

TENDER FORM**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT****TENDER FOR
THE GRANT OF A LICENCE TO OPERATE THE CAR PARK AT MONG KOK STADIUM
OF THE LEISURE AND CULTURAL SERVICES DEPARTMENT****(Tender Ref. : LCSD/MKS/CP2019)**

LOGGING OF TENDER

To be acceptable as a tender, this form, together with other documents as specified in Clause 5 of the Terms of Tender, shall be properly completed in triplicate, and placed in a sealed plain envelope marked “Tender for the Grant of a Licence to Operate the Car Park at Mong Kok Stadium” and addressed to the Chairman, Government Logistics Department Tender Board, must be deposited in the Government Logistics Department Tender Box situated on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon (time) on 19 November 2018. Late tender will not be accepted.

Dated this 2 October 2018Mr. CHAN Wai-kiu Alex
Government Representative

Part I — Tender Documents

These documents under the tender reference LCSD/MKS/CP2019
consist of three (3) complete sets of :

- (a) Tender Form (Part I to II);
- (b) Interpretation;
- (c) Terms of Tender and Tender Attachments 1 and 2 plus pro forma bank guarantee;
- (d) Conditions of Contract;
- (e) First to Eighth Schedules;
- (f) Annexes A to C;
- (g) Articles of Agreement.

Part II — Offer to be Bound

- 1. Having read the Tender Documents, I/we agree to be bound by all of the terms and conditions as stipulated therein.
- 2. I/We hereby offer to pay the Monthly Licence Fee quoted by me/us in the First Schedule in return for the grant of the licence to carry on the Business at the Licence Area and subject to the terms and conditions of the Tender Documents.
- 3. In case the Tenderer is a company/corporation/firm, the Tenderer is required to complete paragraphs 3(a) to (c). In case the Tenderer is a sole proprietor (which shall submit the tender as principal), the Tenderer should strike out paragraphs 3(a) to (c) and sign this form at the end only.

(a) The authorized representative below has been duly authorized to bind the company/corporation hereafter mentioned by his signature.

– or –

The authorized representative below is a partner of the firm hereafter mentioned signing in the name of the firm and duly authorized to bind the said firm and the partners therein.

(b) The name of the company/corporation/firm*

is

(c) The registered office or principal place of business of the company/corporation is situated

at

– or –

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

.....

Name of Tenderer: _____

Name of Authorized Representative*: _____

Title of Authorized Representative : _____

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

(with firm / company chop, if applicable)

Date: _____

* Delete as appropriate

- NOTES* : (i) All the particulars required above shall be provided.
 (ii) Strike out clearly alternatives which are not applicable.

INTERPRETATION

1. In the Tender Documents and the Contract, the following words and expressions have the meaning assigned to them below except where the context otherwise requires –

“Business” has the meaning given to the term in Clause 3.1 of the Conditions of Contract.

“Cap.” means the Chapter of the laws of Hong Kong.

“Car Park” means the car park to be operated on the Licence Area by the Contractor.

“company” or
“body corporate” means a body corporate –

- (a) incorporated under the Companies Ordinance (Cap. 622) or any of the former Companies Ordinance; or
- (b) incorporated by any other Ordinance; or
- (c) incorporated outside Hong Kong which has complied with the provisions of Part 16 of Companies Ordinance (Cap. 622) or equivalent provisions in any of the former Companies Ordinance.

“Contract” means the contract to be entered into between the Government and the successful Tenderer comprising the following parts of the Tender Documents and other items as specified below:

- (a) the “Articles of Agreement”;
- (b) the “Terms of Tender”; and the Tender Attachments and the pro forma bank guarantee;
- (c) the “Conditions of Contract”;
- (d) the “First Schedule” to “Eighth Schedule” 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;
- (e) the “Annexes” A to C;

- (f) 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 2.1 of the Conditions of Contract commencing from the date as specified in the Articles of Agreement, as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.
- “Contractor” means the person named as the Contractor in the Articles of Agreement.
- “Contract Year” means every successive twelve (12) months' period within the Contract Period or the remainder of the Contract Period after the last complete twelve (12) months' period (as the case may be).
- “Disabled Person's Car Parking Spaces” means the fee-paying parking spaces as delineated in Annex C of the Contract for use by vehicles displaying the “Disabled Person's Parking Permit” (“Permit”) issued by Transport Department of the Government.
- “Estimated Contract Value” has the meaning given to the term in Clause 25.1 of the Terms of Tender.
- “Event” means football matches or any form of entertainment or function which takes place at the Venue, where attendance of spectators is expected.
- “Event Day” means a day on which there is an Event at the Venue.
- “General Holiday” (upper or lower case) means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).

“Government”	means the Government of the Hong Kong Special Administrative Region.
“Government Representative”	means the Director of Leisure and Cultural Services or any officer of Leisure and Cultural Services Department (“LCSD”) authorised to act for the purpose of the Contract.
“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.
“Invitation to Tender”	means the invitation issued by the Government Representative to invite tender for the Contract on the terms set out in the Tender Documents.
“laws and regulations” or “laws”	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, regardless of the applicable jurisdiction.
“Licence Area”	means the area as delineated and shown edged red in Annexes B and C.
“Licence Fee” or “Monthly Licence Fee”	means the Monthly Basic Licence Fee and the Percentage Licence Fee.
“Monthly Basic Licence Fee”	means the monthly minimum guaranteed lump sum to be paid by the Contractor to the Government for the right to operate the Car Park at the Licence Area on a monthly basis during the Contract Period in the amount as quoted by the successful Tenderer in the third column of the First Schedule.
“Monthly Gross Receipts”	means the gross proceeds as received or receivable by the Contractor from its operation of the Business plus all other incomes (except proceeds arising from the sale of capital assets belonging to the Contractor) deriving from or in respect of the operation of the Business and shall be free and clear of any deduction during each month of each Contract Year.

“Original Tender Closing Date”	means the date specified in Clause 4.1 of the Terms of Tender as the date for submission of tender regardless of any extension.
“Parking Charges”(upper or lower case)	means the amounts chargeable by the Contractor for car parking at the Licence Area during the Contract Period at the rates specified in the Second Schedule.
“Percentage Licence Fee”	means the fee to be paid by the Contractor to the Government within fourteen (14) days after the end of each month (11 th day of each month) during the Contract Period which is calculated by applying the Percentage of Monthly Gross Receipts to the Monthly Gross Receipts of that month less the Monthly Basic Licence Fee payable for that month. If a negative amount is shown, no Percentage Licence Fee is required to be paid for that month.
“Percentage of Monthly Gross Receipts”	means the percentage of Monthly Gross Receipts as quoted in the First Schedule.
“Permitted Vehicles”	means the types of vehicles as specified in the fourth column of the First Schedule.
“person”	means any individual, corporation, partnership and firm.
“Schedules” or “Contract Schedule”	means any of the First to Eighth Schedules.
“Security Deposit”	means the deposit which the Contractor deposits with the Government Representative in accordance with Clause 25 of the Terms of Tender and Clause 7 of the Conditions of Contract for the due and proper performance of the Contract.
“tender” (upper or lower case)	means a tender submitted in response to this Invitation to Tender.
“Tender Closing Date”	means the date and time referred to in Clause 4.1 of the Terms of Tender, being the latest time by which tenders must be lodged.
“Tender Documents”	has the meaning given to the term in Clause 2 of the Terms of Tender.

“Tender Validity Period”	means the period of time as described in Clause 8.1 of the Terms of Tender during which the tender is to remain open.
“Tenderer”	means a person with capacity to contract and sue or be sued who has submitted a tender in response to the Invitation to Tender .
“Venue”	means Mong Kok Stadium as delineated and shown edged red in Annex A.
“working day”	means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force.

2. In the Tender Documents or the Contract, unless the content otherwise requires, the following rules of interpretation shall apply –
 - 2.1 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.
 - 2.2 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 or body corporate (wherever established or incorporated); references to company include corporation.
 - 2.3 Headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract.
 - 2.4 References to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such documents; 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.
 - 2.5 Unless otherwise expressly stated, references to “Clauses” or “paragraphs” in a Tender Document shall mean the clauses or paragraphs of that Tender Document.

- 2.6 References to “Government” and “Government Representative” shall include their respective assigns, successors or persons deriving title under them.
- 2.7 References to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them.
- 2.8 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.
- 2.9 The expressions “public body” and “public officer” have the meanings given to them in the General Clauses and Interpretation Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622). 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.
- 2.10 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.
- 2.11 All rights and powers of the Government under the Contract may be exercised by the Government Representative. References to rights or claims or remedies or powers of the Government include those of the Government and those of the Government Representative. The same interpretation shall also apply to references to rights or claims or remedies or powers of the Government Representative.
- 2.12 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.
- 2.13 If there are discrepancies between the English version and the Chinese version of the Tender Documents, the English version shall prevail. The Chinese version of the Tender Documents is for reference only.

TERMS OF TENDER

1. Invitation to Tender

The Director of Leisure and Cultural Services invites tenders for a licence to operate the car park located at Mong Kok Stadium (the Mong Kok Stadium is shown on the plan at Annex A of the Tender Documents). The premises for operating the car park is for identification purpose shown edged red on the plans at Annexes B and C of the Tender Documents (hereinafter referred to as the “Licence Area”), **for thirty-six (36) months tentatively from 12th day of April 2019 to the 11th day of April 2022 (both dates inclusive)** for such purposes and on such terms and conditions as specified in these Terms of Tender and the Contract.

2. Tender Documents

These documents identified as Tender Ref.: LCSD/MKS/CP2019 consist of THREE (3) complete sets of –

- (a) Tender Form;
- (b) Interpretation;
- (c) Terms of Tender (including the Tender Attachments 1 and 2 plus the pro forma bank guarantee);
- (d) Conditions of Contract;
- (e) First to Eighth Schedules;
- (f) Annexes A to C;
- (g) Articles of Agreement.

(collectively, the “Tender Documents”).

3. Preparation of Tender

- 3.1 A Tenderer shall provide as part of its tender all quotation, information and documents required to be submitted under the Tender Documents. A list of the quotation, information and documents required are set out in Clause 5.

- 3.2 All Tender Documents shall be completed in ink or typescript in English or Chinese (for Chinese version). When completing the Tender Documents, any correction or alteration in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the originals. All such amendments shall be initialed by the Tenderer in ink.
- 3.3 The Tenderer should read the Tender Documents carefully prior to submitting a tender and ensure that it understands all requirements of the Tender Documents.
- 3.4 The Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 3.5 The Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 3.6 It is the duty of the Tenderer to ensure that it fully understands the requirements of the Tender Documents. Should a Tenderer for any reason whatsoever be in doubt as to the precise meaning of any provision contained in the Tender Documents, it should consult its own legal and other advisers. Without prejudice to the foregoing, the Tenderer may consider writing to the Government Representative to seek clarification at least five (5) working days prior to the Tender Closing Date and the Government Representative may at its discretion provide such clarification as it considers appropriate.
- 3.7 The Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents and in general to have obtained all necessary information of any circumstances which may influence or affect its tender.
- 3.8 A Tenderer must ensure that there is no discrepancy between the original and the photocopies of the documents submitted to the Government. Should any discrepancies be found, unless the Government wishes to seek clarification, the original shall prevail.
- 3.9 A tender from an unincorporated joint venture or other type of business entity which is not a legal person will NOT be accepted. The tender must be submitted by a person with legal capacity.
- 3.10 Each Tenderer may only submit ONE tender. The Government may, at its absolute discretion, disqualify the tender from a Tenderer who has submitted two or more tenders.

4. Tender Submission

- 4.1 A Tenderer shall submit the Tender Documents in **TRIPLICATE**, which should be enclosed in a sealed envelope clearly marked "Tender Ref.: LCSD/MKS/CP2019" and the subject of Tender **and addressed to the**

Chairman, Government Logistics Department Tender Board and they must be deposited in the Government Logistics Department Tender Box located on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon on 19 November 2018 (Monday).

- 4.2 In case a black rainstorm warning signal or tropical cyclone warning signal no. 8 or above is issued between 9:00 a.m. and 12:00 noon on the Tender Closing Date, the Tender Closing Date will be deferred to 12:00 noon on the immediately following working day when the black rainstorm warning signal or typhoon signal no. 8 or above is cancelled at any time before 9:00 a.m. on that day.
- 4.3 Late tenders (i.e. tenders submitted after the Tender Closing Date) will not be considered.

