a period of less seven (7) days will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

27. Stock and Sale of Food Commodities

- 27.1 The Contractor may sell the Food and Beverages at the Licence Area. Without prejudice to the generality of the foregoing, unless otherwise specified in the Contract, the Contractor shall stock in sufficient quantities and sell the Food and Beverages as stipulated in the **Contract Schedule 4** to the extent as accepted by the Government and such other food and beverages from time to time approved by the Government of a standard to the satisfaction of the Government.
- 27.2 Any food or beverage or any other goods or service to be sold or to be provided at the Licence Area not belonging the style of such Catering Outlet may only be sold or provided after obtaining the prior written approval of the Government. Any deduction of items from the Food and Beverages may only be made after obtaining the prior written approval of the Government.
- 27.3 The Contractor shall only sell the Food and Beverages consistent with the style of the Catering Outlet as stipulated in the **Contract Schedule 4**. Subject to the foregoing, and observation and compliance with all other requirements in the Contract, the Contractor will nonetheless be allowed, according to market demand, to introduce new items of food or beverages which are consistent with the style of the Catering Outlet as stipulated in the **Contract Schedule 4** without the need for obtaining the prior written approval of the Government Representative.
- 27.4 The Contractor shall not sell drinking water in plastic bottles measuring one (1) litre or less at the Licence Area and shall comply with the Government's latest policies on this issue during the Contract Period.
- 27.5 The Contractor shall provide to customers upon request receipts for any food and beverage sold at the Licence Area.
- 27.6 Notwithstanding the prior approval of any items appearing in the **Contract Schedule 4** or other prior approval from time to time, the Contractor shall remove forthwith from display and not sell or continue to sell, stock or display at or from the Licence Area any food, beverage or services or any other items whatsoever used or provided in or from the Licence Area or in connection with the performance of this Contract:

- (a) to which the Government Representative has notified its objection to the Contractor as being inconsistent with the objectives of the Business or the objectives or images of the Venue or the Government or the Government Representative; or
- (b) of which there is allegation of infringement of Intellectual Property Rights of any person; or
- (c) which consists of or contains any materials that infringe or are alleged to infringe the Intellectual Property Rights of any person;

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

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

28. Display of Commodity Prices

- 28.1 The Contractor shall prominently display at all times the prices of the authorised food and beverage and services in respect of the Business at the 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.
- 28.2 In the case of goods which have a wholesaler or manufacturer recommended Hong Kong retail price, a price not higher than that price shall be adopted and where such prices are stated in foreign currencies, the Contractor shall make available for inspection the Hong Kong Dollar exchange rates applied by the Contractor to the currencies concerned to any customer who so requests, and notify the Government of any changes to the said exchange rates. Where no recommended Hong Kong retail price is available, the goods will be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlets, or in the case where such goods are not sold by the Contractor at its other retail outlet, within the range of prices charged in similar types of retail outlets in Hong Kong.

29. Erection of Structure

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

30. Store of Dangerous Goods and Prohibited Goods

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

31. Fire Precautions

- 31.1 The Contractor shall provide and maintain in proper and serviceable condition fire-fighting equipment to the satisfaction of the Government and comply with any directions issued by the Government or the Director of Fire Services in connection with the Licence Area.
- 31.2 The Contractor shall only use electricity as fuel to heat or cook food or boil water in the Licence Area. No naked flame is permitted in the Licence Area.

32. Watchman

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

33. Access by the Government for Repair

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

34. Inconvenience or Annoyance Caused at the Venue

- 34.1 The Contractor shall ensure that the On-site Personnel shall perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- 34.2 The Contractor shall not do anything at the Licence Area or any part of the Venue or in the immediate vicinity thereof which may be or become a nuisance or annoyance (including but not limited to the making of excessive noise or sound) or cause damage or inconvenience or discomfort to the users of the Venue, the Government, its employees or agents working at the Venue. The Government shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area under **Clause 25.1** for non-compliance with this **Clause 34.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.
- 34.3 The Contractor shall not place or leave, or cause, suffer or permit to be placed or left any of its trade equipment, stores, provisions, furniture, fixtures, fittings, chattels or other things whatsoever at any places within the Licence Area or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government if the Government in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this Clause and without prejudice to any other rights and remedies which the Government has or may have under the Contract, the Government shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Contractor to seize and dispose of any such property in such manner as the Government may see fit without any liabilities whether towards the Contractor or any person otherwise and the Contractor shall pay the Government on demand all the costs in relation with such removal and/or disposal which are incurred by the Government.

35. Inspection and Rejection

- 35.1 The performance of any obligation by the Contractor of this Contract including the supply of Food and Beverages provided at the Licence Area shall be subject to inspection by the Government Representative at any time.
- 35.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government Representative may reject any action undertaken by the Contractor or the result of such action which does not strictly conform to the terms and conditions of the Contract, including any action that may constitute as non-compliance with any condition stated in Requisite Permits or will lead to revocation of any of such Requisite Permits.
- 35.3 Within twenty-four (24) hours (or such longer times as maybe notified by the Government Representative) of being notified in writing of the rejection of any action undertaken by the Contractor or the result of such action, the Contractor shall take necessary action to rectify such rejected action or the result of such action to the satisfaction of the Government Representative.

35.4 If the Contractor shall fail to rectify such rejected action or result of action, the Government may, but it is not obliged, without prejudice to any other rights and remedies available to the Government carry out and complete such rectification by its own staff or by its agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith on demand. The normal working hours for the staff of the Government are, with the exception of public holidays, from 9:00 a.m. to 5:30 p.m. from Mondays to Fridays. In addition to the administrative costs recoverable from the Contractor for performing any such work within the normal working hours, if any work is carried out by the staff of the Government outside these normal working hours, the Contractor shall also be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

36. Contractor's Act and Default

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

37. Liability and Indemnities

37.1 Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).

37.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (each an "**Indemnified Party**") from and against:

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "**Claims**" and each a "**Claim**") and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified

Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, its employees, agents or sub-contractors;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the Materials or Third Party Materials (as defined in **Clause 47.3**) infringes the Intellectual Property Rights or any other rights of any person;
- (v) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor, or its employees, agents or sub-contractors, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in **Clause 37.1** above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (viii) any injury or death of any third party, or any loss 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, agents and sub-contractors.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

37.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.

37.4 For the purposes of this **Clause 37**, “**Negligence**” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).

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

38. Public Liability Insurance

38.1 The Contractor shall throughout the Contract Period effect at its own expense (a) a public liability insurance policy (“**Public Liability Insurance Policy**”) in the joint names of the Contractor and the Government of the Hong Kong Special Administrative Region with an indemnity amount in the sum of not less than **Hong Kong Dollars Ten Million (HK\$10,000,000)** for any one incident and unlimited number of claims in any one (1) year; and (b) product liability insurance (“**Product Liability Insurance Policy**”), in each case with an insurance company authorised by the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) on such terms and conditions to be approved by the Government in writing in advance.

38.2 The Public Liability Insurance Policy shall:

(a) indemnify the insured in respect of all sums which each of the insured shall become legally liable to pay as compensation for any death of or injury to or illness suffered by any person (other than an employee where such death or personal injury arises out of and in the course of employment) or any loss or damage of property belonging to any person; and

(b) indemnify each of the insured from and against payment of legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.

38.3 The Product Liability Insurance Policy shall indemnify the Contractor in respect of all sums which insured shall become legally liable to pay as compensation for any death of or injury to or illness of any person due to poisoning by food and/or drink supplied by the Contractor at the Licence Area as well as the legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.

38.4 The Contractor shall keep each of the Public Liability Insurance Policy and the Product Liability Insurance Policy in force throughout the continuance of the Contract Period and shall, if required, deposit with the Government for record copies of such policies together with the receipt for payment of the current premiums.

38.5 Where the terms of the Public Liability Insurance Policy or the Product Liability Insurance Policy taken out by the Contractor require the insured parties to bear any excess amount in the event of claims, the Contractor shall be personally and solely responsible for the payment of such excess amount and shall reimburse the Government for such payment (if paid by the Government). Under no circumstances whatsoever shall Government Representative or the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.

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

39. Government to Recover Cost

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

40. Recovery of Sums Due

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

provisions that such amount may be recovered as a debt.

41. Set-off

Whenever under the Contract any sum of money is recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Government contracts.