5. Composition of the Tender

- 5.1 (a) A Tenderer **MUST** submit the following –
- (i) a signed Offer to be Bound in the Tender Form;
 - (ii) the quotation of Monthly Basic Licence Fee and the Percentage of Monthly Gross Receipts for the calculation of the Percentage Licence Fee in the First Schedule; and
 - (iii) a completed Tender Attachment 2 containing the information on the past experience of the Tenderer showing that the Tenderer meets the essential requirements as stipulated in Clause 7 of the Terms of Tender.
- (b) A Tenderer who fails to submit all or any of the above items specified in Clause 5.1(a)(i) to (iii) at the time when it submits its tender shall render its tender invalid.
- 5.2 In addition to Clause 5.1 above, each Tenderer is required to provide all other information / supporting documents requested in the Tender Documents or relevant to its Tender, including but not limited to the following –
- (a) all of the rates of Parking Charges as required in the Second Schedule; in the provision of these rates, the Tenderer is required to provide a rate of Parking Charges for every half an hour of the first two hours of parking at the Licence Area between the period from 7:00 a.m. to 11:00 p.m. (and for every subsequent half hour until 11:00 p.m., the rate shall be fixed at 150% of the aforesaid rate), and another rate of Parking Charges for every half an hour between the period 11:00 p.m. until before 7:00 a.m. of the following day. Parking fees shall be charged per every half an hour at the aforesaid applicable half-hourly rate;

- (b) in the case where the Tenderer is a partnership or sole proprietor, the Tenderer is required to submit with its tender a photocopy of its current certificate of business registration and certified extracts of information on the business register issued by the Commissioner of Inland Revenue under the Business Registration Ordinance (Cap. 310) that contains the name of the sole proprietor or the names of all the partners (as the case may be) of the partnership or sole proprietor;
- (c) in the case where the Tenderer is a company, the Tenderer is required to submit with its tender a photocopy of its current Memorandum of Association and Articles of Association, the latest Annual Return and the Notification of Changes of Secretary and Directors (filed after the date of the latest Annual Return) filed with the Companies Registry, or equivalent documents, that shows the details of its current directors and shareholders as at the Tender Closing Date;
- (d) the Tenderer is required to complete Tender Attachment 1 containing information in relation to itself as well as other information requested therein; the documents requested above (sub-Clause (b) or (c)) should also be attached to Tender Attachment 1;
- (e) the Tenderer is required to submit photocopies of all relevant documents showing its past experience (including reference letters) to prove compliance with the essential requirements concerning experience set out in Clause 7;
- (f) the Tenderer should provide all the above items specified in this Clause 5.2 at the same time when it submits its tender. The Government reserves the power to request any missing item or document as stated in Clause 5.2 or disqualify the tender for any such missing item or evaluate the tender on an “as is” basis; and
- (g) whilst the Tenderer is expected to sign each Tender Attachment and Schedule to be submitted where indicated, where any signature is found missing in any of the Attachments or Schedules, the Government reserves the power to evaluate the Tender on an “as is” basis.

6. Monthly Licence Fee

- 6.1 In return for the right to operate the Car Park at the Licence Area, the Contractor is required to pay to the Government a Monthly Basic Licence Fee and Percentage Licence Fee (viz. collectively, “Licence Fee” or “Monthly Licence Fee”) to be quoted by Tenderers in the First Schedule.
- 6.2 The Licence Fee quoted by Tenderers shall remain valid and binding throughout the duration of the Contract Period. No request for price variation will be

- considered. A Tenderer who proposes any price variation mechanism may be disqualified and its tender will not be considered further.
- 6.3 The Licence Fee does not include rates, Government rent and taxes payable in respect of the Licence Area and the Business. All these shall be the responsibilities of the Contractor. 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 Tenderers should make certain that the Licence Fee tendered is accurate before submitting their tenders. 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 grounds including that a mistake has been made.
- 6.5 Should it be found on examination by the Government after the Tender Closing Date that a Tenderer has made unintentional errors in the figures stated in its tender, the Government 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 considers should be the correct figures.

7. Essential Requirements

A Tenderer MUST have a minimum of two (2) years of experience (i.e. not less than seven hundred and thirty (730) days) in operating fee-paying public car park(s) whether as a business owner of such car park(s) or as a service provider for the owner of such car park(s) within the ten (10) years immediately prior to the Original Tender Closing Date. The Original Tender Closing Date shall be the cut-off date for calculation of the years of experience in conducting business of fee-paying public car park(s).

Notes:

- i) The Tenderer's experience must be gained as an owner of the business of the fee-paying public car park(s) or as a service provider for such owner(s).
- ii) Experience gained outside Hong Kong will not be counted.
- iii) If the Tenderer is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the participants to the partnership will be counted. If the Tenderer is a company, only the years of company experience gained by that company, but not the individual experience of the shareholders to the company will be counted.
- iv) If more than one (1) relevant contract is quoted as proof of the Tenderer's relevant experience, the overlapping period between contracts will only be counted once when counting the length of aggregate years of experience. For example, a Tenderer will be counted as having two (2) years of experience in

aggregated if he had two (2) contracts for operation of car park business covering overlapping periods of 1.3.2013 - 28.2.2014 and 1.10.2013 - 28.2.2015, i.e. overlapping period of 1.10.2013 - 28.2.2014 will be counted once only. Experience need not be continuous.

- v) Documentary proof including a copy of business registration certificate, evidence showing ownership or tenancy of the relevant premises (in the case the Tenderer operated the car park as business owner), or a copy of service contract or client reference letter (in the case the Tenderer operated the car park as service provider) to substantiate the past experience claimed in the tender shall be provided. Otherwise, the relevant claimed past experience will not be taken into account.
- vi) The decision of the Government whether or not to count the experience of a Tender under the circumstances described in this provision shall be final.

8. Tender to Remain Open

- 8.1 It is an essential requirement of this Invitation to Tender that a tender shall remain valid and open for acceptance for a period not less than one hundred and fifty (150) 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 Clause 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 LCSD contractor.

9. Request for information

In the event that the Government determines that -

- (a) clarification in relation to any tender is necessary; and/or
- (b) a document or a piece of information, other than the document or information set out in Clause 5.1, 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 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.

10. Tender Assessment

The tenders will be assessed in the following manner –

(a) Stage 1: Completeness Check

Completeness check of the tender will be conducted by checking whether the tender is submitted in accordance with the requirements of the Tender Documents. If a Tenderer fails to submit the items specified in Clause 5.1 by the Tender Closing Date, its tender will not be considered further.

(b) Stage 2: Essential Requirements Compliance Check

A tender will be checked, in accordance with Clause 7 for its compliance with the essential requirements stated therein. Any tender which fails to meet the essential requirements will not be considered further.

(c) Stage 3: Price Evaluation

The Government Representative will take into account the Licence Fee offered by the Tenderer. A total score for each Tenderer will be arrived at based on the following formula –

$$\begin{array}{l}
 \text{Monthly Basic Licence} \\
 \text{Fee offered by the} \\
 \text{Tenderer} \\
 \hline
 \end{array}
 \times 50
 +
 \begin{array}{l}
 \text{Percentage of Monthly} \\
 \text{Gross Receipt offered by} \\
 \text{the Tenderer} \\
 \hline
 \end{array}
 \times 50$$

$$\frac{\text{Highest offer of the Monthly Basic Licence Fee amongst the tenders which pass the Stage 1 and Stage 2 assessments}}{\text{Highest offer of the Percentage of Monthly Gross Receipt amongst the tenders which pass Stage 1 and Stage 2 assessments}}$$

- (i) Equal weightings will be assigned to the total Monthly Basic Licence Fee and the Percentage of Monthly Gross Receipt.
- (ii) The maximum total score is 100.

- (iii) If the total scores so calculated are the same for two or more than two tenders, the Tenderer who offered the highest Monthly Basic Licence Fee will normally be identified as the preferred Tenderer.
- (iv) The total score will be rounded up to two decimal places.

11. 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 selection of Tenderers will be conducted in accordance with Clause 10. The tender which passes both Stage 1 and Stage 2 assessments, and has achieved the highest total score under Stage 3 assessment will normally be recommended for acceptance.

12. Basis of Acceptance

- 12.1 The Government Representative is not bound to accept the tender with the highest total 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. Without prejudice to the generality of the foregoing, in case the Licence Fee 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.
- 12.2 Tenderers should note that their offers will be considered on an overall basis. Tenders with only partial offers will not be considered.

13. Negotiation

The Government reserves the right to negotiate with any or all Tenderer(s) about the terms and conditions in the Tender Documents and of the Contract. If the Government at its discretion considers appropriate, the Government will normally conduct negotiation with the Tenderer whose tender is identified as the most advantageous to the Government in terms of the evaluation criteria set out in Clause 10.

14. Execution of the Contract and Payment of Monthly Basic Licence Fee

- 14.1 Unless and until the Articles of Agreement has been signed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government Representative and any Tenderer. References to award of the Contract mean the signing of the Articles of Agreement.

- 14.2 The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “conditional acceptance of tender”). Upon receipt of the conditional acceptance of tender, the successful Tenderer shall be obliged to fulfill all of the following conditions to the satisfaction of the Government Representative within fourteen (14) days from the date of the notification (or such later date as the Government Representative may allow) -
- (a) the provision of the Security Deposit as required under Clause 25;
 - (b) the payment of the Monthly Basic Licence Fee in respect of the first month of the Contract Period;
 - (c) the submission of the completed Seventh Schedule concerning ethical commitments requirements; and
 - (d) such other conditions as the Government Representative may stipulate in the conditional acceptance of tender.
- 14.3 Unless and to the extent waived by the Government Representative in writing, upon fulfilment of the conditions by the Tenderer specified in Clause 14.2 above to the satisfaction of the Government Representative, the Government Representative will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government Representative, the tender submitted by the successful Tenderer (subject to such other changes as the Government Representative may stipulate in exercise of its powers under the Tender Documents and such changes as the parties may agree (if any)). If a Tenderer fails to fulfill all or any of the conditions mentioned in Clause 14.2 above (unless and save to the extent they are waived by the Government Representative in writing, if any), or fails to sign the Articles of Agreement upon notification by the Government Representative (“defaulting Tenderer”), the conditional acceptance of tender will become void and be of no further force.
- 14.4 The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and remedies of the Government, the defaulting Tenderer shall be responsible for the difference in the total Licence Fee submitted by that defaulting Tenderer and the eventual Contractor who will be granted the Contract in replacement of the defaulting Tenderer whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise as well as all administrative costs incurred by the Government in finding a replacement contractor and implementing any stop-gap measures during the time when no replacement contractor can be appointed. On the other hand, notwithstanding anything in the Tender Documents or in the conditional acceptance of tender to the contrary, in the event that the Government exercises any of its discretion under Clause 18 or 19, the Government Representative shall be entitled not to enter into the Contract

with a Tenderer even if the Tenderer has received a conditional acceptance of tender and fulfilled all the conditions specified in Clause 14.2.

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

15. Counter-proposals

- 15.1 No Tenderer may propose any counter-proposal to any part of the Tender Documents.

- 15.2 The Government will refrain from awarding the Contract to the Tenderer who is unwilling to withdraw its counter-proposal(s) which are not acceptable to the Government.

16. Costs of Preparation of a Tender

Tenderers shall submit their tenders at their own costs and expenses. Neither the Government nor the Government Representative shall be liable for any costs and expenses whatsoever incurred by Tenderers in connection with the preparation or submission of their tenders, including all costs and expenses relating to (a) communication or negotiations with the Government Representative; or (b) attending briefings, document inspections, site visits or surveys made by the Tenderer, whether before or after the Tender Closing Date.

17. 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. On the other hand, the Government reserves the discretion to refuse acceptance of any part of the tender which is inconsistent with any requirements of the Tender Documents.

18. Government's Discretion

- 18.1 Notwithstanding anything to the contrary in these 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 award of the Contract or an order

is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or its related person;

- (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 a claim or allegation made any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract or the Government having grounds to believe that any thing(s), service(s) or material(s) supplied or previously supplied by the Tenderer or its related person infringes or will infringe any Intellectual Property Rights of any person;
- (d) any time during the twenty-four (24) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer was in significant or persistent default(s) in the performance of any substantive requirement or obligation under any other Government contract awarded by the Director of Leisure and Cultural Services regardless of whether the default(s) led to the actual termination of the relevant Government contract or whether such default(s) has been remedied (a "Contract Default");
- (e) the Tenderer or a related person or a director or management staff 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 award of the Contract) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract;
- (f) in the event of any professional misconduct or any act or omission having been committed during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract that adversely reflects on or casts doubt on the commercial integrity of the Tenderer or a related person or a director or management staff of the Tenderer; or
- (g) any failure of the Tenderer or its related person to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract.

The grounds specified in Clauses 18.1(a) to 18.1(g) are separate and independent, and shall not be limited by reference to or inference from the other of them.

18.2 For the purposes of Clause 18.1, each Tenderer shall provide in the Tender Attachment 1 at the time of submission of its tender (and thereafter up to the time of the award of the Contract in relation to any event occurring between the time of submission and the time of grant) all information at least in relation to itself and those information in relation to its related person or its director or management staff which it has knowledge that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following -

- (a) details of any petition or proceeding mentioned in Clause 18.1(a);
- (b) details of all infringement claims or allegations and/or settlement agreement as mentioned in Clause 18.1(c);
- (c) details of all Contract Defaults as mentioned in Clause 18.1(d);
- (d) details of conviction as mentioned in Clause 18.1(e) in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission that adversely reflects or casts doubt on the commercial integrity of the Tenderer or a related person as mentioned in Clause 18.1(f); and
- (f) details of any failure to pay taxes as mentioned in Clause 18.1(g).

If none of the events as mentioned in Clauses 18.2(a) to 18.2(f) above has ever occurred within the applicable period as mentioned in the relevant sub-clause in Clause 18.1, the Tenderer shall provide a statement to that effect by completing the relevant part of the Tender Attachment 1 at the time of submission of its tender. If found missing, the Government reserves the right to seek clarification.

18.3 In addition to the information mentioned in Clause 18.2, the Government reserves the right to request from a Tenderer or from other sources and take into account all information about -

- (a) the Tenderer itself (viz. in relation to any information relevant to any of the events mentioned in Clause 18.1);
- (b) any of the directors or management staff of the Tenderer (viz. information relevant to the event mentioned in any of Clauses 18.1(e) and (f) applicable to any such person);
- (c) any of the related persons of the Tenderer (viz. information relevant to any of the events mentioned in any of Clauses 18.1(a) to (g) applicable to any such person); and

- (d) such other information which is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 18.1.
- 18.4 Such information relating to any of the aforesaid persons may include, without limitation, details of any claim or allegation of infringement or settlement agreement as referred to in Clause 18.1(c); details of any Contract Default referred to in Clause 18.1(d); details of any conviction of serious offences referred to in Clause 18.1(e); details of any professional misconduct, acts or omissions referred to in Clause 18.1(f) and of any failure to pay taxes to the Government referred to in Clause 18.1(g) above.
- 18.5 If the Tenderer fails to comply with the request made by the Government pursuant to Clause 18.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 10. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 18.1(b) above.
- 18.6 In providing the information required under Clauses 18.2 and 18.3 above, the Tenderer may show cause to satisfy the Government that the petition, proceeding, conviction record, infringement claim or allegation, Contract Default, or any professional misconduct or act or omission as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 18.7 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 (50) percent or more of the issued share capital of the Tenderer ("majority shareholder"); or
 - (b) a holding company or a subsidiary of the Tenderer; or
 - (c) a holding company or a subsidiary of a majority shareholder of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

- 18.8 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); or
- (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 of both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in any of Clause 18.1(c), 18.1(d), 18.1(e), 18.1(f), or 18.1(g).

19. Cancellation of the Invitation to Tender

- 19.1 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 Clause 10 to identify the successful Tenderer.
- 19.2 After cancellation pursuant to Clause 19.1 above, if and when it considers fit, the Government Representative reserves the right to re-issue the Invitation to Tender on such terms and conditions as the Government Representative considers appropriate.

20. Undisclosed Agency

The person who signs a tender as Tenderer shall be deemed to be acting as a principal unless he discloses therein that he is acting as an agent only, in which case he shall also disclose therein the name, address and the name(s) of the contact person(s) of his principal. In the event of any failure to do so, the Government shall be entitled to treat the Tenderer to be acting as principal.

21. Consent to Disclosure

- 21.1 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, the Tender Documents, particulars of Business to be operated by the successful Tenderer, the location of the Licence Area, the date of the award of the Contract, the name and address of the successful Tenderer, the Monthly

Basic Licence Fee and the Percentage of Monthly Gross Receipt of the Contract.

- 21.2 Nothing in Clause 21.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 21.1 above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information) –
- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
 - (b) the disclosure of any information already known to the recipient;
 - (c) the disclosure of any information which is public knowledge;
 - (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction; or
 - (e) without prejudice to the power of the Government under Clause 21.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.
- 21.3 For future contract, invitation to tender or award purposes, the Government shall have the right to disclose the utilisation rate of the Licence Area in respect of the Contract Period or any part thereof without further giving notice to the Contractor or any other person.

22. Personal Data

- 22.1 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, award of the Contract and resolution of any dispute arising from this Invitation to Tender). In the case of the successful Tenderer, the purposes shall be extended to include enforcement and management of the Contract, and resolution of disputes arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- 22.2 By submitting a tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the tender, his consent for the disclosure to the Government, use and further disclosure by the

Government of the personal data for the purposes and to the persons specified in Clause 22.1 above.

- 22.3 An individual to whom personal data belongs or 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 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the tender.
- 22.4 Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the LCSD.

23. New Information

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

24. Commencement Date of the Contract Period

Subject to the confirmation by the Government Representative in the Contract, the tentative commencement date of the Contract Period is **12th day of April 2019**. Notwithstanding the aforementioned tentative commencement date, the Government Representative shall have absolute discretion to determine the commencement date of the Contract Period in the Articles of Agreement and the Contract Period shall commence from the date as specified in the Articles of Agreement.

25. Security Deposit

- 25.1 In the event that the Estimated Contract Value exceeds HK\$4.5 million, a financial vetting will be conducted by the Government Representative in the manner set out hereunder. For the purpose of financial vetting under this Clause, the Estimated Contract Value shall mean the total amount of the Monthly Basic Licence Fee for the whole Contract Period as quoted by the Tenderer in the First Schedule. If financial vetting is required, the Tenderer shall upon request of the Government Representative provide such financial information that the Government Representative considers necessary and relevant within five (5) working days after the date of request. If the Tenderer fails to provide any financial information required by the Government Representative within a specified period resulting that the Government Representative cannot complete vetting of the financial position of the Tenderer,

it shall be considered by the Government Representative that the Tenderer has failed the financial vetting.

- 25.2 The successful Tenderer shall, within the period specified in Clause 14.2 or such other time as specified by the Government Representative, deposit with the Government in cash, cheque or casher's order or in the form of a bank guarantee for an amount equal to four (4) times the Monthly Basic Licence Fee. In addition, where the successful Tenderer fails the financial vetting as mentioned in Clause 25.1, the aforesaid amount shall be further topped up by an amount equivalent to 5% of the Estimated Contract Value. The aforesaid amount (whether with or without top-up, as applicable) shall serve as security for the due, punctual and proper performance of the Contract ("Security Deposit").
- 25.3 If the successful Tenderer elects to provide a bank guarantee, the bank guarantee must be in the form attached to Tender Attachment 1 and be issued by a bank which holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and which bank is to be further approved by the Government.

26. Licence, Permit and/or Certificate

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 Car Park at the Licence Area. The responsibility for applying the necessary licences, permits and certificates and fulfillment of the requirements stated therein lies 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 as the licensing authority.

27. State of Licence Area

- 27.1 Tenderers are strongly advised to visit the Licence Area before submitting the tenders and the successful Tenderer shall accept the Licence Area in the state and condition in which it is at the date on which the occupancy is given (i.e. the first date of the Contract Period).
- 27.2 Subject to the due signature of the Articles of Agreement, occupancy of the Licence Area will be given to the successful Tenderer **upon commencement of the Contract Period** or such other date as specified by the Government in the Articles of Agreement.

28. Restriction on Assignment and Sub-contracting

The Contract shall only entitle the Contractor to occupy the Licence Area for the operation of the Car Park at the Licence Area in accordance with the terms and conditions of the Contract. A Tenderer shall note that no assignment, underletting, or parting with the occupancy of the Licence Area or any part thereof or any interest therein will be permitted save to the extent provided for in the Contract.

29. Past Utilisation Figures and Disclaimer

- 29.1 The utilisation of the Licence Area for the period from **April 2016 to June 2018** as provided by the previous contractor is set out in the Eighth Schedule. The Government does not guarantee or warrant the accuracy or completeness of the information provided by the previous contractor.
- 29.2 Tenderers should study all Tender Documents carefully before submitting their tenders. Tenderers should note that all information and statistics provided by the Government in connection with this tender are for reference only.
- 29.3 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 in the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.
- 29.4 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 operation of 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.

30. Successful Tenderer's Performance Monitoring

A Tenderer is advised that should it be awarded the Contract, its performance under the Contract will be monitored and shall be taken into account in the evaluation by the Government Representative of tenders submitted by it.

31. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers shall be retained for a period of not less than three (3) months after the Contract has been duly executed by the Government and the successful Tenderer. Thereafter, the documents may be destroyed.

32. Tender Enquiries

- 32.1 Any enquiry in relation to this tender at least five (5) working days before the Tender Closing Date shall be addressed to –

Deputy Manager (Maintenance) Hong Kong Stadium,
Hong Kong Stadium,
No.55 Eastern Hospital Road,
So Kon Po, Causeway Bay, Hong Kong

Tel. : 2895 7948

Fax : 2895 7962

- 32.2 Unless otherwise specified, any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Tenderer shall be for guidance and reference purposes only. The statement shall not be deemed to form part of these Terms of Tender and such statement or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as are set out in these Terms of Tender or the Contract.
- 32.3 After lodging a tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its tender or the Tender Documents. The Government 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.

33. Site Visit and Tender Briefing

Tenderers are advised to visit the Licence Area before submitting their tenders. A tender briefing would be held at **3:00 p.m. on 31st day of October 2018 (Wednesday)** at the media centre of Mong Kok Stadium, 55 Flower Market Road, Mong Kok to answer queries about the tender procedure and the

contents of the Tender Documents. Any requests for site visits or enquiries on site visits may be made to Senior Assistant Manager (Turf Maintenance) Hong Kong Stadium at 2895 7953.

34. Closure of the Car Park on Event Days

- 34.1 Tenderers shall note that during the Contract Period, the whole of the Car Park will need to be closed on an Event Day. During the Contract Period, the Car Park will be closed for football events from 5:00 p.m. to 11:00 p.m. for two (2) to three (3) days between Monday and Friday and from 12:00 noon to 11:00 p.m. on Saturdays, Sundays and public holidays. The actual closure time will be subject to the event time and to be confirmed by the Government Representative.
- 34.2 For Tenderers' information, the estimated closure hours of the Car Park for Event inclusive of football matches during the whole Contract Period are about 560 hours during Mondays to Fridays and 1,100 hours during Saturdays, Sundays and/or public holidays. However, the estimated closure hours of the Car Park above are indicative only and may vary according to actual requirements of different Event. The Government shall not guarantee the accuracy of the data given above though reasonable care is exercised by the Government to ensure that the estimated closure hours reflect the actual situation. The Government shall not be liable for any loss sustained by the Tenderer due to inaccuracy of the information.

35. Tender Addendum

- 35.1 Should the Government Representative requires any amendments, clarifications or adjustments to be made to the Tender Documents, the Government Representative will issue to every person who is known to have collected the Tender Documents numbered addenda giving full details of such amendments. The Tenderer 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.
- 35.2 Tender Documents obtained from the LCSD may be subject to updating. Notwithstanding Clause 35.1, it is the responsibility for Tenderers to check for any latest updates or addendum to the Tender Documents before the Tender Closing Date. These addenda shall form a part of the Tender Documents and shall take priority over the documents previously issued. If Tenderers would like to be informed of any updates or addendum to the Tender Documents, they should provide their email addresses to the Government Representative for contact.

36. Authentication of Documents

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

- (a) any person whose particulars are set out in the tender submitted by the Tenderer, and
- (b) any issuing body of any of the certificates or documentary evidence required in the Tender Documents, all information which the Government considers appropriate and relevant to the evaluation of the tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer represents that such consent has been duly obtained.

37. Complaint about Tendering Process or Contract Award

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

38. Probity Clause

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

39. Licence to use the Tender

- 39.1 A tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderers may be destroyed in accordance with Clause 31. In consideration of the Government considering its tender, without prejudice to all other rights and powers of the Government Representative

under the Tender Documents (including in particular its right to disclose information in the Tender) and under the Contract, each Tenderer grants to each of the Government and the Government Representative, their respective 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 and also for the purposes of disclosure under Clause 21. 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.

- 39.2 The Tenderer shall keep the Government Representative informed in writing of any materials that are subject matters of the licences granted or to be granted to which the Tenderer is not empowered to grant licences under Clause 39.1 and any restrictions whatsoever affecting the use thereof.
- 39.3 The Tenderer hereby undertakes to procure at its own costs and expense from the relevant third parties all proper licences, clearances and releases in writing to be granted in favour of the Government, the Government Representative, their respective authorized users, assigns and successors-in-title pursuant to the terms of licence under Clause 39.1.
- 39.4 The Tenderer hereby waives and undertakes to procure at its own costs and expense all authors including its employees, sub-contractors and agents to waive all moral rights (whether past, present or future) in all materials Tenderer comprised in the Tender, such waiver shall operate in favour of the Government, the Government Representative, their respective authorized users, assigns and successors-in-title and shall take effect upon submission of such materials.
- 39.5 The Tenderer shall at its own costs and expense do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Government to give full effect to this Clause 39 and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 39.6 By submitting a tender, the Tenderer represents and warrants that none of the materials comprised in the Tender submitted infringes the Intellectual Property Rights of any person.
- 39.7 The Tenderer shall indemnify the Government, the Government Representative, their respective assigns, successors-in-title, and authorized users from and against everything stated in Clause 29.2 of the Conditions of Contract in the event that the exercise by any of them of the rights set out in Clause 39 infringes or is alleged to infringe the Intellectual Property Rights of any person.

40. Anti-collusion

- 40.1 By submitting a tender, the Tenderer represents and warrants that in relation to the tender -
- (a) it has not communicated and will not communicate to any person other than the Government the amount of the Licence Fee;
 - (b) it has not fixed and will not fix the amount of the Licence Fee by arrangement with any person;
 - (c) it has not made and will not make any arrangement with any person as to whether he or that other person will or will not submit a tender; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.
- 40.2 In the event that the Tenderer is in breach of any of the representations and/or warranties in Clause 40.1 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government -
- (a) reject the tender; or
 - (b) if the Government has accepted the tender, withdraw its acceptance of the tender; or
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- 40.3 The Tenderer shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 40.1 above.
- 40.4 Any breach of any of the representations and/or warranties in Clause 40.1 above by the Tenderer may prejudice the Tenderer's future standing as a Government contractor.
- 40.5 Clause 40.1 shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Licence Fee, or with its professional advisers or consultants to solicit their assistance in preparation of tender submission.

40.6 The rights of the Government under Clauses 40.2 to 40.4 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

41. Survival

All rights powers and remedies 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 grant of the Contract or cancellation of this Invitation to Tender.

42. Electricity Charges

The Contractor shall bear all electricity charges arising from the operation of the Car Park including but not limited to the lighting and ventilation system (if any) installed at the premises. The estimated monthly electricity charges for the Car Park is HK\$1,500.