42. Termination

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

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract and in the case of a breach capable of being remedied, the Contractor fails within fourteen (14) days (or such longer period as the Government may allow) to remedy the breach following from the issue of a notice from the Government requiring it to do so (such notice shall contain a warning of the Government's intention to terminate the Contract);
- (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 at the Licence Area, or a petition is filed for the bankruptcy or winding up of its Business otherwise than for the purpose of a bona fide reconstruction or solvent amalgamation previously approved by the Government in writing;
- (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;
- (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;
- (e) if the Contractor unilaterally ceases the operation at the Licence Area and/or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period;
- (f) if there is any claim or allegation or the Government has reasonable grounds to believe that the Contractor in the course of performing the Contract, or any goods or materials supplied or to be supplied by the Contractor, has infringed or may infringe the Intellectual Property Rights of any person;

- (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
 - (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
 - (i) any event or circumstance occurs which enables the Government Representative to terminate the Contract under any provision of the Contract including any of the following provisions:
 - (i) **Clause 10.3 or 10.4** (Licence, Permit and/or Certificate);
 - (ii) **Clause 16.8** (Green Measures Relating to Disposable Tableware);
 - (iii) any of **Clauses 22.14 to 22.20** (On-site Personnel);
 - (iv) **Clause 23** (Admission of Contractor Personnel to Government Premises);
 - (v) **Clause 48** (Probity);
 - (vi) **Paragraph 32** of the **Terms of Tender** (Offering Gratuities); or
 - (vii) **Paragraph 38.3** of the **Terms of Tender** (Warranty against Collusion).
- 42.2 If the Government is at any time prevented from performing the Contract by force majeure, then the Government shall serve a notice on the Contractor to this effect whereupon the Contract shall terminate immediately.
- 42.3 For the purpose of **Clauses 26.2 and 42.2**, “force majeure” means acts of God, strikes, lockouts, acts of war, civil disorders, or other similar or different events or contingencies beyond the reasonable control of the parties to this Contract. For these purposes an event shall not be deemed to be within the control of the Government on the ground that the Government could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person. Failure to obtain or renew any licence or permit for carrying the Business for whatever reason including due to any change of applicable law and regulations may not be treated as force majeure but a default on the part of the Contractor.
- 42.4 Notwithstanding anything herein to the contrary, either party to the Contract may without cause early terminate this Contract by giving not less than six (6) months’ notice to the other party but such date of termination shall not be earlier than eighteen (18) months after the date of commencement of the Contract.
- 42.5 If the Government has terminated the Contract by notice to the Contractor pursuant to this **Clause 42** or the Contractor has terminated the Contract early by serving prior written notice pursuant to **Clause 42.4** above, and the Government conducts a new procurement exercise to award a contract to provide the Business from another source to replace the existing Contract, and tender/quotation offer from the same Contractor or a related person of the Contractor (as defined in **Clauses 22.21 and 22.22**) for the contract to be awarded in that new procurement exercise will be rejected.
- 42.6 The grounds for termination specified in this **Clause 42** are separate and independent, and shall not be limited by reference to or inference from the other of them.

43. Effect of Termination

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

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
 - (ii) the rights and claims which have accrued to a party or the Government prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including without limitation **Clauses 6, 9, 11, 13, 15, 19, 36 to 60**);
- (b) neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under **Clause 37.2**, in the event that this Contract is terminated under **Clause 42.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government and the Government Representative arising from the Termination including without limitation to:
 - (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement contract is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination;
 - (ii) all administrative and legal costs incurred by the Government for earlier terminating the Contract; and
 - (iii) all administrative and legal costs incurred by the Government for issuing an invitation to bid for a new replacement contract similar to the Contract;
- (d) the Contractor shall forthwith pay up all unpaid Monthly Licence Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in **Clause 6.5**;

- (e) the Contractor shall immediately deliver up vacant possession of the Licence Area, and other working area and storage area provided by the Government Representative or used by the Contractor in a clean and tidy condition, and all Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government in good repair (fair wear and tear excepted) and in clean and hygienic condition. Provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government's consent, the Government may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government's fixtures and installations thereof by such deadline date as specified by the Government Representative (whether to fall before or after the Termination) before delivering up the Licence Area to the Government. Alternatively, the Government may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government so chooses without any compensation to the Contractor whatsoever. For the avoidance of doubt, the Contractor shall be entitled to remove its own trade fixtures and trade equipment;
- (f) the Contractor shall remove from the Licence Area all removable objects which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at its own expense make good any damage to the Licence Area arising from such removal;
- (g) the Contractor and all persons of the Contractor Responsible Group shall vacate the Licence Area and deliver up all keys and/or access cards to the Government;
- (h) if the Contractor fails to comply with **Clause 43(e)** or **43(f)** or **43(g)**, the Government may forthwith enter the Licence Area to remove any persons therein, or to remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in a good repair and clean and serviceable condition. The Government reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due from the Contractor; and
- (i) the Contractor shall submit all outstanding statements and information as specified in **Clause 6**.

44. Monies or Valuables Found

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

45. Publicity and Advertisement

45.1 The Contractor shall not exhibit, display, publish or use any advertising or other publicity materials or perform any act with an advertising nature either inside or outside the Licence Area or any part thereof except with the prior written consent of the Government.

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

45.3 Without prejudice to the generality of **Clause 45.2** above, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Licence Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature relating to any tobacco or tobacco related products.

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

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

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

47. Intellectual Property Rights

47.1 The Government shall be the exclusive owner of the Materials. Except for the Third Party Materials (as defined in **Clause 47.3** below), all the Intellectual Property Rights in the Materials shall vest in the Government immediately upon creation. Subject to **Clause 47.3** below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.

- 47.2 The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. “Use” includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 47.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract (“**Third Party Materials**”), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.
- 47.4 The Contractor warrants that:
- (a) prior to the use and incorporation of the Third Party Materials into the Materials or in operating the Business, the Contractor shall have obtained from the third party Intellectual Property Rights owners the grant of all necessary clearances and licences for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;
 - (b) the provision of the Materials, Business and Third Party Materials by the Contractor and the use or possession by the Government, its authorised users, assigns and successors-in-title of the Materials and the Third Party Materials for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights or any other rights of any person; and
 - (c) the exercise of any of the rights granted under the Contract by the Government, its authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights or any other rights of any person.
- 47.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of the Materials or upon the grant of the licence to the Government, its authorised users, assigns and successors-in-title or upon the delivery of the Third Party Materials to the Government (as the case may be).

- 47.6 The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licences, documents and instruments and do or procure the doing of any further things as may be required by the Government to give full effect to **Clauses 37.2 and 47**, and shall provide all such assignments, deeds, licences, documents and instruments to the Government within fourteen (14) days from the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 47.7 The provisions of this **Clause 47** shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

48. Probity

- 48.1 The Contractor acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its officers, employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
 - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- 48.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Contractor shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- 48.3 The Government shall have the right to terminate the Contract pursuant to **Clause 42.1(i)** in the event that the Contractor or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).
- 48.4 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to operate the Business from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-contractor (if any), or any person employed by it to operate the Business is well aware of the prohibited acts explicitly stated in **Clause 48.2** above and of the staff code of conduct. The code of conduct shall form part of

the employment contract to ensure acknowledgement and compliance by the employees.

49. Disclosure of Information

49.1 The Contractor hereby irrevocably authorises, consents and agrees that the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the Government considers fit:

- (a) a brief description of the Business provided or to be provided by the Contractor;
- (b) the Monthly Licence Fee payable by the Contractor pursuant to the Contract;
- (c) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor; and
- (d) the date of award of the Contract.

49.2 Disclosure may also be made by the Government under any of the circumstances specified in **Paragraph 19.2** of the **Terms of Tender** in relation to any information concerning or relating to the Contractor or the Contract or the Business or the Materials, recorded in whatever media.

49.3 Nothing in this **Clause 49** or in **Paragraph 19.2** of the **Terms of Tender** shall imply or be construed that the Government owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Business or the Materials.

50. Applicability of the Public Health and Municipal Services Ordinance

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

51. Compliance with Law and Government Requirements

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

52. Service of Notice

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

by facsimile or by email.

52.2 The Government Representative's details are as follows:

Address: Kwai Tsing Theatre, 12 Hing Ning Road, Kwai Chung,
New Territories, Hong Kong
Attention: Manager (New Territories South) Building Management
Facsimile number: (852) 2944 8743
Email address: mntsbm@lcsd.gov.hk

52.3 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.

53. Waiver

53.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

53.2 Without prejudice to the generality of **Clause 53.1** above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

54. Severability

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

55. Entire Agreement

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

56. Amendment

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

57. Further Assurance

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

58. Relationship of the Parties

- 58.1 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.
- 58.2 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.

59. Governing Law and Jurisdiction

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

60. Contracts (Rights of Third Parties) Ordinance

The parties hereby declare that nothing in this Contract confers or purports to confer on any person not being a party to this Contract any benefit or any right to enforce any term of this Contract under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).