Tender Attachment 1**(A) Tenderer's Status**

(1) If the Tenderer is a Sole Proprietor – (If the Tenderer is not a sole proprietor of the business it is bidding for, please strike out (1) and go to (2). If the Tenderer is a sole proprietor, please complete (1) and strike out (2) and (3).)

(a) Name of _____ (in English)
 Owner/Proprietor: _____ (in Chinese)

(b) Hong Kong Identity Card Number: _____

(c) Residential Address:

(d) Telephone Number: _____
 Facsimile Number: _____

(e) Business Registration Certificate
 Number of the business being
 operated (if any): _____

Expiry date of Business
 Registration Certificate (if
 applicable): _____

(f) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch:

Bank Account Number: _____

(g) I submit this tender for and on my own behalf as the sole proprietor with details as shown above. I also attach the documents in relation to the sole proprietorship as required in Clause 5.2(b) of the Terms of Tender.

Signature of Owner / Proprietor

(i.e. the Tenderer):

Date:

(2) **If the Tenderer is a firm** – (If the Tenderer is a body corporate, please strike out (2) and go to (3)).

(a) Name of the Firm: (in English) _____

(in Chinese) _____

(b) Address of the Firm: _____

(c) Telephone Number: _____ Facsimile Number: _____

(d) Business Registration Certificate

Number of the business being

operated: _____

Expiry date of Business

Registration Certificate: _____

(e) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch:

Bank Account Number: _____

(f) Names of all partners (in BLOCK letters):

Residential Address(es) of partners (in above order):

- (g) I declare and confirm that I am one of the partners of the said firm and am duly authorized to bind the said firm and all its partners to this tender by my signature in the name of the firm. I also attach the documents in relation to the firm as required in Clause 5.2(b) of the Terms of Tender.

Signature of partner signing in the name
of the firm:

(with firm chop)

Name of partner:

Date:

(3) If the Tenderer is a Body Corporate -

(a) Name of the Body Corporate: (in English) _____

(in Chinese) _____

If a Subsidiary, Name of Ultimate Holding Company:

(in English) _____

(in Chinese) _____

(b) Address of Registered Office:

(c) Telephone Number: _____ Facsimile Number: _____

(d) Certificate of Incorporation Number of the company or name of ordinance under which the body corporate is established:

Limited or unlimited liability:

Year of establishment:

(e) Business Registration Certificate Number of the business being operated:

Expiry date of Business Registration Certificate:

(f) Name (in BLOCK letters) and Residential Address of the Managing Director:

(g) Name (in BLOCK letters) and Residential Address of the Company Secretary:

(h) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch:

Bank Account Number:

(i) I declare and confirm that I am a *Director / Company Secretary / principal officer (please specify _____)# of the said body corporate and am duly authorized to sign this Tender Attachment 1 on behalf of the said body corporate. I attach to this Tender Attachment 1 a certified true copy of the company's resolution / body corporate's minutes of meeting showing that I am duly authorized to sign contracts / agreements on behalf of the body corporate including this tender and the Articles of Agreement. I also attach the documents in relation to the body corporate as required in Clause 5.2(c) of the Terms of Tender (where the Tenderer is a company).

Please fill in the blank.

Signature of Authorized Representative
for and on behalf of the body corporate:

(with company / body corporate chop)

Name of Authorized Representative:

Title of Authorized Representative:

Date:

(B) Other information

(a) If my/our tender is conditionally accepted under Clause 14.2 of the Terms of Tender, I/we shall, pursuant to Clause 14.2 of the Terms of Tender and Clause 7 of the Conditions of Contract, deposit with the Government the sum equal to four (4) months' Monthly Basic Licence Fee; and in the event that I/we failed the financial

vetting if so conducted by the Government Representative, I/we shall deposit an additional amount equivalent to 5% of the Estimated Contract Value as security for the due and proper performance of the Contract either –

- (a) in cash, cheque or cashier’s order or
- (b) in the form of a bank guarantee in the form attached to this Tender Attachment 1 and issued by a bank licensed under Section 16 of the Banking Ordinance (Cap. 155) approved by the Government.

(b) Name(s) and address(es) of banker(s) who is/are prepared to provide reference -

(c) Confirmation required under Clause 18.2 of the Terms of Tender

*I/We confirm that none of the events as mentioned in Clause 18.1(a) to 18.1(g) of the Terms of Tender has ever occurred within the applicable period as mentioned in therein; OR

*I/We hereby provide the details as required in any of Clause 18.2(a) to 18.2(f) where applicable:

*Delete where inapplicable

(d) Contact Details

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

Name:

Post Title:

Fax No:

Address:

(e) I/We hereby declare that all information given above and contained in any additional sheets attached hereto are correct. I/We understand that if any of the information contained in this Clause is found to be incorrect, my/our tender will not be further considered, or my/our Contract will be terminated in accordance with Clause 34.1 of the Conditions of Contract even if I am/we are awarded the Contract.

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

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

*Delete where inapplicable

- Notes: (i) All the particulars required above shall be accurately completed and the supply of any inaccurate, incomplete or misleading particulars or wilful omission may lead to rejection of this tender.
- (ii) Any alternatives, which are not applicable, shall be struck out.
- (iii) Tenderer shall read carefully each and every part of the Tender Documents.

Form of Bank Guarantee
for the Performance of a Contract

THIS GUARANTEE is made on the day of201.....

By..... of

....., a bank within the meaning of the Banking Ordinance

(Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

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

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the ...[Day]...of...[Month]... 201..... made between << Contractor Name >>..... of << Contractor Address >>..... (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Tender Ref.: LCSD/MKS/CP2019), the Contractor agreed and undertook to operate the business of car park at Mong Kok Stadium of LCSD upon the terms and conditions of the Contract.

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

Now this Guarantee as a deed witnesses as follows:

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

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

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

dispute between the Contractor and the Government or any other person.

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

- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.
- (6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling three (3) months after the expiry or early termination of the Contract; or
 - (b) in the event that upon early termination or expiry of the Contract, there are any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, the date on which all such obligations and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing), but in the absence of any such confirmation, this Guarantee shall expire upon thirty-six (36) months after the expiry or early termination of the Contract, whichever is applicable.
- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

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

(12) All documents arising out of or in connection with this Guarantee shall be served :

(a) upon the Government, at the Leisure and Cultural Services Department of 1-3, Pai Tau Street, Sha Tin, New Territories, Hong Kong, marked for Director of Leisure and Cultural Services facsimile number (852) 2603 0235;

(b) upon the Guarantor, at _____, Hong Kong, marked for the attention of _____, facsimile number _____.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed _____.

(15) The Guarantor hereby acknowledges that the Guarantor should read and fully understand, with the benefit of independent legal advice if necessary, the terms and conditions of this Guarantee before entering into this Guarantee.

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

* The [Common Seal/Seal*] of the said)
Guarantor was hereunto affixed and)
signed by)
.....)
[Name & Title])
duly authorised by its board of)
directors in the presence of:)
Name of witness:
Title of witness:
Signature of witness:

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

[Name & Title])
and in the presence of)

Name of witness:
Title of Witness:
Signature of witness:

* Please delete as appropriate

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

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

Tender Attachment 2
Experience of the Tenderer

There will be an assessment on whether a Tenderer is in compliance with the experience requirements stipulated in Clause 7 of the Terms of Tender. In this connection, a Tenderer **MUST** submit with its tender information on its past experience as required in this Tender Attachment 2 at the time when it submits its tender.

Documentary proof including a copy of business registration certificate, evidence showing ownership or tenancy of the relevant premises (in the case the Tenderer operated the car park as business owner), or a copy of service contract or client reference letter (in the case the Tenderer operated the car park as service provider) to substantiate the past experience claimed in the tender shall be provided. Otherwise, the relevant claimed past experience will not be taken into account.

A Tenderer **MUST** have a minimum of two (2) years of experience (i.e. not less than seven hundred and thirty (730) days) in operating fee-paying public car park(s) whether as a business owner of such car park(s) or as a service provider for the owner of such car park(s) within the ten (10) years immediately prior to the Original Tender Closing Date. The Original Tender Closing Date shall be the cut-off date for calculation of the years of experience in conducting business of fee-paying public car park(s).

Brief description of car park operated (including name and address)	Whether the Tenderer operated the car park as business owner or as service provider	Operation period (with commencement and expiry dates)

(If there is not enough space, please use separate sheets)

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

Name of person authorised to sign tender
for and on behalf of the Tenderer:

Name and Signature of the Tenderer:

Tel No. : _____

Fax No.: _____

Date : _____

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CONDITIONS OF CONTRACT

1. Nature of Contract

It is expressly agreed between the parties that this Contract creates no tenancy or lease or any form of legal rights on land whatsoever between the parties except the right to use the Licence Area in accordance with the provisions of the Contract. This Contract is granted by the Government Representative to entitle the Contractor to operate the Business at the Licence Area in exercise of its power pursuant to the delegated power by the Chief Executive by Gazette Notice 2008/2003.

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, with the option to extend in accordance with Clause 2.2.

2.2 The Government shall have the option to extend the Contract Period for a maximum period of six (6) months ("Extension Period"). The Government shall be entitled to exercise such option, not less than one (1) month prior to the expiry of the Contract Period, by giving the Contractor a written notice to that effect ("Option Notice"). Upon the Government issuing an Option Notice, the Contract Period shall be deemed to be so extended on and subject to the same terms and conditions set out in the Contract apart from this Clause 2.2.

2.3 The commencement date of the Contract Period is 12th day of April 2019 **unless a different date is specified in the Articles of Agreement (which can be any date earlier or later than the aforesaid date as determined by the Government at its sole and absolute discretion)**, and subject to prior termination or extension as provided in this Contract, shall expire upon the end of thirty-six (36) months from the commencement date, both dates inclusive.

2.4 Even there is any suspension under Clause 23 or closure of the Business under Clause 24 regardless of the duration whether on an accumulative basis or individual basis, the Contract Period will not correspondingly be extended.

3. The Business

3.1 Subject to the terms and conditions of the Contract, the Government Representative grants to the Contractor during the Contract Period the right to

operate the Car Park at the Licence Area in compliance with all terms and conditions set out in the Contract (“Business”). In consideration of the opportunity being given by the Government Representative for operating the Business at the Licence Area for the Contract Period, the Contractor undertakes to carry on the Business in compliance with all requirements set out in the Contract as soon as the Contract Period commences.

- 3.2 The Contractor shall carry on the Business at the Licence Area at all times on 7 x 24 basis on all days of the week including all general holidays except with prior authorization of the Government Representative in writing. The Car Park shall remain open throughout the aforesaid time and period.
- 3.3 The Government Representative reserves the right to revise at any time and from time to time the business hours of the Contractor’s Business as specified in Clause 3.2 above.
- 3.4 The Contractor shall not vary the business hours of its Business unless prior written consent of the Government has been obtained.
- 3.5 The Contractor shall not be entitled to any adjustment or abatement of the Monthly Licence Fee for any change of the business hours referred to in this Clause and shall pay the Monthly Licence Fee in full pursuant to Clause 5 under all circumstances.
- 3.6 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.

4. Conduct of Business

- 4.1 This Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other premises in the Venue or otherwise.
- 4.2 The Contractor shall use the Licence Area only for the Business and shall not use, cause, suffer or permit to be used the Licence Area or any part thereof for any other purpose.
- 4.3 The Contractor shall conduct its Business only in the Licence Area and shall not use, cause, suffer or permit to be used any area of the Venue except the Licence Area without the prior written consent of the Government Representative for such purpose or for any other purpose.
- 4.4 The name of the Car Park 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.

5. Payment of Monthly Licence Fee

- 5.1 In consideration for the entitlement to operate the Business at the Licence Area and subject to the terms and conditions set out in the Contract, in respect of each month of the Contract Period, the Contractor shall pay to the Government Representative in advance a Monthly Basic Licence Fee and in arrears a Percentage 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 including water and electricity). The Monthly Basic Licence Fee shall be payable on or before the 12th day of each and every month of the Contract Period without any deduction or set-off whatsoever except that the Monthly Basic Licence Fee in respect of the first month shall be payable as one of the conditions to be fulfilled before signing of the Articles of Agreement under Clause 14.2 of the Terms of Tender. The Percentage Licence Fee in respect of each month of the Contract Period shall be payable no later than fourteen (14) days after the end of that month (i.e. 11th day of each month) (including the last month of the Contract Period or the remaining period after the last complete month of the Contract Period).
- 5.2 The Percentage Licence Fee in respect of each month of the Contract Period shall be calculated by multiplying the Percentage of Monthly Gross Receipts as stated in the First Schedule by the Monthly Gross Receipts for that month and then deduct therefrom the Monthly Basic Licence Fee payable in respect of that month. In the event that the Percentage Licence Fee is a negative figure, no sum shall be payable by either party to the other.
- 5.3 If the Contractor fails to pay the Monthly Basic Licence Fee or Percentage Licence Fee by the due date or any other amount payable by the Contractor under the Contract (“default amount”), the Contractor shall pay a surcharge on the default 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.
- 5.4 No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in individual provisions of the Contract.
- 5.5 In the event that the remaining period of the Contract Period after the last complete month is not a complete month, there shall be adjustment of the

Monthly Basic Licence Fee for such remaining period. The adjustment shall be arrived at by multiplying the daily rate with the actual number of days of the relevant period. The daily rate shall be arrived by dividing the Monthly Basic Licence Fee by the number of days of such calendar month. The Percentage Licence Fee shall be calculated in respect of the Monthly Gross Receipts in respect of such remaining period and no adjustment to the Percentage of Monthly Gross Receipts is required.

5.6 Within fourteen (14) days after the end of each month (i.e. 11th day of each month) and the expiry or sooner termination of the Contract Period, the Contractor shall –

- (a) submit to the Government Representative a statement of accounts in the form as the Government Representative may prescribe at any time and from time to time showing the Monthly Gross Receipts and the amount of the Percentage Licence Fee that should be payable to the Government Representative, if any, for that month (or the remaining period as the case may be). The statement of accounts shall be certified as being accurate and complete by the Contractor or such other person as the Government Representative may from time to time approve or prescribe;
- (b) if the statement of accounts is not submitted within the fourteen (14) days as described above, the Contractor shall pay to the Government Representative by way of a provisional Percentage Licence Fee for that month an amount equivalent to the highest Percentage Licence Fee paid for any one (1) month during the twelve (12) months' period immediately preceding the month in question; and
- (c) in the event that the amount of the Percentage Licence Fee as shown in the statement of accounts eventually submitted by the Contractor under Clause 5.6(a) in respect of a month shall exceed or shall be less than the provisional Percentage Licence Fee actually paid by the Contractor to the Government Representative in respect of that month, the amount of the shortfall, if any, shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand; or the amount of overpayment, if any, shall be repaid without interest by the Government Representative to the Contractor within thirty (30) days of demand. In the case of shortfall, the Contractor shall also pay interest on the shortfall amount at the rate specified in Clause 5.3 to accrue from the date which it should have been paid up to the date of actual payment.

5.7 Upon the request from time to time of the Government Representative, the Contractor shall within thirty (30) days from the date of such request submit to the Government Representative a statement of accounts in the form approved by the Government. The statement of accounts shall show the Monthly Gross Receipts and the amount of the Percentage Licence Fee that should be payable

to the Government Representative for such month or months as stipulated in the notice. 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 (Cap. 50) (“Auditor”) in accordance with Hong Kong Standard on Assurance Engagements 3000 “Assurance Engagements Other Than Audits or Reviews of Historical Financial Information” issued by the Hong Kong Institute of Certified Public Accountants.

- 5.8 Within three (3) months after the end of each Contract Year, and after the expiry or earlier termination of this Contract Period in respect of the last Contract Year, the Contractor shall submit to the Government Representative an audited statement of accounts certified as being accurate and complete by the Auditor showing inter alia the Monthly Gross Receipts and the amount of the Percentage Licence Fee for each month of that Contract Year (or in the case of the last Contract Year, each month of that Contract Year plus the remaining period).
- 5.9 In the event that the amount of the Percentage Licence Fee as shown in the audited statement of accounts submitted by the Contractor under Clause 5.7 or 5.8 for any period covered by such accounts shall exceed or shall be less than the Percentage Licence Fee actually paid by the Contractor to the Government Representative in respect of that period, the amount of the shortfall, if any, shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand; or the amount of overpayment, if any, shall be repaid without interest by the Government Representative to the Contractor within thirty (30) days of demand. In the case of shortfall, the Contractor shall also pay interest on the shortfall amount at the rate specified in Clause 5.3 to accrue from the date which it should have been paid up to the date of actual payment.
- 5.10 If the audited statement of accounts is not submitted by the deadline as specified in Clause 5.8, the Contractor shall pay to the Government Representative by way of a provisional top up amount to the Percentage Licence Fee for the Contract Year equivalent to the highest Percentage Licence Fee paid during that Contract Year multiplied by the number of months covered by that Contract Year and then subtract the same with the total amount of Percentage Licence Fees already paid by the Contractor in respect of that Contract Year (“top-up amount”). In the event that the amount of the Percentage Licence Fee as shown in the audited statement of accounts eventually submitted by the Contractor under Clause 5.9 for a Contract Year shall exceed or shall be less than the Percentage Licence Fee actually paid by the Contractor to the Government Representative in respect of that period (taking into account any top-up amount paid in respect of that period), the amount of the shortfall, if any, shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand; or the amount of overpayment, if any, shall be repaid without interest by the Government Representative to the Contractor within thirty (30) days of demand. In the case of shortfall, the Contractor shall also pay interest on the

shortfall amount at the rate specified in Clause 5.3 to accrue from the date which it should have been paid up to the date of actual payment.

- 5.11 For the avoidance of doubt, it is hereby expressly agreed and declared that the acceptance by the Government Representative of any statement of accounts or audited statement of accounts submitted or any money paid by the Contractor in accordance with this Clause 5 shall not in any way whatsoever bar or otherwise preclude the Government Representative from subsequently disputing the accuracy of any such statement of accounts or the correctness of any such sum. In the event that any further sum whatsoever shall be found due from the Contractor to the Government Representative, without prejudice to other rights and claims of the Government Representative, the same shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand plus interest under Clause 5.3 as if such amount is a default amount.
- 5.12 The Contractor shall keep and maintain proper books of account including ledgers, supporting vouchers, receipts, etc. and other records or documents in respect of the operation of the Business under this Contract and to cause all such records or documents to make up on a monthly basis and retain the same for at least seven (7) years after the expiry or earlier termination of the Contract Period.
- 5.13 At all reasonable time upon prior notice from the Government Representative to produce to it or any person authorised by it for inspection of all books of account, ledgers, vouchers, receipts, etc. and other records or documents relating to the operation of the Business and, if required, to make available copies of them.

6. Non-exclusive Right of the Contractor

- 6.1 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 and performance of all other obligations under the Contract which are required to be performed at the Licence Area.
- 6.2 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.
- 6.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Venue.
- 6.4 Nothing in this Contract shall be regarded as in any way negating, prejudicing

or otherwise restricting the right of the Government Representative to authorize any person to park any vehicle at the Venue. The Contractor is not entitled to claim for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorizations.

- 6.5 That in case any of the sums payable by the Contractor under the Contract or any part thereof shall be unpaid after the same become due (whether formally demanded or not), or if there is any breach, non-performance or non-observance of any of the terms and conditions to be observed by and on the part of the Contractor herein contained or if the Contractor becomes bankrupt or, being a company, enters into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation), or enters into any composition with its creditors or suffer any distress or execution to be levied upon its goods, then, and in any of the said cases, it shall be lawful for the Government Representative at any time thereafter to re-enter upon the Licence Area or any part thereof in the name of the whole, and thereupon this Contract shall be deemed terminated under Clause 34.1(f). In the event of such re-entry, the Monthly Licence Fee already paid for the Licence Area or any part thereof shall not be refunded and no compensation whatsoever shall be payable to the Contractor by the Government Representative arising from such re-entry.

7. Security Deposit

- 7.1 The Contractor shall within fourteen (14) days from the date of the notification (or such later date as the Government Representative may allow) deposit with the Government in cash, cheque or cashier's order or in the form of bank guarantee in the form attached to Tender Attachment 1 to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155), for an amount equal to four (4) times the Monthly Basic Licence Fee. In addition, where the successful Tenderer fails the financial vetting as mentioned in Clause 25.2 of the Terms of Tender, the aforesaid amount shall be further topped up by an amount equivalent to 5% of the Estimated Contract Value. The aforesaid amount (whether with or without top-up, as applicable) shall serve as security for the due, punctual and proper performance of the Contract ("Security Deposit").
- 7.2 The Security Deposit, if in the form of cash, cheque or cashier's order shall be retained by the Government Representative, or if in the form of a bank guarantee, shall remain in force, in either case, from the date of commencement of the Contract Period until the date specified in (a), or (b) below, whichever is applicable:
- (a) the date falling three (3) months after the expiry of the Contract Period; or
 - (b) there remain any outstanding obligations and liabilities of the Contractor

under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding claim or right of the Government Representative or the Government, the date on which all such obligations, liabilities and rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

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

- 7.3 Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash, cheque or cashier's order and if any is remaining) be refunded to the Contractor without interest; or, if in the form of a bank guarantee, be discharged or released.
- 7.4 The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash, cheque or cashier's order or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government Representative under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government Representative in its absolute discretion deems fit. The Security Deposit (whether in cash, cheque or cashier's order or in the form of the bank guarantee) may be deducted or called on, without the Government Representative first having recourse to any other security or rights or taking any other steps or proceedings against the 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 Representative.
- 7.5 If any deduction is made by the Government Representative from the Security Deposit in cash, cheque or cashier's order or a call is made on the bank guarantee during the Guarantee Period, the Contractor shall, within twenty-one (21) days on demand in writing by the Government Representative, deposit a further sum or reinstate the level or extent of the bank guarantee or procure the issuance of a fresh bank guarantee in a sum equal to the amount so deducted or so called, which shall be added to the residue of and form part of the Security Deposit and, where applicable, the additional security amount required under Clause 7.1.

8. Restriction on Assignment and Sub-contracting

- 8.1 Unless otherwise with the prior written consent of the Government

Representative, 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 of the occupancy 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.

8.2 The Government Representative may refrain from giving any written consent under Clause 8.1 without giving any reason. If the Government Representative agrees to give consent, any such agreement may be subject to fulfilment of conditions either by the Contractor and/or by any proposed assignee or transferee or sub-contractors.

8.3 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 tier), and employees, officers and agents of any such sub-contractors (collectively, "Contractor Personnel") as if they were its own.

9. Licence, Permit and/or Certificate

9.1 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 of Hong Kong in order to operate the Business in the Licence Area. Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.

9.2 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 such licences, permits and/or certificates.

9.3 Since it necessarily takes time for the relevant authorities to consider and decide on an application for the requisite licences, permits and/or certificates, without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business as soon as the Contract Period commences, the Contractor agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor

cannot operate its Business pending the consideration of its applications and issuance or renewal of the relevant licences, permits and/or certificates. The non-issuance of any of the relevant licences, permits and/or certificates by the relevant authorities does not constitute any ground for the abatement of the Licence Fee.

9.4 The Contractor shall produce copies of all requisite licences, permits and/or certificates including but not limited to Business Registration Certificate, from time to time upon demand by the Government Representative.

10. Warranties and Undertakings

The Contractor warrants and undertakes to the Government Representative that -

- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business in the Licence Area in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;
- (b) this Contract constitutes the binding obligations of the Contractor in accordance with its terms;
- (c) the entry into this Contract, the performance by the Contractor of its obligations under it and the operation of the Business will not conflict with or result in the breach of -
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum (if any) and articles of association);
 - (ii) any contract or arrangement to which the Contractor is a party or by which it is bound;
 - (iii) any order, judgment or decree of any court or government agency to which the Contractor is a party or by which it is bound; or
 - (iv) any applicable laws and regulations.
- (d) it will comply with and observe all applicable laws and regulations in the operation of the Business in the Licence Area.

11. Fitting Out Work, Maintenance Work and Removal Work

- 11.1 The Contractor may with the prior written consent of the Government Representative erect upon the Licence Area the structure or structures which are necessary for the operation of the Business. The design and location of the structure or structures shall be subject to the prior written approval of the Government Representative. The ownership of any such structures shall be vested in the Government Representative if the Government Representative so directs upon the termination or expiry of the Contract Period free of any costs or charges to the Government Representative. If so required by the Government Representative, on the termination or expiry of the Contract Period, the Contractor shall demolish and remove the structures at the Contractor's own expense and to the satisfaction of the Government Representative without any compensation therefore being paid by the Government Representative to the Contractor.
- 11.2 Any building or structure erected by the Contractor on the Licence Area or any part thereof shall in all respects comply with the Buildings Ordinance (Cap. 123), any regulations made there under and any amending legislation.
- 11.3 The Contractor shall maintain and keep to the satisfaction of the Government Representative the Licence Area (including retaining and boundary walls and fences (if any) belonging thereto) in good repair and condition. The Contractor shall hand over to the Government Representative the Licence Area in the same condition as the Licence Area was first taken occupancy by the Contractor (fair wear and tear excepted) on early termination or expiry of the Contract.
- 11.4 If so required by the Government Representative, on the early termination or expiry of the Contract Period, the Contractor shall demolish and remove at the Contractor's own expense and to the satisfaction of the Government Representative any building, structure, foundation, paving or other surfacing which is then standing on or forms part of the Licence Area and thereafter landscape such Licence Area without any compensation therefor being paid by the Government Representative to the Contractor.
- 11.5 From time to time upon the request of the Government Representative during the Contract Period, the Contractor shall construct and maintain at the Contractor's own expense, to the satisfaction of the Government Representative, such drains and channels, whether within the boundaries of the Licence Area or upon adjacent Government land, as the Government Representative may consider necessary to intercept and convey into the nearest stream-course, catchpit, channel or storm-water drain all water which may fall or flow on to the Licence Area and to be solely liable for, and to indemnify the Government Representative and its officers from and against all actions, claims, liabilities and demands arising out of any damage or nuisance caused by such water.