PART 3
CONTRACT SCHEDULES

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CONTRACT SCHEDULE 1

Marking Scheme for Tender Evaluation

1. Marking Scheme

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

Stage 1 – Completeness Check on the Tender Offers Submitted

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

Stage 2 – Technical Assessment

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

Assessment Criteria	Maximum Mark	Unit Mark (M)	Standard Score (S) (See Note 1)						Marks Scored (M x S)	Passing Mark
			5	4	3	2	1	0		
(A) Execution Plan										
(1) Business Plan (See Notes 2 and 6)	24	6								6
(2) Menus, Service Packages, Marketing and Customer Service Plan (See Notes 3 and 6)	24	6								6
(3) Hygiene Maintenance Plan (See Notes 4 and 6)	10	2.5								2.5
(4) Waste Management Plan (See Notes 5 and 6)	10	2.5								2.5
(5) Innovative Suggestions that can Bring Positive Values/Benefits to the Society (See Note 7)	17	4.25								–
Sub-total for (A)	85									–
(B) Experience and Qualification										
(6) Years of Experience in Operating Catering Outlet(s) (See Note 8)	8	2								–
(7) Experience and Qualifications of Senior Manager(s) (See Note 9)	2	1								–
(8) Valid and Relevant ISO and OHSAS Certifications (See Note 10)	5	1								–
Sub-total for (B)	15									–
Total Technical Mark = (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 mark, while the weighted technical score for other conforming tenders will be calculated by the following formula –

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

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

Explanatory Notes for Stage 2 – Technical Assessment

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

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

For Assessment Criteria (1) to (6)

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

For Assessment Criterion (7)

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

For Assessment Criterion (8)

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

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

The Business Plan shall cover the following items:

- (a) details of vision and core value of the business including quality food, excellent customer service, integrity of service (to be illustrated and supported by statements, plans and drawings where appropriate) which can be fully compatible with the image and functions of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities**, which is required under the **Contract Schedule 3(a)**;
- (b) details of décor design including the design concept and layout plans for seating area, kitchen / food serving areas, shop front and reception, which aim to foster the image of the Venue as a cultural facility, which is required under the **Contract Schedule 3(b)**;
- (c) details of hospitality facilities including dining table layout and tableware for the Licence Area, which is required under the **Contract Schedule 3(c)**; and
- (d) details of staff deployment and management including staff recruitment, staffing structure, training/re-training on customer services, and retention strategies, which is required under the **Contract Schedule 3(d)**.

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

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

- (a) details of the branding concept of a Tenderer's own branding including an overview of marketing and communication methods to create a unique brand identity and clientele philosophy including the identification of target customer segment and formulation of various strategies to reach the target group, which is required under the **Contract Schedule 4(a)**;

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (b) details in support of the promotion of the programmes of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities** (e.g. displaying posters and pamphlets provided by the Venue at the prominent locations of the Licence Area, free Internet access, charging of mobile devices available for patrons), which is required under the **Contract Schedule 4(b)**;
- (c) details of the marketing and customer services initiatives (e.g. advertising strategies, seasonal promotion programme, customer outreaching programmes) for promoting the image and functions of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities**, which is required under the **Contract Schedule 4(c)**;
- (d) details of the marketing strategies to promote revenue and encourage repeated visits of the customers (e.g. membership discount programme), which is required under the **Contract Schedule 4(d)**;
- (e) a list of the signature cuisines, regular and special festive menus for a western restaurant including the food, drinks and beverages and their key elements which help attract customers and are for immediate consumption by customers to be seated at such venue or for take-away, which is required under the **Contract Schedule 4(e)**; the proposed menus shall aim to blend with the image of the Venue as a cultural facility; and
- (f) details of the proposed service packages for the corporate events (e.g. a reception, a celebration feast, a boardroom luncheon, a conference refreshment, a farewell party, a company function), which is required under the **Contract Schedule 4(f)**. The proposed service packages shall aim to blend with the image of the Venue as a cultural facility.

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

The Hygiene Maintenance Plan shall cover the following items:

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

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

The Waste Management Plan shall cover the following items:

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

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

- (a) Standard scores will be given to Assessment Criteria (1) to (4) in accordance with the following five-grade approach –
 - 4 – The proposed plan is **practical** with **detailed information** on **all** items of the respective plan as required in Notes 2 to 5 above.
 - 3 – The proposed plan is **practical** with **detailed information** on **more than half** of the items and brief information covering the remaining items of the respective plan as required in Notes 2 to 5 above.
 - 2 – The proposed plan is **practical** with **detailed information** on **half** of the items and brief information covering the remaining items of the respective plan as required in Notes 2 to 5 above.
 - 1 – The proposed plan is **practical** with **brief information** on **all** items of the respective plan as required in Notes 2 to 5 above.
 - 0 – The proposed plan is **impractical** or **fails** to provide information on any of the items of the respective plan as required in Notes 2 to 5 above.
- (b) The meaning of “more than half” and “half” of the items of the respective plan are as below –

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (c) All the proposed plans and the information herein submitted by the successful Tenderer under Assessment Criteria (1) to (4) shall form part of the Contract.

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

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (f) Tenderers shall highlight the proposed innovative suggestions and explain clearly with sufficient details on what benefits / positive values to which their proposed innovative suggestions can bring about in their submissions to facilitate tender evaluation as well as how they are to be implemented.
- (g) Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following –
- (i) if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle: scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations, outcome and others as appropriate;
 - (ii) if the suggestion is concerned with a kind of measure, service, scheme and activity: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries as appropriate; and
 - (iii) if the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries as appropriate.
- (h) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the tender submissions and factual supporting documents (e.g. test reports / certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are NOT allowed to provide additional information not contained in their original tender submissions.
- (i) All practicable innovative suggestions accepted by the Government shall form part of the Contract.

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

- (a) Assessment will be based on the aggregate number of relevant years of experience of a Tenderer in running catering outlet(s) each with a seating capacity of not less than fifty (50) persons in the ten (10) years immediately preceding the original Tender Closing Date.

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (b) Standard scores will be given to Assessment Criterion (6) in accordance with the following five-grade approach –
- 4 – An aggregate of five (5) years’ experience or more.
 - 3 – An aggregate of four (4) to less than five (5) years’ experience.
 - 2 – An aggregate of three (3) to less than four (4) years’ experience.
 - 1 – An aggregate of two (2) to less than three (3) years’ experience.
 - 0 – An aggregate of less than two (2) years’ experience,
or failing to produce documentary proof to support its claim of experience.
- (c) Catering outlet(s) refer to licensed restaurant(s), e.g. general restaurant(s) and light refreshment restaurant(s).
- (d) Local and/or outside Hong Kong experience will be counted.
- (e) The experience gained by a Tenderer will only be counted where the previous contract(s) was/were entered under the same name of the Tenderer. For the avoidance of doubt, a Tenderer’s experience gained in its capacity as a sub-contractor or the experience of a parent company, subsidiary or sub-contractor of the Tenderer shall not be considered. The meanings of “**parent company**” and “**subsidiary**” follow the meanings under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- (f) If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership, will be counted.
- (g) The aggregate years of experience will be counted in calendar days. For the purpose of tender evaluation, “**an aggregate of two (2) years’ experience**” is equivalent to having accumulated 730 days (i.e. 365 days x 2) of experience under different catering outlets.
- (h) It is not necessary for a Tenderer to have continuous experience in operating catering outlet(s) in the ten (10)-year period immediately preceding the original Tender Closing Date.
- (i) For the purpose of tender assessment, the relevant experience in operating catering outlet(s) could be gained under the same catering outlet or different catering outlets. However, a Tenderer’s experience under different catering outlets will not be double-counted for those overlapping periods. A Tenderer’s experience under different catering outlets with overlapping periods is to be counted in accordance with the following example:

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

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

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

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (g) If more than one (1) senior managers are nominated by a Tenderer, standard score will be given according to the numbers of experience and qualification requirements listed in (i) and (ii) of this Note above met by the nominated senior manager having the longest years of full-time working experience at management or supervisory level in catering, hotel management and/or marketing in the ten (10)-year period immediately preceding the original Tender Closing Date.

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

- (a) Standard scores will be given to Assessment Criterion (8) in accordance with the following rule –
- 5 – Accredited to all five (5) certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP).
 - 4 – Accredited to any four (4) certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 3 – Accredited to any three (3) certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 2 – Accredited to any two (2) certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 1 – Accredited to any one (1) certificate of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 or Hazard Analysis Critical Control Points (HACCP).
 - 0 – Not accredited to any of the certificates of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP), or failing to produce documentary proof to support its claim of possessing any relevant accreditation.

CONTRACT SCHEDULE 1
Marking Scheme for Tender Evaluation

- (b) A Tenderer shall submit documentary evidence (e.g. a copy of the certificate), which is required under the **Contract Schedule 10**, to substantiate its claim of the accreditation. Accreditation not substantiated will not be taken into account.
- (c) For the purpose of counting the accreditation, “**certificate(s)**” means certificate(s) of ISO 9001 Quality Management Systems, ISO 14001 Environmental Management Systems, ISO 22000 Food Safety Management, Occupational Health and Safety Assessment Series (OHSAS) 18001 and Hazard Analysis Critical Control Points (HACCP) which are relevant to catering and are valid as at the original Tender Closing Date.

Stage 3 – Price Assessment

5. The price evaluation will commence after completion of the technical assessment.
6. A maximum weighted price score of 50 will be allocated to the conforming tender with the highest fixed monthly fee, while the weighted price score for other conforming tenders will be calculated by the following formula –

$$\text{Weighted Price Score} = 50 \times \frac{\text{Fixed monthly fee of the conforming tender being assessed}}{\text{The highest fixed monthly fee among the conforming tenders}}$$

[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 paragraph 4 above.]