- 11.6 The Contractor shall take or cause to be taken such precautions in all respects to the satisfaction of the Government Representative as are necessary to prevent oil or oil derived substances from entering sewers or drains within or serving the Licence Area.
- 11.7 The Contractor shall at its own expense form and surface the Licence Area within such time, to such levels with such materials and to such standards as may be considered necessary by and to the satisfaction of the Government Representative.
- 11.8 The Contractor shall not cut away, remove or set back any Government land adjacent to or adjoining the Licence Area or any part thereof or carry out any building up, filling in or any slope treatment works of any kind whatsoever on any Government land except with the prior written consent of the Government Representative who may, at its sole discretion, give its consent subject to such terms and conditions as it sees fit, including the grant of a licence of additional Government land as an extension to any of the Licence Area at such licence fee as it may determine.
- 11.9 The Contractor shall not carry out or permit any activity or works to be carried out at the Licence Area or any part thereof which in the opinion of the Government Representative may adversely affect the stability of land and structure within or surrounding the Venue or any part thereof.
- 11.10 Any damage or obstruction caused by the Contractor to any nullah, sewer, storm-water drain or water main within or adjoining the Licence Area or any part thereof shall be made good by the Government Representative at the cost of the Contractor, and the amount due in respect thereof shall be paid on demand to the Government Representative by the Contractor.
- 11.11 Notwithstanding Clause 11.10, the Contractor shall, at the request of the Government Representative, make good such damage or obstruction as specified by the Government Representative at its own expense and in all respects to the satisfaction of the Government Representative.

12. Government Premises and Government Property

- 12.1 The Contractor shall accept the Licence Area in the state and condition in which occupancy is given. The Government Representative makes no warranty or representation of whatsoever nature concerning the Licence Area. The Licence Area shall be provided on an “as is” basis.
- 12.2 The Contractor shall furnish and provide all such equipment and facilities necessary for the efficient operation of the Business. All such equipment and facilities shall be of a design and standard to the satisfaction of the Government Representative.

- 12.3 The Contractor shall keep and maintain at all times all Government property located at the Licence Area (moveable or immovable) or otherwise from time to time provided to the Contractor for use (if any) (including those as specified in the Third Schedule) (collectively, "Government Property") in good repair, clean and serviceable conditions to the Government Representative's satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Property in good repair, clean and serviceable condition at any time upon request by the Government Representative and/or at the end or sooner termination of the Contract.
- 12.4 The Contractor shall keep and maintain at all times 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 materials to walls, floors and ceilings and all fixtures and fittings therein including all doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatuses in good repair, clean and proper condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 12.5 If so required by the electricity company, or the Government Representative or other public officer, 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 the Contractor, if any, in any other part of the Licence Area.
- 12.6 Except for the work expressly required under the Contract, the Contractor shall not make any alteration or addition to the Licence Area or any Government Property without prior permission in writing by the Government Representative and shall not carry out the repairs to the same without obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by and of a standard acceptable to the Government Representative.
- 12.7 The Contractor shall be liable to the Government Representative for any damage or loss to the Licence Area or any Government Property. If any such Licence Area or Government Property 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 12.

- 12.8 The Licence Area and all Government Property 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.
- 12.9 The Contractor shall be regarded as the occupier of the Licence Area under the Occupier's Liability Ordinance (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 Clause 29.2 including claims arising from any incident occurring within the Licence Area which constitutes 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.
- 12.10 To the maximum extent permissible under the law, no compensation shall be payable by the Government Representative to the Contractor in respect of any loss or damage caused to the Contractor or others by reason of any water flowing on to the Licence Area or any part thereof or landslip or subsidence on, to, of or from the Licence Area or any part thereof.
- 12.11 The Government Representative or its duly authorized officers may carry out works of any description on the Licence Area or any part thereof or outside the Licence Area (whether on behalf of the Contractor or on the failure of the Contractor to carry out such works or otherwise) at the cost of the Contractor or that the Contractor shall pay or repay to the Government Representative or to its duly authorized officers on demand the cost of such works, such cost shall include such supervisory and overhead charges as may be fixed by the Government Representative or by its duly authorized officers.
- 12.12 The Government Representative may at its discretion provide office space, working area, equipment and storage space free of charge in the Licence Area for the use of the Contractor and for storage of plant, equipment and materials if such space is available. The space is provided to the Contractor and its employees solely for the purpose of performance of this Contract during the Contract Period.
- 12.13 The Contractor shall take all precautions to protect the interior and exterior of the Licence Area against damage by fire, storm, tropical cyclone or vandalism.

13. Operation of the Business

- 13.1 To ensure that during the continuance of this Contract and during the opening hours of the Licence Area there is provided and maintained at the Licence Area an efficient and adequate service of a style, type and quality to the satisfaction

of the Government Representative, without prejudice to the generality of the foregoing, the Contractor shall ensure that the Business provided at the Licence Area shall at all times suffice to meet the reasonable needs of the users and visitors of the Venue and its facilities including but not limited to members of the general public, persons attending the functions and activities being held in the Venue and group visitors to the Venue.

- 13.2 Unless otherwise directed or approved by the Government Representative, the Contractor shall operate and keep the Car Park open for use by the public throughout the hours specified in Clause 3.2.
- 13.3 Throughout the Contract Period, the Contractor shall levy Parking Charges in accordance with the scale of charges specified in the Second Schedule for each half-hour or part thereof during the first two hours of parking for the parking period from 7:00 a.m. to 11:00 p.m. (“regular parking period”); and the scale of charges specified in the Second Schedule for each half-hour or part thereof for the parking period after 11:00 p.m. until before 7:00 a.m. of the following day (“irregular parking period”). The parking charges for each half hour after the first two hours within the regular parking period shall be equal to 150% of the half hourly rate for the first two hours within the regular parking period. Parking fees shall be charged per every half an hour, or part thereof based on the aforesaid rate and calculation. In case of any half hour straddling the regular and irregular parking periods, and where that half hour commences in the regular parking period, the charges for regular parking period shall apply to the whole of that half hour. Where that half hour commences in the irregular parking period, the charges for irregular parking period shall apply to the whole of that half hour. Where the Parking Charges for each half hour after the first two hours are more than one (1) digit after the decimal point (i.e. a fraction of ten cents), the Parking Charges shall be rounded up to the nearest ten (10) cents.
- 13.4 The Contractor may adjust downwards the rates specified in the Second Schedule subject to the prior approval from the Government Representative. The Contractor may with the prior written consent of the Government Representative adjust upwards the parking charges that it may levy under the Second Schedule. Unless otherwise provided for in the Contract, the Contractor shall not levy any other charges or fees against any person in connection with its management of the Licence Area or its operation of the Car Park at the Licence Area without the prior approval from the Government Representative in writing.
- 13.5 Without prejudice to Clause 8 (Restriction on Assignment and Sub-contracting), the Contractor shall not let out any car parking spaces in the Licence Area other than the mode on half hourly basis without the prior written consent of the Government Representative.
- 13.6 (a) With the exception of fire engines, ambulances, police cars and government vehicles on official duties which shall be given free access

to the Licence Area, the Contractor shall not permit any vehicles other than those Permitted Vehicles to be parked in the Licence Area unless prior approval in writing from the Government Representative is obtained.

- (b) The Contractor shall not, without reasonable excuse or lawful authority, prevent or refuse the use of the Licence Area for parking of the Permitted Vehicles.
- (c) Unless otherwise provided for in the Contract, the Contractor shall not reserve or cause or permit any car parking spaces in the Licence Area to be reserved for use by any person or vehicle.
- (d) Save with the prior written consent of the Government Representative, the Contractor shall ensure that at all times during the Contract Period (including any extension thereto the Licence Area) the Permitted Vehicles are parked at the car parking spaces shown on the plans attached to Annex C which may be varied in accordance with Clause 13.8, and the number of vehicles parked at the car parking spaces so designated shall not exceed those specified in the Fourth Schedule.

- 13.7
- (a) The Contractor shall reserve such number of Disabled Person's Car Parking Spaces in the Licence Area as delineated in Annex C for use by vehicles displaying the Permit (as defined in the definition of "Disabled Person's Car Parking Spaces" in the Interpretation).
 - (b) The Disabled Person's Car Parking Spaces shall be used on a first-come-first served basis. If the Disabled Person's Car Parking Spaces are occupied, other vehicles displaying the Permit can use other vacant car parking spaces for its vehicular type.
 - (c) When car parking spaces for motorcycles are available and remain vacant, motorcycles displaying the Permit shall have priority in using car parking spaces for motorcycles. If car parking spaces for motorcycles are not provided at the car park or when all such parking spaces are fully occupied, motorcycles displaying the Permit may use the Disabled Person's Car Parking Spaces.
 - (d) The Contractor shall only charge drivers of vehicles displaying the Permit in circumstances referred to in Clause 13.7(b) and 13.7(c) for parking charges at a rate equivalent to half of the parking charges of the car parking spaces for its vehicular type stipulated in the Second Schedule for using car parking space other than the Disabled Person's Car Parking Space.

- 13.8 No change shall be made by the Contractor to the designation of car parking spaces in the Licence Area as shown on the plans attached to Annex C of this

Contract unless with the prior written consent of the Government Representative and other applicable authorities including the Lands Department and the Transport Department (if required). The Contractor shall make the required applications to each of them to effect the change in the designation of parking spaces and shall be liable for the cost of making such applications and if the application is approved by all of them, for altering the designation of parking spaces in the Licence Area in accordance with the approval.

- 13.9 The Contractor shall allow vehicle(s) approved by the Government Representative and taxi(s) free access to the Licence Area for loading and unloading purposes. The time for loading and unloading shall not exceed fifteen (15) minutes or such other period as directed by the Government Representative. For the avoidance of doubt, no parking or other charge shall be levied against the drivers or the owners of those vehicles before the expiry of the authorized time limit.
- 13.10 The Contractor shall seek the prior written approval of the Government Representative on the terms and conditions under which the Contractor offers the car parking spaces to the general public for use (the "Parking Terms").
- 13.11 The Contractor shall not post or allow or suffer to be posted on the Licence Area or any part thereof or any structure erected thereon any advertisement of whatsoever nature except such notices and signs denoting the Contractor's Business on the Licence Area permitted in this Contract and as may be approved by the Government Representative.
- 13.12 The Contractor shall ensure no vehicles that are not authorized by the Government Representative or the Contractor to use any part of the Licence Area or remain at the Licence Area and that the entry/exit points of the Licence Area are free from obstruction at all times.
- 13.13 The Contractor shall display signs and deploy its employees as appropriate to ensure vehicles waiting for entry into the Car Park do not cause any obstruction to the traffic of the public road connecting the entry/exit points of the Car Park at all time.
- 13.14 The Contractor shall erect and display at the Licence Area the Parking Terms including but not limited to the rates and method of calculation of the parking charges and such signs (including traffic signs) at such location(s) and in such manner as approved by the Government Representative for the efficient management and operation of the Car Park. All signs erected or displayed at the Licence Area by the Contractor must comply with the Road Traffic Ordinance (Cap. 374) and shall be written in both English and Chinese.

14. Other Covenants

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

- (a) Not to cause, suffer or permit the preparation, cooking, reheating or otherwise of food in, nor delivery of food to the Licence Area or any part thereof.
- (b) Not to erect or allow to remain on the Licence Area any building or structure without the consent in writing of the Government Representative first had and obtained.
- (c) Not to alter or demolish any building or structure already erected on the Licence Area as at the first day of the Contract Period without the prior consent in writing of the Government Representative.
- (d) Not to use water from any Government mains for any purpose without the prior written consent of the Water Authority.
- (e) Not to do or cause or permit to be done anything in or upon the Licence Area that may –
 - (i) be or become a / an obstruction, trespass, nuisance, interference with pedestrian, road, rail, air or waterborne traffic, or invasion of the right of privacy or interference with any right of air, light, water or way or otherwise any act or omission or default which constitutes as a tortious act under the law; or
 - (ii) cause damage to any property of the Government Representative or of the Government or of the owners or occupiers of premises in adjacent to or within the vicinity of the Licence Area.
- (f) Not to operate car-washing related business or garage business or allow any person to operate any such business in the Licence Area.
- (g) Except with the prior written approval of the Government Representative, not to carry out or cause or permit to be carried out any business or activity, other than the operation of the Car Park, at the Licence Area including but without limitation to —
 - (i) the shooting of any cinematographic or television materials; and
 - (ii) the erection of short term exhibition stalls or promotional counters.
- (h) Not to store or allow or suffer to be stored in or upon the Licence Area or any part thereof any dangerous goods as defined in the Dangerous

Goods Ordinance (Cap. 295).

- (i) Observe and comply with any requirement which may be imposed by the Director of Fire Services in connection with the occupation and use of the Licence Area by the Contractor.
- (j) Be solely responsible for, and take all necessary measures to ensure, the security of the Licence Area and all users, visitors, and motor vehicles parked thereat.
- (k) Not to carry out or cause or suffer to be carried out at the Licence Area or any part thereof any fuelling or lubricating or maintenance services of any nature for motor vehicles.
- (l) Not to cause, suffer or permit any floor show or other entertainment whatsoever to be staged in or from the Licence Area.
- (m) Not to use any gramophone, loudspeaker, musical instrument or similar apparatus or equipment within Licence Area regardless of whether the same shall be audible outside the Licence Area.
- (n) Not to carry on business in or from or otherwise howsoever use or cause suffer or permit to be used for any purposes whatsoever any part of the Venue outside the Licence Area without the prior written consent of the Government Representative.
- (o) Not to cause, suffer or permit any smoking whatsoever to take place in or at the Licence Area.
- (p) To comply with the relevant provisions of the Smoking (Public Health) Ordinance (Cap. 371), and of all regulations made thereunder and for the time being in force.
- (q) Not to set aside or reserve the whole or any part of the Licence Area for the exclusive use of any person or organization or for any other purpose or function, save and except where the Government Representative at its absolute discretion may permit or require.
- (r) Not to use the Licence Area or any part thereof, or cause, permit or suffer the same to be used for any illegal, immoral purpose, gambling or any other purpose not permitted under the Contract.
- (s) Not to cause, suffer or permit any games to be played in the Licence Area including but not limited to mahjong and tin kau whether for gambling purposes or otherwise.
- (t) Not to place or leave or cause, or suffer, or permit to be placed or left in

any part of the Car Park (including but not limited to fire exits, common areas, stairways, landings and passages of such buildings) any solid waste or any other similar materials. The Contractor shall arrange at its own cost proper and immediate disposal of the same at designated locations as approved by the Government authorities from time to time.

- (u) Be responsible to make good any loss or damage to the Venue or any part thereof or any facilities or other fixture or fitting therein not being the property of the Contractor which may arise as a result of the operation of the Business or any other act, neglect or default of the Contractor or any of the Contractor Personnel.

15. Utilisation Rate

- 15.1 The Contractor shall provide the Government Representative with the monthly utilisation rate in respect of the Licence Area in the form as set out in the Fifth Schedule or such other information as the Government Representative may require from time to time within fourteen (14) days after the end of each month of the Contract Period (including the last month or the remaining period after the last complete month).
- 15.2 The Contractor shall provide the Government Representative with the annual utilisation rate in respect of the Licence Area in the form as set out in the Sixth Schedule within one month after the end of each Contract Year (including the last Contract Year).

16. Premises Hygiene and Safety

- 16.1 The Contractor shall not keep or permit or suffer to be kept in the Licence Area or any part thereof any animals or pets, and shall take all such steps and precautions to the reasonable satisfaction of the Government Representative to prevent the Licence Area or any part thereof from becoming infested by any pests or vermin.
- 16.2 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 on 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 sub-clause.
- 16.3 The Contractor shall take all reasonable precautions to protect the Licence Area

from damage by fire, storm, typhoon or the like and shall at its own expense install and provide suitable equipment and systems, etc., and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government Representative. Such installation shall thereupon become the property of the Government Representative 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 and to remove the same should the Government Representative so directs.

- 16.4 The Contractor shall assume full responsibility for the safety and security of the Licence Area or its surroundings and all operations and methods of operations.
- 16.5 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 the Government against everything stated in Clause 29.2 arising from any incident in relation to such vehicles.

17. Outgoings

- 17.1 The Contractor shall pay all the costs and deposits of all telephone lines installed in, and water and electricity supplied to, the Licence Area, and 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 or the periods of suspension of Business due to whatsoever reasons.
- 17.2 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.

18. Cleansing, Collection and Disposal of Refuse and Litter

- 18.1 The Contractor shall maintain the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition to the reasonable satisfaction of the Government Representative. If the Government Representative in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof, the Government Representative may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government Representative in its reasonable opinion may allow the necessary cleaning and servicing work in the Licence Area. In the event that the Contractor fails to carry out the

works as directed, the Government Representative may without further notice close the Licence Area or any part thereof and suspend the Contractor's Business for a period or periods not exceeding seven (7) days on any one (1) occasion 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 Representative on demand and shall remain liable to pay the Monthly Licence Fee to the Government Representative without any deduction.

- 18.2 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 Representative and shall collect all refuse and litter therein.
- 18.3 The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government Representative at any time and from time to time for the removal and disposal of all refuse and litter collected in the course of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government Representative and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Licence Area designated by the Government Representative at any time and from time to time in such manner as approved or prescribed by the Government Representative.
- 18.4 In the event of failure to comply with this Clause 18, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government Representative in the removal and disposal of such refuse and litter or in cleansing and clearing all drains and sewers that are choked or stopped up, and to pay the Government on demand the cost incurred in repair or replacement of any of the said items of the Licence Area due to the act, default or negligence of the Contractor or any of the Contractor Personnel.
- 18.5 The Contractor shall, solely at its cost, employ or use only such cleaner or cleansing agent within the Licence Area as the Government Representative shall approve or prescribe, provided always that such approval may be withdrawn by the Government Representative upon notifying the Contractor that it has reasonable grounds for such withdrawal.

19. Water Supply

- 19.1 The Contractor, if so permitted by the Government Representative, may use water supply which may be available at the Licence Area to operate its Business and shall pay all deposits, fees and charges incurred.
- 19.2 If water supply is not available at the Licence Area, or permission to use available supply is not granted or is withdrawn, the Contractor shall at its own cost apply for water meter for such water supply in its own name, and shall pay all deposits, fees and charges incurred in the application and in the use of water

from such supply point.

- 19.3 All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government Representative and the works shall be carried out by qualified personnel approved by and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government. The Contractor shall be responsible to maintain and repair such installation at its own expense as well as to remove the same should the Government Representative so directs.

20. Electricity Supply

- 20.1 The Contractor, if so permitted by the Government Representative, may consume electricity from supply points which are available at the Licence Area to operate its Business and shall pay all deposits, fees and charges incurred and, in the event that any such supply is not metered, such amount in respect of electricity consumption as shall be reasonably assessed or estimated by the Government Representative. 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 (Cap. 406) and its subsidiary legislations and/or the Government Representative with respect to the utilities.
- 20.2 If electricity supply is not available at the Licence Area, or permission to use available supply is not granted or is withdrawn, the Contractor shall at its own expense apply for the electricity meter for such supply in its own name, and shall pay all deposits, fees and charges incurred in the application and the consumption of electricity from such electricity supply points.
- 20.3 Any installation of wiring and lighting fittings, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out by a Registered Electrical Contractor (REC)/Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406D) and to the satisfaction of the Government Representative. 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 should the Government Representative so directs. A copy of the Work Completion Certificate (WR1) issued under Regulation 19 of the Electricity (Wiring) Regulations (Cap. 406E) attached with schematics and test reports should be submitted to the Government Representative for retention.

21. Contractor Personnel

- 21.1 The Contractor shall ensure to the satisfaction of the Government

Representative that a sufficient number of staff is employed for the efficient operation of the Car Park. The Contractor shall ensure that all staff and personnel deployed to operate the Car Park have the requisite skills and experiences to discharge their duties in an efficient and safe manner, and all such arrangements shall be made in compliance with the provisions of the Employment Ordinance (Cap. 57) and be subject to such requirement as the Government Representative may from time to time require the Contractor to observe.

- 21.2 The Contractor shall provide its employees with uniforms of a design approved by the Government Representative, and ensure that they shall wear such uniforms while on duty at the Licence Area.
- 21.3 The Contractor shall provide all the necessary equipment for its staff at the Car Park such as walkie-talkies at its own expense for the proper and efficient performance of the Business.
- 21.4 The Contractor shall provide a minimum of one (1) security guard at the Licence Area at all times for provision of security services to the Licence Area. For this purpose, the Contractor shall only deploy security guards who hold valid permits issued under the Security and Guarding Services Ordinance (Cap. 460) and shall submit to the Government Representative for record purpose the names and Hong Kong Identity Card numbers of such security guard. The aforesaid security guard may at the same time be deployed for manning the gate and collecting parking charges.
- 21.5 The security guard shall carry out at the Licence Area regular patrols on such routes and at such frequencies as shall be approved by the Government Representative for security and management purposes. The Contractor shall provide the Government Representative with details of the patrol routes and records of patrol as and when required by the Government Representative.
- 21.6 The Contractor shall be responsible for the good conduct of all members of the Contractor Personnel while they are in the Licence Area, and shall ensure that they will behave accordingly.
- 21.7 The Government Representative shall be entitled to demand on reasonable grounds, including but not limited to medical, health, security and disciplinary grounds, the removal or replacement of any member of the Contractor Personnel.
- 21.8 The Government Representative shall be entitled to refuse to admit to the Licence Area or any part thereof any member of the Contractor Personnel, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- 21.9 The Government Representative shall in no circumstances be liable either to the Contractor or any member of the Contractor Personnel in respect of any

liabilities, losses or damages occasioned by any removal or replacement or non-admission as stipulated in Clause 21.7 or 21.8 and the Contractor shall fully indemnify each of the Government and the Government Representative from and against everything stated in Clause 29.2 arising from such removal or replacement or non-admission.

- 21.10 The Contractor shall ensure that all members of the Contractor 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.
- 21.11 The Contractor shall provide quality customer services to customers and therefore ensure the ability of all the front-line staff to communicate with customers in a courteous manner.
- 21.12 The Contractor shall maintain good order of vehicles using or waiting for the use of the Car Park, deal with or settle complaints or disputes in respect of the use of the Car Park by the visitors of the Car Park and the Government has no obligation to render any assistance to the Contractor in this respect. If the Government Representative's assistance is required to deal with or settle the complaints or disputes and to the extent the Government Representative is willing to provide such assistance, the Contractor shall keep each of the Government and the Government Representative indemnified against everything stated in Clause 29.2 in rendering any such assistance.
- 21.13 The Contractor shall maintain a proper, current and accurate record of all Contractor Personnel. Such record shall include the name, the Hong Kong Identity Card number and a photograph of such Contractor Personnel and shall be produced for inspection by the Government Representative on request. All personal data submitted by the Contractor will be used by the Government Representative for the purpose of this Contract only.
- 21.14 The Contractor shall not employ any persons who are forbidden under the laws of Hong Kong or not entitled for whatever reasons to undertake any employment in Hong Kong. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, if there is any breach of this Clause 21.14 by the Contractor, the Government Representative may terminate the Contract under Clause 34.1(f).
- 21.15 The Contractor shall comply with the Employment Ordinance (Cap. 57). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 34.1(f) if the Contractor is convicted of any offence under the Employment Ordinance.
- 21.16 The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government

Representative may terminate the Contract under Clause 34.1(f) if the Contractor is convicted of any offence under the Minimum Wage Ordinance.

- 21.17 The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 34.1(f) if the Contractor is convicted of any offence under the Employees' Compensation Ordinance.
- 21.18 The Contractor shall comply with the Immigration Ordinance (Cap. 115). If the Contractor is convicted of an offence under the Immigration Ordinance for employing a person who is not lawfully employable to perform the Contract, or is convicted of an offence for aiding and abetting another person to breach its condition of stay, without prejudice to any other rights or remedies which the Government Representative has or may have, the Government Representative may terminate the Contract under Clause 34.1(f).
- 21.19 The Contractor shall comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509), 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 Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 34.1(f) if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance.
- 21.20 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 34.1(f) if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes.
- 21.21 Any conviction mentioned in Clauses 21.14 to 21.20 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 18.7 and 18.8 of the Terms of Tender) 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 34.1(f).

22. Arrangement during Epidemic Illness

In the event of illness of any epidemic nature breaking out or situations related

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

23. Suspension of the Business

- 23.1 In the event that the Contractor is in breach of any term and condition of the Contract, the Government Representative 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 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.
- 23.2 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.
- 23.3 In the event that any default leading to the Suspension for Default has been remedied to the satisfaction of the Government, the Government Representative may cancel the Suspension for Default by notice in writing to the Contractor ("notice of resumption"). Upon receipt of such notice, the Contractor shall resume the Business at the Licence Area by such date as specified in the notice of resumption. The Contract Period will not be extended due to any suspension under Clause 23.1.
- 23.4 Without prejudice to other rights and powers of the Government including the power to early terminate the Contract under Clause 34.1(f), during the Suspension for Default, the Government shall be entitled to engage another contractor or itself to conduct the car parking business at the Car Park and the Contractor shall pay the Government on demand all costs incurred thereby, as well as the loss in revenue arising from any such arrangement.
- 23.5 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any Suspension for Default under Clause 23.1.

24. Temporary Closure of the Licence Area

- 24.1 Without prejudice to the rights and powers of the Government Representative (including under Clause 23 to effect a Suspension for Default), the Government Representative may require a temporary closure of the Licence Area or any part thereof for any operational, maintenance, repair, renovation, modification, holding special events or functions, or other reason (including any of the reasons as specified in Clause 24.2) 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, if it is practicable in the circumstances. Upon such temporary closure (including a temporary closure due to any ground specified in Clause 24.2), the Contractor shall not raise any objection nor make any claim for compensation or relief of any nature whatsoever against the Government or the Government Representative and the Monthly Basic Licence Fee hereby agreed to be paid in respect of the Licence Area shall be abated on a pro-rata basis in accordance with Clause 24.4 for so long as such closure continues. The Contract Period will not be extended due to such temporary closure. Where the temporary closure of any part of the Venue does not cover the Licence Area, the Contractor shall be required to continue to operate the Business at such Licence Area and the Monthly Licence Fee shall continue to be payable notwithstanding any such temporary closure.
- 24.2 Without prejudice to the generality of Clause 24.1, the Government Representative reserves the right to require a temporary closure of the whole of the Licence Area or any part thereof, by reason of fire or storm or damage or spread of epidemic (not being the result of willful default or misconduct or negligence of the Contractor, or any member of the Contractor Personnel) or any force majeure (as defined in Clause 34.3) at any time and for whatever period or periods during the Contract Period.
- 24.3 Upon any temporary closure pursuant to this Clause 24, the Contractor shall cease carrying on the Business of the whole of the Licence Area or such part thereof, where applicable, for so long as the temporary closure continues.
- 24.4 If the number of car parking space is decreased pursuant to Clauses 24.1 and 24.2, the Monthly Basic Licence Fee in respect of the Licence Area shall be abated as follows –

$$\text{Amount abate} = M \times \frac{Nr}{Nt} \times \frac{Dr \times Hs}{Dm \times Ho}$$

where

M is the Monthly Basic Licence Fee

Nr is the number of parking space reduced

Nt is the total original number of fee-paying car parking space at the Licence

Area

Dr is the number of days the parking space reduced

Hs is the number of operating hours suspended daily

Dm is the number of days in that calendar month

Ho is the number of operating hours open to public daily

- 24.5 The Contractor shall be required on each and every Event Day to vacate the Car Park two (2) hours before admission of spectators into the Venue and to reopen the Car Park for public use two (2) hour after the Event finishes provided that the Government Representative shall be entitled at its sole discretion give notice at any time and from time to time to the Contractor to change any of the aforesaid time of vacating or reopening the Car Park.
- 24.6 The Contractor may request to suspend its Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained as far as it is practicable in the circumstances and the Government Representative's decision on the duration of such period of suspension shall prevail. The Contractor shall remain liable to pay the Monthly Licence Fee in full and all fees and charges in respect of the Licence Area and the Business during such approved period of suspension of Business.
- 24.7 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 of a Venue whether or not affecting the Licence Area or cessation of the Business under this Clause 24.