Stage 4 – Calculation of Combined Score

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

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

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

CONTRACT SCHEDULE 2
Working Background and Status of Tenderer

(To be inserted into the “Technical Submission” envelope)
(Information provided can be written in English, Chinese or both)

Each Tenderer shall provide the following information (please make photocopy of these sheets if necessary):

Table A – Information and documents required under Paragraph 7 of the Terms of Tender:

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

(b) Principal place of business of the Tenderer (in address form):

(c) Type of business entity of the Tenderer:
company / sole proprietorship / partnership / statutory corporation / others*
*(*Delete whichever is not applicable)*

(d) Shareholders/partners/proprietor of the Tenderer and their percentage of ownership:

(e) Length of business experience:

(f) Names of the following:
(i) managing director and other directors; (ii) partners; or (iii) sole proprietor

(g) Place and date of incorporation or formation:

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

** Delete as appropriate*

CONTRACT SCHEDULE 2
Working Background and Status of Tenderer

(To be inserted into the “Technical Submission” envelope)
 (Information provided can be written in English, Chinese or both)

- (h) Business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise:
-

- (i) Names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer:
-

- (j) A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Tenderer:
-

(Please attach if applicable)

- (k) (If the Tenderer is a company) A copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer:
-

(Please attach if applicable)

- (l) (If the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong)) A copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents issued by the authority of the place of incorporation of the Tenderer:
-

(Please attach if applicable)

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
 Authorised Representative*: _____
 (with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 2
Working Background and Status of Tenderer

(To be inserted into the “Technical Submission” envelope)
 (Information provided can be written in English, Chinese or both)

(m) Employee’s Compensation Insurance Policy

Name of insurer: _____

Policy number: _____

Expiry date: _____

(n) A certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if the signatory of the “Offer to be Bound” of the **Tender Form** is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be):

 (Please attach if applicable)

Table B – Information required under Paragraph 17.2 of the Terms of Tender:

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

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

Date	Details of the Event

(*Delete whichever is not applicable)

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or Authorised Representative*: _____

(with firm/company chop, if applicable)

* Delete as appropriate

CONTRACT SCHEDULE 2
Working Background and Status of Tenderer

(To be inserted into the “Technical Submission” envelope)
(Information provided can be written in English, Chinese or both)

Table C – Other information which is required to be provided or disclosed in this Schedule (if any) or otherwise any information which the Tenderer wishes to provide:

Table D – Enquiries

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

Name and Post: _____

Address: _____

Telephone number: _____

Facsimile number: _____ Email address: _____

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____

(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Business Plan

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

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

Each Tenderer shall provide the following information:

- (a) Details of vision and core value of the business including quality food, excellent customer service, integrity of service (to be illustrated and supported by statements, plans and drawings where appropriate) which can be fully compatible with the image and functions of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities**.

- (b) Details of décor design including the design concept and layout plans for seating areas, kitchen / food serving areas, shop front and reception, which aim to foster the image of the Venue as a cultural facility.

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or Authorised Representative*: _____

(with firm/company chop, if applicable)

* Delete as appropriate

CONTRACT SCHEDULE 3

Business Plan

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

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

- (c) Details of hospitality facilities including dining table layout and tableware for the Licence Area.

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

* *Delete as appropriate*

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

(To be inserted into the “Technical Submission” envelope)
(Information provided can be written in English, Chinese or both)

Each Tenderer shall provide the following information:

- (a) Details of the branding concept of a Tenderer’s own branding including an overview of marketing and communication methods to create a unique brand identity and clientele philosophy including the identification of target customer segment and formulation of various strategies to reach the target group.

- (b) Details in support of the promotion of the programmes of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities** (e.g. displaying posters and pamphlets provided by the Venue at the prominent locations of the Licence Area, free Internet access, charging of mobile devices available for patrons).

- (c) Details of the marketing and customer services initiatives (e.g. advertising strategies, seasonal promotion programme, customer outreaching programmes) for promoting the image and functions of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities**.

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or Authorised Representative*: _____
(with firm/company chop, if applicable)

* *Delete as appropriate*

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

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

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

- (f) Details of the proposed service packages for the corporate events (e.g. a reception, a celebration feast, a boardroom luncheon, a conference refreshment, a farewell party, a company function). The proposed service packages shall aim to blend with the image of the Venue as a cultural facility.

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

Remarks: The proposed list of menu items and services, once accepted and approved by the Government Representative, shall become the foods/services allowed for supply and sale at the Licence Area for which the Contractor shall seek the Government Representative’s prior approval on any subsequent deletion of items. Apart from the proposed list of foods/services, the Contractor will be allowed, according to market demand, to introduce extra items of food or services on a voluntary basis which will not be subject to the same restriction imposed on the foods/services.

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 5
Hygiene Maintenance Plan

(To be inserted into the “Technical Submission” envelope)
(Information provided can be written in English, Chinese or both)

Each Tenderer shall provide the following information:

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

- (b) Guidelines and standards to seating area staff on cleansing and hygiene.

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

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 6
Waste Management Plan

(To be inserted into the “Technical Submission” envelope)
(Information provided can be written in English, Chinese or both)

Each Tenderer shall provide the following information:

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

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

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

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____

(with firm/company chop, if applicable)

* Delete as appropriate

CONTRACT SCHEDULE 7

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

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

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

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

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

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or Authorised Representative*: _____

(with firm/company chop, if applicable)

* Delete as appropriate

CONTRACT SCHEDULE 7

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

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

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

(c) Environmental protection –

Promotion of consumption of fewer resources, reduction of waste, food donation and food waste recycling on top of the green measures relating to disposable tableware as stated in the tender document.

(d) Local arts development –

Offering special packages or initiating joint collaborations with arts organisations and explore or enrich experience of new visitors which shall be commensurate with the image and functions of the Venue as mentioned in **Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities**, to promote arts and culture in the society.

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or Authorised Representative*: _____

(with firm/company chop, if applicable)

* Delete as appropriate

CONTRACT SCHEDULE 8
Years of Experience in Operating Catering Outlet(s)

(To be inserted into the “Technical Submission” envelope)
 (Information provided can be written in English, Chinese or both)

Each Tenderer shall submit the following information for evaluation according to the marking scheme in Note 8 in the **Contract Schedule 1**. **Please refer to Note 8 in the Contract Schedule 1 for details of preferred experience.**

Tenderers' previous experience in relevant business:

Each Tenderer shall state its experience in running catering outlet(s) and the number of currently operated catering outlet(s) each with a seating capacity of not less than fifty (50) persons, in the ten (10) years immediately preceding the original Tender Closing Date. Each Tenderer shall provide documentary proof evidence including but not limited to a copy of agreement, Business Registration Certificates, trading and profit and loss account of the catering business, layout/seating plans of the catering outlet(s) approved by the Food and Environmental Hygiene Department to substantiate claim of relevant experience and seating capacity. Experience not substantiated will not be taken into account.

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

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

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
 Authorised Representative*:

(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 9
Experience and Qualifications of Senior Manager(s)

(To be inserted into the “Technical Submission” envelope)
 (Information provided can be written in English, Chinese or both)

Each Tenderer shall nominate senior manager(s) who shall be the single on-site manager-in-charge operating the Catering Outlet under the Contract. Each nominated senior manager shall possess working experience and qualification meeting the following two (2) requirements –

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

Please refer to Note 9 in the Contract Schedule 1 for details of preferred experience and qualifications.

Years of relevant experience and qualification of the nominated senior manager(s):

Name of the nominated senior manager(s)	Qualification with documentary proof of employment history	Name and seating capacity of restaurant for past employment	Years of relevant experience

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

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
 Authorised Representative*: _____
 (with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 10
Valid and Relevant ISO and OHSAS Certifications

(To be inserted into the “Technical Submission” envelope)
 (Information provided can be written in English, Chinese or both)

Each Tenderer shall possess valid and relevant ISO and OHSAS certifications. Tenderers shall state the valid and relevant ISO and OHSAS certifications below.

Please refer to Note 10 in the Contract Schedule 1 for details of preferred certifications.

Valid and relevant ISO and OHSAS certifications:

Relevant ISO and OHSAS certification	Years attained	Expiry date

A Tenderer shall submit documentary evidence (e.g. a copy of certificate) to substantiate its claim of the accreditation.

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
 Authorised Representative*: _____

(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 11**Monthly Licence Fee****(To be inserted into the "Price Submission" envelope)**

In the event that I am / we are* awarded the Contract, I/we* shall pay the Monthly Licence Fee pursuant to **Clause 6** of the **Conditions of Contract** in consideration of the grant of the Licence to operate the Business at the Licence Area. For this purpose, I/we* propose below the following amount as the Monthly Licence Fee:

Monthly Licence Fee (in figures):	HK\$ _____ per month
--	-----------------------------

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

* *Delete as appropriate*

CONTRACT SCHEDULE 12
Introduction of the Licence Area

1. Location and Gross Floor Area of the Licence Area

Indoor area:	Gross floor area of approximate 98.73m ² as delineated and edged red in Annex C and Annex D
Outside seating accommodation area:	Gross floor area of approximate 100m ² as delineated and edged green in Annex C and Annex D

2. Indoor Area of the Licence Area

Indoor seating area:	Approximate 50m ² (net)
Food preparation area and service counter area:	Approximate 40.25m ² (net)

3. Toilet Provision outside the Licence Area

There are no toilets inside the Licence Area. Staff and customers of the Catering Outlet could use the public toilets in the vicinity inside the Venue.

4. Provisions Given by the Government

Provisions given by the Government for the Licence Area are shown on the **Contract Schedule 13** and **Contract Schedule 14**.

Note:

1. All plans in the Tender Documents are for the purpose of identification and general reference only. All figures in this **Contract Schedule 12** are approximate and subject to final measurement.
2. The Contractor is allowed to conduct business for provision of other services at such other areas of the Venue as the Government Representative at its absolute discretion may at any time and from time to time set aside.

CONTRACT SCHEDULE 13
Technical Schedule

1. The Catering Outlet

- 1.1 The Catering Outlet is at the G/F foyer of the Venue. The indoor seating area is approximate 50m² whereas the outside seating accommodation area provides an additional area of approximate 100m². Decorated with curtain wall windows, the Catering Outlet offers an attractive view overlooking the plaza of the Venue.
- 1.2 The Licence Area is designed for catering operations under a general restaurant licence with outside seating accommodation. The standard of the Catering Services shall be in keeping with the Venue's status as a cultural centre of international standard and geared to serve its patrons. The Contractor shall be able to offer reasonably priced food and drinks of a quality commensurate with the services, image, functions and activities of the Venue.
- 1.3 If liquor is to be sold in the Catering Outlet, separate liquor licence issued by the Liquor Licensing Board will also be required.

2. Glass Panels and Doors

- 2.1 Toughened glass panel fixed at top and bottom with butt joint and sealant between panels are used for the windows of the indoor seating area. Glass doors are 2200mm high including bottom rails. Glass doors are fixed with stainless steel hinges at top and bottom with concealed door locks.
- 2.2 No fixing on the glass panels and structural frames will be permitted.

3. Ceiling

- 3.1 No false ceiling is provided in the Licence Area. If false ceiling is required, the Contractor shall be responsible for any alteration works and getting the approval from the Government Representative.
- 3.2 The ceiling may be of open construction such as lattice grid or open strip providing a minimum of 70% net free area in order to avoid modifications to the fire services installations.

4. Floor and Walls

- 4.1 Natural granite tiles are used for the flooring of the indoor seating area, which shall not be removed but may be covered. No fixing, drilling and cutting of the flooring will be allowed without the prior approval of the Government Representative. Raised flooring is permissible but it must be removed at the time of expiry or early termination of the Contract Period.
- 4.2 The existing glass panels may be lined with plaster board or plywood. No coating or painting on the glass panels is allowed.

CONTRACT SCHEDULE 13
Technical Schedule

- 4.3 Internal wall of the indoor seating area shall be finished with plaster and emulsion paint. It may be covered up with plaster board or plywood with decoration, which shall be removed at the time of expiry or early termination of the Contract Period.
- 4.4 Internal wall and floor in the food preparation area and the service counter area are finished with glazed ceramic tiles and homogeneous tiles respectively. Any alteration work is not allowed without prior permission of the Government Representative.
- 4.5 The permitted superimposed loading on the floor of the Licence Area is 5Kpa.

5. Service Counter

- 5.1 No alteration works on the provided service counter in the Licence Area is allowed without prior approval of the Government Representative. The demarcated area for the fountain bar shall not be altered. The Contractor shall be responsible for reinstating the service counter at the time of expiry or early termination of the Contract Period if modification works are required to facilitate his operational needs.
- 5.2 Internal walls and floor in the service counter area are finished with glazed ceramic wall tiles and homogeneous tiles respectively. The Contractor shall be responsible for their maintenance and reinstating them in good condition at the time of expiry or early termination of the Contract Period.

6. Electricity Supply

- 6.1 A 100 Amp three-phase power supply for the Licence Area is available. The Contractor will be responsible for the subsequent wiring from the main power point there to the desired locations within the Licence Area and making application to the power company for the installation of his own meter and the cost thereof.
- 6.2 The Contractor must engage a 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 shall be submitted to the Government Representative for retention. All alteration works must be removed and all original provisions restored at the time of expiry or early termination of the Contract Period.
- 6.3 The Licence Area must be lit in such a way that other building users will be not be adversely affected by any glare or reflection.
- 6.4 The Contractor must take down all electrical alteration works and reinstate the original electrical works and light fittings provided by the Government Representative at the Licence Area at the time of expiry or early termination of the Contract Period.

CONTRACT SCHEDULE 13
Technical Schedule

- 6.5 All the electrical installation works to be carried out by the Contractor shall comply with the Buildings Energy Efficiency Ordinance (Chapter 610 of the Laws of Hong Kong).
- 6.6 The Contractor shall comply a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within two (2) months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

7. Water Supply

- 7.1 Fresh water supply with stainless steel sink is provided in the Licence Area. Separate meters for fresh water supply to the Licence Area are provided in the main meter at the plaza of the Venue. The Contractor shall make his own application to the Water Authority for the water supply to the Licence Area. Any alteration work for operational needs shall be approved by the Water Authority with the prior permission of the Government Representative.
- 7.2 The Contractor shall pay and discharge all deposits and charges in respect of water (including sewage charges) consumed by the Contractor on or in the Licence Area, charges for sewage services and all costs of installation of all meters in connection therewith. In the event that any such supply is not metered, such amount in respect of water (including sewage services) consumption as shall be reasonable assessed or estimated by the Government Representative.

8. Drainage

- 8.1 Floor drain and grease traps are provided in the Licence Area. The Contractor is responsible for submission to the Food and Environmental Hygiene Department for approval of any alteration works to the existing installations that he intends to suit the layout of food preparation area of the Licence Area. All alteration works including but not limited to raised flooring and surface channel shall be removed and all original provisions restored at the time of expiry or early termination of the Contract Period.
- 8.2 The Contractor shall keep and maintain at all the times at the expense of the Contractor the drainage system, including all grease traps, drain pipes and manholes located within the Licence Area and/or outside the Licence Area but solely serving the Licence Area. The Contractor shall carry out cleansing and clearing of all grease traps in relation to / connected to the Licence Area for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes in relation to the Licence Area for which the Contractor is liable at frequent intervals to the Government's reasonable satisfaction to prevent choking and blockage of the installations and to ensure that all water and liquid discharged from the Licence Area is free of grease. For reducing the likelihood of recurrent choking and blockage of the installations, the Contractor shall arrange at the expense of the Contractor

CONTRACT SCHEDULE 13
Technical Schedule

professional pipe cleaning at least on half-yearly basis or at a frequency as prescribed by the Government at any time and from time to time for clearing clog in the course of the Business. Where the Government reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government undertake at its own expense either an emulsifying or a neutralizing effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government Representative.

- 8.3 The Contractor shall pay the Government on demand the cost incurred by the Government Representative in cleansing and clearing any of the drains, sewers and grease traps choked or blocked due to the act, default or negligence of the Contractor or any of its servants, agents, invitees, licensees or customers.

9. Air-conditioning System

- 9.1 Central air-conditioning, with four (4) fan coil units and separate control switches, has been installed in the Licence Area. The Contractor is responsible, at his own cost, for the installation of an independent system if additional cooling is required subject to the prior approval from the Government Representative.

- 9.2 Kitchen exhaust system and water scrubber system (or equivalent equipment serving the same purpose) for the Catering Outlet shall be installed by the Contractor.

- 9.3 The Contractor shall:

- (a) install additional air handling units, fan-coil units, or other air-conditioning equipment for provision of sufficient air-conditioning supply, if required, subject to the prior approval from the Government Representative. All condenser units must be located at suitable locations as might be prescribed by the Government Representative;
- (b) take down all air-conditioning and kitchen exhaust system alternation works and reinstate the original works provided by the Government Representative at the Licence Area at the time of expiry or early termination of the Contract Period; and
- (c) read this Clause in conjunction with **Clause 17** of the **Conditions of Contract**.

- 9.4 All the air-conditioning installation works to be carried out by the Contractor, if required, shall comply with the Buildings Energy Efficiency Ordinance (Chapter 610 of the Laws of Hong Kong).

CONTRACT SCHEDULE 13
Technical Schedule

10. Fire Services Installations

All the fire services installations provided by the Government in the Licence Area shall be maintained by the Government Representative. The Contractor shall allow access for the maintenance of the fire services installations by any person appointed by the Government Representative. If addition and alteration works to the existing fire services installations is required, the Contractor shall be responsible for submitting proposal to the Government Representative for comment, approval and implementation, and such works and the additional installations must be fed from the existing system in the Licence Area to the satisfaction of the Government Representative and comply with any directions issued by the Government Representative or the Fire Services Department. The Contractor shall pay all the required costs, including any additional maintenance costs, to the Government Representative for the addition or alternation work.

11. Signage

All signage shall not be erected without prior approval from the Government Representative. External signage is not allowed except for the title signboard at the designated location delineated at **Annex D** and **Annex E**. Any electrical works required for installation of the signage shall be carried out by a Registered Electrical Contractor (REC) / Registered Electrical Worker (REW). No moving signs or flashing lights will be permitted.

12. Toilet Provision

There are no toilets inside the Licence Area. Staff and customers of the Catering Outlet could use the public toilets in the vicinity inside the Venue.

13. Fitting Out Methods

- 13.1 In conducting fitting-out works, the Contractor shall maintain the work place in a clean, safe and decent condition to the satisfaction of the Government Representative. The fitting-out works must be carried out in such a way that the public and other users of the Venue are protected from excessive risks, noise and dirt.
- 13.2 The works area is to be completely sealed off by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 13.3 Before any welding work is carried out, the Government Representative must be informed. Precautionary measures must be applied to the smoke detectors to prevent activating the fire alarm system unnecessarily.
- 13.4 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative. Prior approval by the Government Representative is required for the designated material and debris storage area.

CONTRACT SCHEDULE 13
Technical Schedule

- 13.5 The Contractor shall, at its own cost, pay all required cost for the fitting-out works.
- 13.6 The fitting-out works shall comply with the updated Barrier Free Access Design Manual.

14. Working Hours for Fitting Out

- 14.1 Provided that the noise level of the fitting-out works emitted is acceptable to or approved by the Director of Environmental Protection, the works for fitting out the Licence Area will **not** be permitted after office hours:

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

- 14.2 The Contractor is responsible to apply for permission from the Director of Environmental Protection if special arrangement is deemed necessary.
- 14.3 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.
- 14.4 During the period of the fitting-out works, the Contractor shall only permit those Registered Workers with valid safety training certificates as defined and required under the Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong) and under the Construction Workers Registration Ordinance (Chapter 583 of the Laws of Hong Kong) to carry out the works. The Contractor shall keep a register of daily attendance of all the workmen working on site for periodic inspection by the Government Representative.

15. General

- 15.1 The Contractor shall design, submit for approval and implement a plan for obtaining an appropriate licence from the Food and Environmental Hygiene Department or other licensing authorities as appropriate. All building works shall comply with the relevant statutory requirements. The Contractor shall appoint and seek professional services from a competent person such as an Authorised Person (AP) and/or a Registered Structural Engineer (RSE) to implement the construction works in the Licence Area which shall fully comply with the Buildings Ordinance/Regulations and other relevant statutory requirements as well as the latest licensing requirements. The AP/RSE shall assess the structural feasibility and ensure their installation is structurally sound, and bear the full responsibility of his/her design, planning and supervision of the construction works to be carried out without any irregularities, in the aspects of statutory requirements, materials, design and workmanship. No part of the works may have any adverse effect, structurally or in any other ways, on the existing building.

CONTRACT SCHEDULE 13**Technical Schedule**

- 15.2 The Contractor shall undertake to implement all necessary improvement works in the Licence Area and those do not comply with the Buildings Ordinance/Regulations and other relevant statutory requirements as well as the latest licensing requirements, at his own cost.
- 15.3 The Contractor's AP/RSE shall advise on any improvement works necessary for the area(s) outside the Licence Area to meet the latest licensing requirements.
- 15.4 No claims shall be allowed where the improvement works is necessary in either the Licence Area or outside the Licence Area, to comply with the Buildings Ordinance/Regulations and other relevant statutory requirements as well as the latest licensing requirements.
- 15.5 The repair and maintenance of all the internal building elements, fixtures and fittings, including but not limited to plumbing and drainage pipe works, inside the Licence Area except the structure of the building shall be undertaken by the Contractor. The Contractor shall at all reasonable times with or without prior notice allow the Government Representative and/or its agent and/or contractor to gain access for inspection and/or maintenance of the Licence Area or its adjoining area.
- 15.6 The Contractor shall at any time exercise due care for the fitting-out works which may result in any damage / loss of properties / injury to persons. The Contractor shall indemnify the Government Representative for any such claim from damage / loss of properties / injury to persons.
- 15.7 Demolition and alternation of structural elements of the Licence Area are not allowed except with prior approval and consent from the Building Authority as well as the Government Representative.
- 15.8 The Contractor shall appoint adequate competent safety officers/supervisors/representatives to ensure site safety for compliance with relevant statutory requirements.
- 15.9 No building structure and other elements/facilities under the Venue's maintenance purview may be damaged or affected. No work by the Contractor shall obstruct the future operation and maintenance of the existing building elements. The Contractor shall take down, re-site, remove or reinstate their renovated fixtures/services/installations, when so required by the Government Representative, at his own cost and any affected areas shall be made good to match the existing and to the satisfaction of the Government Representative.
- 15.10 All building elements or affected areas shall be made good after completion of their works and shall be reinstated to match with existing to the satisfaction of the Government Representative at the time of expiry or early termination of the Contract Period.

CONTRACT SCHEDULE 13

Technical Schedule

- 15.11 The Contractor shall seek comments of the Government Representative (or the Government Representative's maintenance agents if the Government Representative so directs) on all mechanical, electrical, fire services, specialised feature and equipment aspects.

CONTRACT SCHEDULE 14**Government Provisions Made Available to the Contractor at the Licence Area**

Item	Description	Quantity
1	Fountain bar counter with seamless worktop surface and wooden cupboard	1
2	Stainless steel sinks in the food preparation area and the service counter area	1 lot
3	Floor of the indoor seating area and the outside seating accommodation area finished with natural granite tiles and artificial granite tiles respectively	N/A
4	Walls and floor of the food preparation area and the service counter area finished with glazed ceramic tiles and homogeneous tiles respectively	N/A
5	Four (4) fan coil units integrated with 1kW electric duct heater and thermostat connected to chilled water pipes	1 lot
6	Sprinkler provision for fire services installation	1 lot
7	100 Amp 3-phase power supply	1

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
Government Logistics Department Tender Opening Committee

I/We elect, to deposit with the Government the Security Deposit according to **Paragraph 23** of the **Terms of Tender** –

- # (a) in cash, or
- # (b) by a bank guarantee in the **Form of Bank Guarantee for the Performance of a Contract** and as approved by the Government Representative and issued by a bank that holds a valid banking licence issued under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong).

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

Name of Tenderer: _____ Date: _____

Name of Authorised Representative: _____

Signature of Tenderer or
Authorised Representative*: _____
(with firm/company chop, if applicable)

** Delete as appropriate*

FORM OF BANK GUARANTEE
FOR THE PERFORMANCE OF A CONTRACT

THIS GUARANTEE is made on the day of 20.....
by.....
of, a bank within the meaning of the Banking
Ordinance (Chapter 155 of the Laws of Hong Kong) (hereinafter called the “Guarantor”)

in favour of

the Government of the Hong Kong Special Administrative Region (hereinafter called the
“Government”) of the other part.

WHEREAS

- (A) By a contract (hereinafter called the “Contract”) dated the _____ of _____ 20____
made between _____ of _____
(hereinafter called the “Contractor”) of the one part and the Government of the other
part (designated as Leisure and Cultural Services Department Contract No.
LC/CS/T/GR/PVMP/KTT/2022/01), the Contractor agreed and undertook to operate
the Business at the Foyer Coffee Corner in the Kwai Tsing Theatre upon the terms and
conditions of the Contract.
- (B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions
hereinafter appearing, the due and faithful performance of the Contract by the
Contractor.

Now this Guarantee executed as a deed witnesses as follows:

- (1) Where applicable, words and expressions used in this Guarantee shall have the meaning
assigned to them under the Contract.
- (2) In consideration of the Government’s acceptance of the bank named herein as the
Guarantor under this Guarantee:
- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing
obligation, the due and punctual performance and discharge by the Contractor of all
of his, her and their obligations and liabilities under the Contract and the Guarantor
shall pay to the Government on demand and without cavil or argument all monies
and discharge all liabilities which are now or at any time hereafter shall become due
or owing by the Contractor to or in favour of the Government under or in connection
with the Contract together with all costs, charges and expenses on a full indemnity
basis which may be incurred by the Government by reason or in consequence of any
default on the part of the Contractor in performing or observing any of the
obligations, terms, conditions, stipulations or provisions of the Contract,
notwithstanding any dispute between the Contractor and the Government or any
other person.

- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations, terms or conditions, stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as “the Contractor” or where “the Contractor” is a partnership, any change in the partners or in its constitution or where “the Contractor” is a company, any change of its member or shareholder or its officers or its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be amended or affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:
- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
 - (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;

- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.
- (6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.
- (7) This Guarantee shall have immediate effect on the same date as the Contract 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 end of three (3) months from the date of early termination or expiry of the Contract Period; or
 - (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing),
- 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 may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, at the Leisure and Cultural Services Department of Kwai Tsing Theatre, 12 Hing Ning Road, Kwai Chung, New Territories, Hong Kong marked for the attention of Manager (New Territories South) Building Management, facsimile number (852) 2944 8743;
 - (b) upon the Guarantor, at _____, Hong Kong, marked for the attention of _____, facsimile number _____.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.
- (15) This Guarantee may only be amended by an instrument in writing signed by the Guarantor and the Government as represented by the Government Representative.

IN WITNESS whereof this Guarantee was executed as a deed and the said Guarantor has caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

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

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

in the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____

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

[Name and Title]) _____

in the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____

* Delete as appropriate

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

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

NON-COLLUSIVE TENDERING CERTIFICATE**(To be inserted into the “Technical Submission” envelope)**

To: The Government

Dear Sir/Madam,

Non-collusive Tendering Certificate

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

Non-collusion

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

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

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

Disclosure of sub-contracting

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

Consequences of breach or non-compliance

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

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

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

Name of the authorised signatory
 (where applicable) : _____

Title of the authorised signatory
 (where applicable) : _____

Date : _____

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

THIS MEMORANDUM OF CONTRACT is made the _____ day of _____, 20__
BETWEEN THE ASSISTANT DIRECTOR (PERFORMING ARTS) OF THE LEISURE
AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and
Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, New Territories, Hong Kong
acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (hereinafter
referred to as "**Government**") of the one part,

AND _____, whose address is at

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

WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LC/CS/T/GR/PVMP/KTT/2022/01), the Government has invited tenders for the grant of Licence to operate the Business at the Foyer Coffee Corner of the Kwai Tsing Theatre.
- (B) The Contractor's tender was accepted in principle by the Government by the issuance of the Conditional Acceptance of Tender to the Contractor pursuant to **Paragraph 13.2** of the **Terms of Tender**.
- (C) The Contractor has fulfilled all conditions specified in **Paragraph 13.2** of the **Terms of Tender** and the Conditional Acceptance of Tender.
- (D) Pursuant to **Paragraph 13.3** of the **Terms of Tender**, the parties hereto enter into this Memorandum of Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
- 2. The Contract between the Government and the Contractor is hereby constituted and shall comprise the following documents:
 - (i) This Memorandum of Contract
 - (ii) Tender Form
 - (iii) Interpretation
 - (iv) Terms of Tender
 - (v) Conditions of Contract
 - (vi) Contract Schedules 1, 12 to 14 (in their original form as found in the Tender Documents)
 - Contract Schedule 1 – Marking Scheme for Tender Evaluation
 - Contract Schedule 12 – Introduction of the Licence Area

- Contract Schedule 13 – Technical Schedule
 Contract Schedule 14 – Government Provisions Made Available to the Contractor at the Licence Area
- (vii) Contract Schedules 2 to 11 (in the form as submitted by the Contractor as part of its offer subject to any modifications as the parties may agree or as the Government may stipulate in exercise of its powers under the Tender Documents)
- Contract Schedule 2 – Working Background and Status of Tenderer
 Contract Schedule 3 – Business Plan
 Contract Schedule 4 – Menus, Service Packages, Marketing and Customer Service Plan
 Contract Schedule 5 – Hygiene Maintenance Plan
 Contract Schedule 6 – Waste Management Plan
 Contract Schedule 7 – Innovative Suggestions that can Bring Positive Values/ Benefits to the Society
 Contract Schedule 8 – Years of Experience in Operating Catering Outlet(s)
 Contract Schedule 9 – Experience and Qualifications of Senior Manager(s)
 Contract Schedule 10 – Valid and Relevant ISO and OHSAS Certifications
 Contract Schedule 11 – Monthly Licence Fee
- (viii) Form of Security Deposit Election
 (ix) Non-collusive Tendering Certificate
 (x) Annexes A to F
- Annex A – General Information on Kwai Tsing Theatre and its Catering Facilities
 Annex B – Location Map of Kwai Tsing Theatre
 Annex C – Plan Showing Facilities of the Venue and Location of the Licence Area
 Annex D – Floor Plan of the Licence Area with Designated Location of Signage
 Annex E – Designated Location of Signage for the Catering Outlet (Elevation Plan)
 Annex F – Enrolment Form for the Tender Briefing Session

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

4. For the purposes of **Clause 52** of the **Conditions of Contract**, the address, facsimile number and email address 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 this Memorandum of Contract on the day and year first above written.

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

Name of the Contractor / Authorised Representative: _____

Title of the Contractor / Authorised Representative: _____

In the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____

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

_____ []

In the presence of

Name of witness: _____

Title of witness: _____

Signature of witness: _____

ANNEXES

<u>Content</u>	<u>Sheet No.</u>
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ANNEX A

General Information on Kwai Tsing Theatre and its Catering Facilities

1. Introduction

The Kwai Tsing Theatre (“**Venue**”) is located at 12 Hing Ning Road, Kwai Chung, New Territories, Hong Kong right next to the MTR Kwai Fong Station and bus terminus, and adjacent to the Kwai Chung Sports Ground. Facilities provided in the Venue include an 899-seat auditorium, a black box theatre with a maximum capacity of 160 seats, a dance studio, a rehearsal room, a lecture room as well as other ancillary facilities. Programmes presented in the Venue include dramas, operas, dances, concerts, community functions, exhibitions and fairs. More detailed information of the Venue is available at the website www.lcsd.gov.hk/ktt. A location map of the Venue is at **Annex B**.

2. Catering Facilities at the Venue

There are two (2) catering facilities at the Venue, the Catering Outlet and a Chinese restaurant, providing services to patrons of the Venue and the general public. The locations of these facilities are shown in the plan attached in **Annex C** with the location of the Catering Outlet as shown shaded red and green in that annex. For this tender, the Licence will be granted to the successful Tenderer to operate the Business at the Licence Area only.

3. Opening Hours of the Venue and the Catering Outlet

- 3.1 The opening hours of the Catering Outlet, although negotiable, shall be compatible with that of the Venue’s opening hours which may be changed as and when required. The opening hours of the Venue are from 9:00 a.m. to 10:00 p.m. daily throughout the year, subject to change at the Government’s sole discretion.
- 3.2 Programmes and activities will be presented at the hiring facilities including but not limited to the auditorium, the black box theatre, the rehearsal room, the dance studio, the lecture room, the plaza and the foyer. If the Government Representative so requests by notice in writing, the Contractor shall conduct the Business at such hours (which may be outside the normal opening hours of the Venue) to provide refreshment to the users, presenters, hirers, performers, audiences and participants of the programmes and activities as requested by the Government provided that the Government shall give such notice in writing at least two (2) weeks before the required conduct of Business.
- 3.3 When Tropical Cyclone Warning Signal No. 8 or above is hoisted, the Venue will be closed until the Signal is lowered to No. 3 or below. The Venue will remain closed if Tropical Cyclone Warning Signal No. 8 is cancelled/lowered less than two (2) hours before the normal closing hour.

- 3.4 The Venue will open as usual when Amber Rainstorm Warning Signal or Red Rainstorm Warning Signal is issued. The Venue will remain open to provide shelter to visitors and staff if the Black Rainstorm Warning Signal is issued during the Venue's opening hours. The Venue will be closed when Black Rainstorm Warning Signal is issued before the opening hour of the Venue and will remain closed if the Signal is lowered/cancelled less than two (2) hours before the normal closing hour.
- 3.5 The operating hours of the Catering Outlet shall be in keeping with the operating hours of the Venue during inclement weather.
- 3.6 At the time this Tender is issued, it is projected that the Venue may be closed for refurbishment for a consecutive period of approximate four (4) to six (6) weeks during the Contract Period. This information is subject to change and is provided only for reference, but should not be construed as a firm commitment of the Government Representative.

4. **Statistical Data**

Statistical information on the daily usage rate, number of performance and number of audience of the major hiring facilities in 2019/20, 2020/21 and 2021/22 is listed below for reference:

Year	Daily usage rate	Number of performance	Number of audience
Kwai Tsing Theatre (Auditorium)			
2019/20	100%	172	94 390
2020/21 [#]	98.77%	54	18 368
2021/22	100%	119	52 926
Kwai Tsing Theatre (Black Box Theatre)			
2019/20	97.55%	168	14 621
2020/21 [#]	88.35%	40	2 290
2021/22	95.63%	131	9 435

[#] The Venue was closed for approximate eight (8) months in 2020/21 due to epidemic.

Note:

Tenderers shall 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. Tenderers shall conduct their own independent assessment for preparation of their tender submissions.

ANNEX B

Location Map of Kwai Tsing Theatre

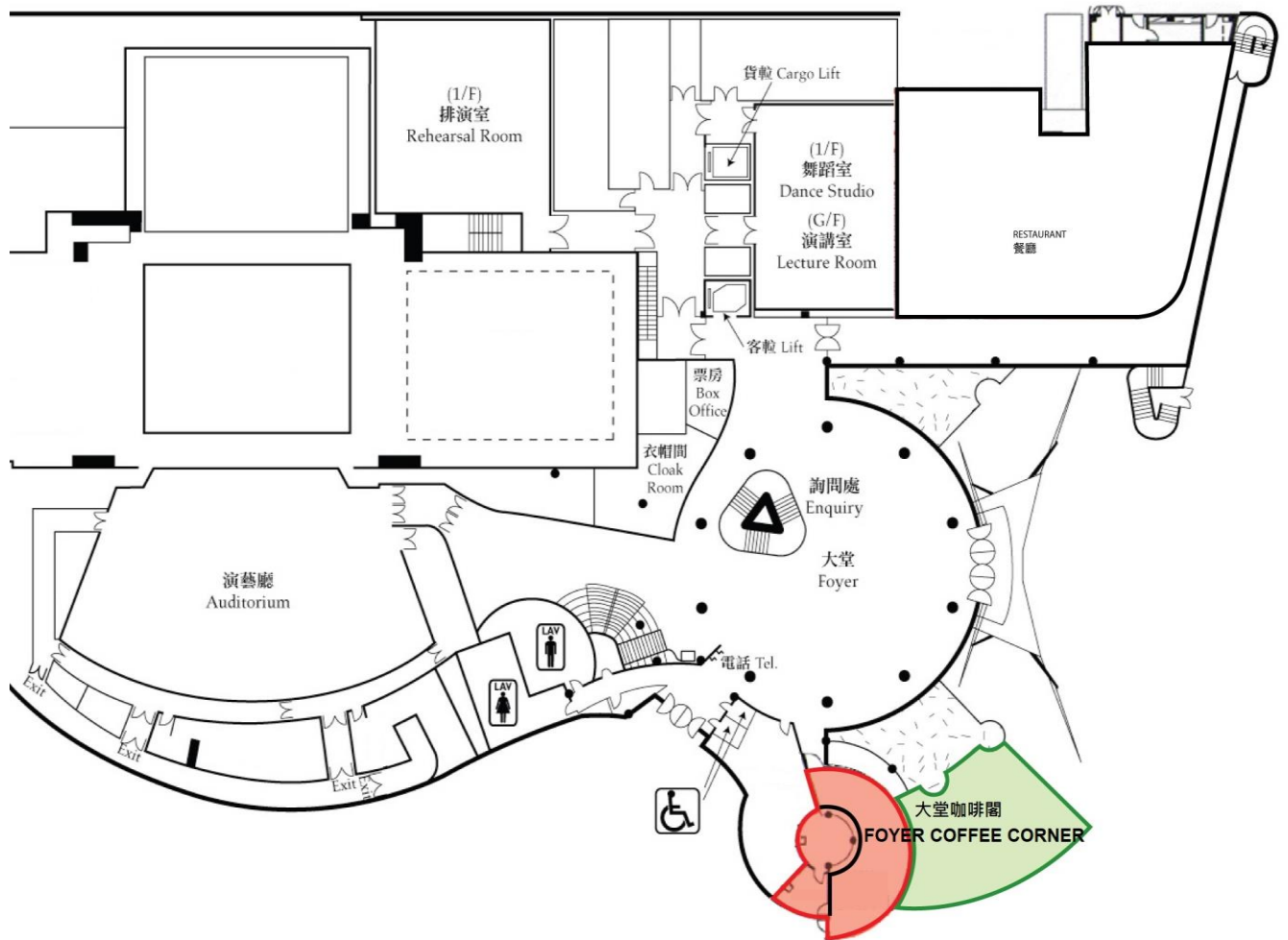


(Not to scale)

ANNEX C

Plan Showing Facilities of the Venue and Location of the Licence Area

(Ground Floor of Kwai Tsing Theatre)



(Not to scale)

Notes:

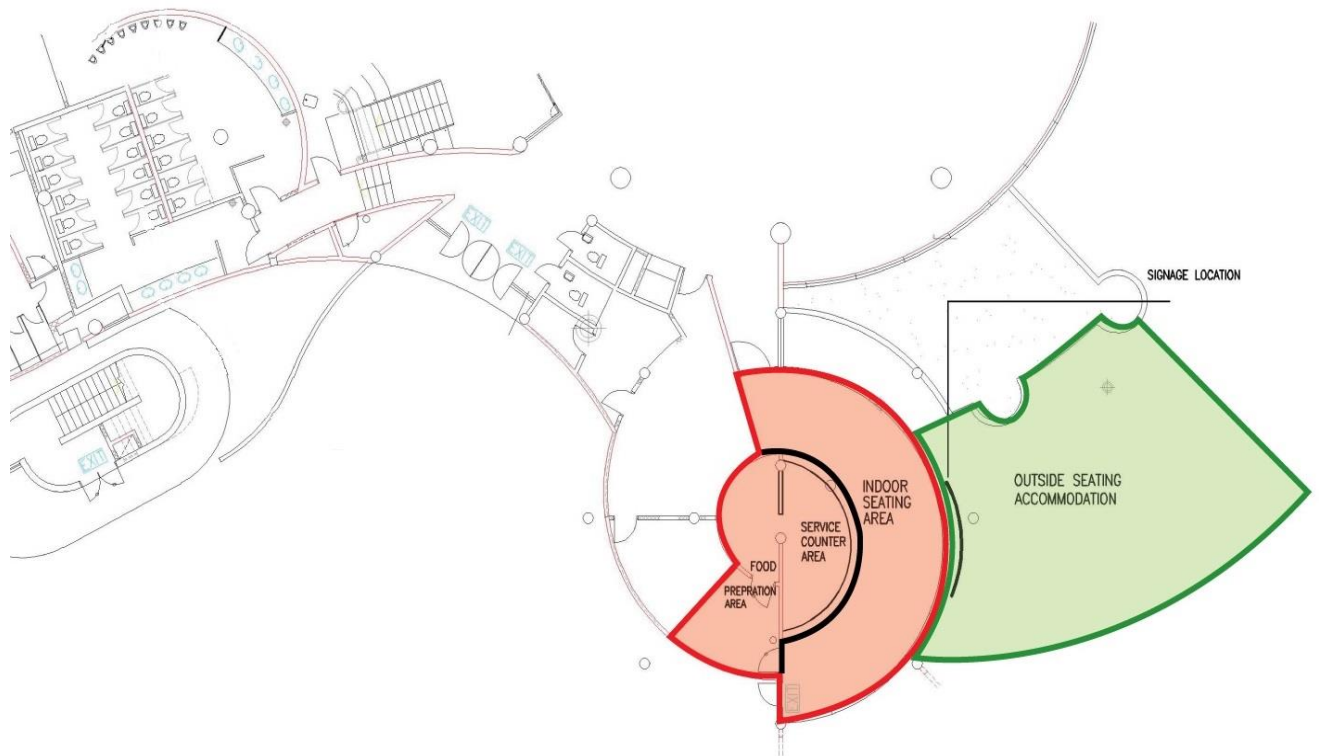
Area edged red – indoor area

Area edged green – outdoor seating

ANNEX D

Floor Plan of the Licence Area with Designated Location of Signage

(Ground Floor of Kwai Tsing Theatre)



(Not to scale)

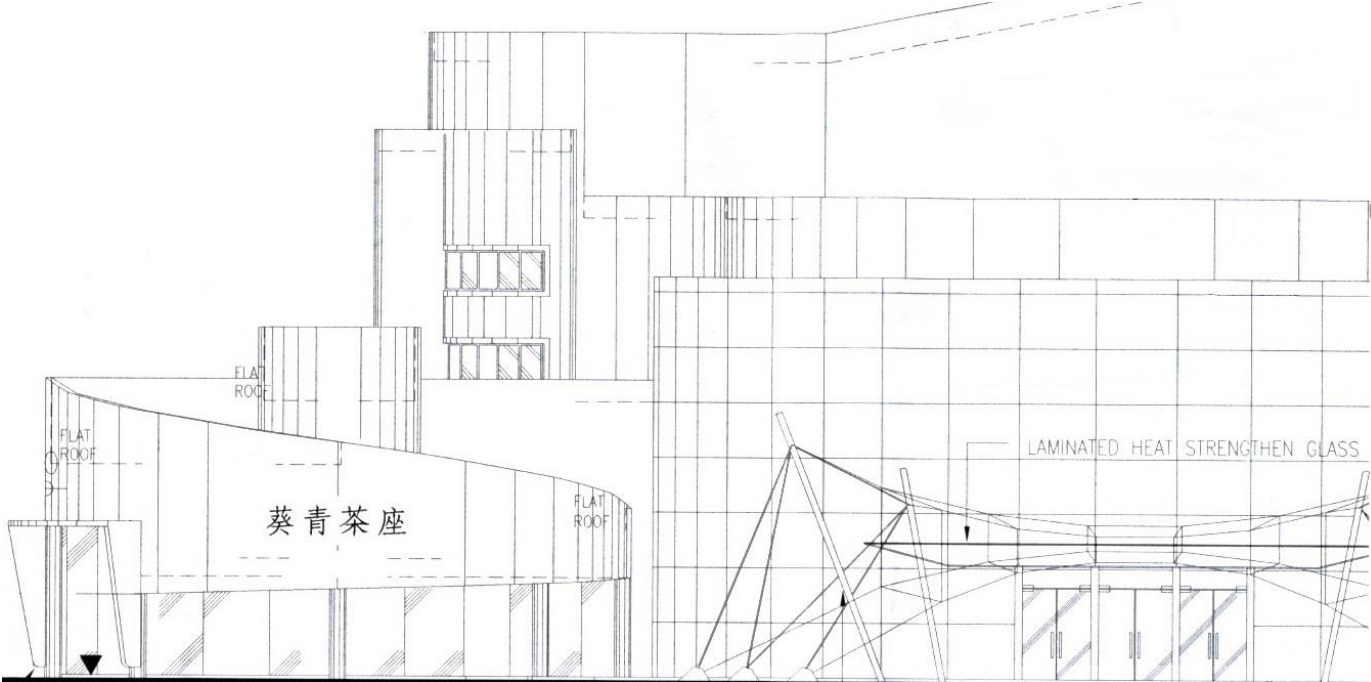
Notes:

Area edged red – indoor area

Area edged green – outdoor seating

ANNEX E

Designated Location of Signage for the Catering Outlet (Elevation Plan)



(Not to scale)

ANNEX F

To: Assistant Manager (New Territories South) Building Management
(Fax: (852) 2414 8903)

ENROLMENT FORM FOR THE TENDER BRIEFING SESSION
on 11 October 2022 (Tuesday) at 10:00 a.m. at Lecture Room of Kwai Tsing Theatre

**Tender for the Grant of Licence to Operate the Business
at the Foyer Coffee Corner of the Kwai Tsing Theatre**

(Please return this form by fax on or before 10 October 2022)

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 : _____

Facsimile number : _____

Email address : _____

Please bring along the Tender Documents to the Tender Briefing Session / Site Visit.