25. Access by 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 to enter upon the Licence Area or any part thereof at all reasonable times 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.

26. Inconvenience or Annoyance Caused at the Venue

- 26.1 The Contractor shall ensure that all Contractor 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.

- 26.2 The Contractor shall not do anything in or upon the Licence Area or any part of the Venue or in the immediate vicinity thereof which may be or become a nuisance or annoyance (including but not limited to the making of excessive noise or sound) or cause damage or inconvenience or discomfort to the users of the Venue, the Government Representative, its staff or agents working in the Venue. The Government Representative shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area under Clause 23.1 for non-compliance with this Clause 26.2 for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.
- 26.3 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 Representative if the Government Representative in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this Clause 26.3 and without prejudice to any other rights and remedies which the Government has or may have under the Contract, the Government Representative shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Contractor to seize and dispose of any such property in such manner as the Government Representative 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 Representative.

27. Inspection and Rejection

- 27.1 The Business carried on by the Contractor at the Licence Area shall be subject to inspection by the Government Representative at any time.
- 27.2 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 (which action is purportedly for the compliance or observance of any term or condition of the Contract), or the result of such action which does not strictly conform to the terms and conditions of the Contract.
- 27.3 Within twenty-four (24) hours (or such longer times as may be notified by the Government) 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.

27.4 If the Contractor fails to rectify such rejected action or the result of such action, the Government Representative may, without prejudice to any other rights and remedies available to the Government, carry out and complete such rectification by its own staff or agents. All costs and expenses whatsoever which may be incurred by the Government Representative thereof shall be recoverable in full from the Contractor forthwith on demand or otherwise in accordance with the express provisions applicable to the relevant failure. The normal working hours for the staff of the Government Representative are, with the exception of public holidays, from 9:00 a.m. to 4:00 p.m. from Mondays to Fridays. If such rectification is carried out by the staff of the Government Representative outside these normal working hours, the Contractor shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

28. 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, and those officers, employees or agents of the sub-contractors (viz., Contractor Personnel), or any visitor or patron 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 them as if it is its own.

29. Liability and Indemnity

29.1 Neither the Government, the Government Representative nor any of the public officers, employees or agents of the Government shall be under any liability whatsoever for or in respect of -

- (a) any loss of or damage to any of the Contractor's property or that of any member of the Contractor Responsible Group, howsoever caused; or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any member of the Contractor Responsible Group, save and except any such injury or death caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).

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

- (a) all and any liabilities and indebtedness, all and any losses and damage, and all and any costs and expenses (including liabilities to pay damages or compensation, and all legal and expert fees on a full indemnity basis); and
- (b) all and any claims, actions, investigations, demands, proceedings or arbitration, threatened, brought or instituted by any person against an Indemnified Person (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part and whether alone or jointly with another) (“Third Party Claims”) and everything stated in sub-clause (a) above arising from all or any such Third Party Claims;

which an Indemnified Person may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to –

- (i) the performance or breach of any provisions of the Contract by the Contractor or any member of the Contractor Responsible Group;
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor or any member of the Contractor Responsible Group;
- (iii) any warranty or representation made by the Contractor in the Contract or in the tender submitted for the Contract or from time to time in the course of the Contract which is incorrect, inaccurate, incomplete or misleading;
- (iv) the non-compliance by the Contractor, or any member of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority; or
- (v) any death or injury or loss or damage of property as mentioned in Clause 29.1 except any death or injury caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).

29.3 For the purposes of this Clause, “Negligence” (in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption

Clauses Ordinance (Cap. 71).

- 29.4 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government Representative in enforcing any of the terms and conditions of the Contract, or in supervising or controlling the Contractor's operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Contractor or any member of the Contractor Personnel.
- 29.5 The Contractor shall notify the Government Representative in writing of any injury to or death of any member of the Contractor Responsible Group arising from any work done in pursuance of the Contract or otherwise whilst present at or nearby the Licence Area; and any loss of or damage to the Government's provisions or other property of the Government or to the property of any of the Contractor or of any member of the Contractor Responsible Group within forty-eight (48) hours of the occurrence of such injury, death, loss or damage or after such injury, death, loss or damage has come to the Contractor's knowledge. The requirement of notifying the Government Representative under this Clause shall not exempt or excuse the Contractor from compliance with any law.

30. Government to Recover Cost

If the Contractor fails to carry out any of its obligations or duties under this Contract and the Government Representative executes such obligations or duties on behalf of the Contractor, without prejudice to the other rights and claims of the Government Representative, the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government Representative 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.

31. Public Liability Insurance

- 31.1 The Contractor shall effect at its own expense a public liability insurance policy ("Policy") throughout the Contract Period in the joint names of the Contractor and the Government in the sum of not less than Hong Kong Dollars Ten Million (HK\$10,000,000) for any one incident and unlimited number of claims in any one (1) year with an insurance company authorized by the Insurance Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative in writing in advance.

- 31.2 The Policy shall cover liability to pay damages or compensation as a result of (a) death of or personal injury to any person (excluding any injury or death of any Government or Contractor's employee in the course of employment); and (b) loss of or damage to property of any person, occurring any time during the Contract Period in connection with the Business.
- 31.3 On top of the indemnity amount as stated in Clause 31.1, the Policy shall also 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 and legal costs incurred by the insured in defending any claim.
- 31.4 The Contractor shall keep the Policy in force during the continuance of the Contract and shall, if required, deposit with the Government Representative for safe keeping a copy of such policy of insurance together with the receipt for payment of the current premiums.
- 31.5 If the terms of the 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 Representative for such payment if it is paid by the Government Representative.
- 31.6 The Policy shall include a cross liability clause so it shall be treated that a separate policy has been issued to each of the Contractor and Government Representative.
- 31.7 The Contractor is responsible to lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage, provided that the Government shall have the right to liaise with the insurance company on any matter of such claims.
- 31.8 If the Contractor fails to effect or to keep in force the Policy or any other insurance which it may be required to effect under the terms and conditions of the Contract, the Government Representative may effect and keep in force any such insurance and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with Clause 7 or may recover the same as a debt due from the Contractor.

32. Recovery of Sums Due

If the Contractor fails to pay any amount due or payable or otherwise upon demand by the Government Representative pursuant to any applicable provision of the Contract, the Government Representative shall be entitled to

deduct the same from the Security Deposit in accordance with Clause 7 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.

33. 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.

34. Termination

34.1 Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government, the Government Representative may at any time by notice forthwith terminate the Contract without entitling the Contractor to compensation in any of the following events –

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract, or in the case of a breach capable of being remedied, fails within fourteen (14) days or such longer period as the Government Representative may allow after the receipt of a notice in writing from the Government Representative to remedy the breach (such notice shall contain a warning of the Government Representative's intention to terminate the Contract); or
- (b) where the Contractor is an individual, he is at any time adjudged bankrupt, or has a receiving order or orders for administration made against him, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6), or makes any conveyance or assignment of his effects or composition or arrangements for the benefit of his creditors or purports to do so, or suffers any execution to be levied on his goods and assets whether or not in the Licence Area, or a petition is filed for his bankruptcy; or
- (c) where the Contractor is a company, a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganisation, reconstruction, or dissolution of the Contractor otherwise

than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing, or the Contractor makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets; or

- (d) if the Contractor assigns or transfers, or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government Representative; or
- (e) if the Contractor unilaterally ceases its Business at the Licence Area or any part thereof and/or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period otherwise than in accordance with Clause 34.4; or
- (f) 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 6.5 (Non-exclusive Right of the Contractor); or
 - (ii) any of Clauses 21.14 to 21.20 (Contractor Personnel); or
 - (iii) Clause 36.1 or 36.3 (Corrupt Gifts); or
 - (iv) Clause 40.2(c) of the Terms of Tender (Anti-collusion).

34.2 If the Government Representative is at any time prevented from performing the Contract by force majeure or otherwise due to any event mentioned in Clause 24.2 and that the Government Representative wishes to early terminate the Contract instead of requiring a temporary closure under Clause 24, the Government Representative may serve not less than fourteen (14) days' notice on the Contractor to this effect.

34.3 For the purpose of Clause 34.2, "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 Representative on the ground that the Government Representative could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person. 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.

34.4 Notwithstanding anything herein to the contrary, either party to the Contract may without cause terminate the Contract early by giving not less than six (6)

months' notice to the other party provided that the date of contract termination shall not be any date earlier than the expiry of the first eighteen (18) months of the Contract Period provided further that upon the occurrence of any circumstance as mentioned in Clause 34.1, the Government Representative shall have full power to early terminate Contract Period by giving not less than fourteen (14) days' notice at any time during the Contract Period.

34.5 The grounds for termination specified in this Clause 34 including those set out in each of the sub-clause in Clause 34.1 are separate and independent, and shall not be limited by reference to or inference from the other of them.

35. Effect of Termination

35.1 In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in Clause 34 or otherwise ("Termination") -

(a) the Contract shall be of no further force and effect, but without prejudice to -

(i) the Government Representative's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitles the Government Representative to terminate the Contract);

(ii) the rights and claims which have accrued to a party prior to the Termination; and

(iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (howsoever occasioned) (including without limitation Clauses 5, 8, 10, 11, 12, 14, 16, 17, 28 to 36, 39 to 51), all provisions entitling Government Representative or the Government to seek indemnity from the Contractor, and the Interpretation;

(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 and the Government Representative including the right to seek indemnity under Clause 29.2, in the event that this Contract is terminated under Clause 34.1, 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 (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement 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 and the Government Representative for terminating the Contract; and (iii) all costs incurred by the Government Representative for arranging stop-gap measures due to the cessation of the Business;
- (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 5.3;
- (e) the Contractor shall immediately deliver up vacant possession of the Licence Area and all Government Property in good repair (fair wear and tear excepted) and in clean and hygienic condition, provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government Representative's consent, the Government Representative 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 Representative may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government Representative'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 Representative. Alternatively, the Government Representative may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government Representative so chooses without any compensation to the Contractor whatsoever;
- (f) the Contractor shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at its own expense make good any damage to the Licence Area arising from such removal;
- (g) all employees and agents of the Contractor shall vacate the Licence Area and deliver up all keys and access cards, as the case may be, to the Licence Area;

- (h) if the Contractor fails to comply with any of Clauses 35.1(e) or (f), the Government Representative may forthwith enter the Licence Area to remove any persons therein, or to remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in good repair and a clean and serviceable condition. The Government Representative reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor or any other party any fixtures and fittings so installed or erected and any property not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government Representative as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due from the Contractor;
- (i) submit all outstanding statements and information as specified in Clause 5 and account to the Government all unpaid Monthly Licence Fee plus any interest at the rate specified in Clause 5.3 for any late payment; and
- (j) in the event of termination of the Contract Period by the Contractor issuing a termination notice under Clause 34.4 above, any tender offer from the same Contractor or a related person of that Contractor (as defined in Clause 18.7 or 18.8 of the Terms of Tender) for a contract immediately replacing this Contract will be rejected.

36. Corrupt Gifts

- 36.1 If the Contractor or any employee or agent of the Contractor is found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may terminate the Contract under Clause 34.1(f).
- 36.2 Without prejudice to the Government's other rights and remedies, the Contractor shall be liable for all costs and expenses incurred by the Government as the result of the termination of the Contract.
- 36.3 The Contractor shall also sign the declaration as set out in the Seventh Schedule at the same time as one of the conditions to be fulfilled before the Articles of Agreement is signed. If the Contractor refuses to sign the declaration as required, upon notification by the Government Representative the conditional acceptance of tender will become void and be of no further force under Clause 14.3 of the Terms of Tender.

37. 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's management in the Venue as soon as possible and a written receipt obtained therefrom.

38. Publicity and Advertisement

38.1 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 Representative.

38.2 Save and except where the Government Representative 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.

38.3 Without prejudice to the generality of Clause 38.2, 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.

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

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

40. Intellectual Property Rights

40.1 The Contractor warrants to the Government Representative that -

(a) the Contractor will not infringe, or cause, suffer or allow infringement of,

any Intellectual Property Rights of any person in the operation of the Business or the performance of this Contract;

- (b) the Government and the Government Representative and their authorized users, assigns and successors-in-title will not infringe any Intellectual Property Right of any person by the exercise of any of its rights under this Contract;
- (c) if and to the extent any material in which Intellectual Property Right subsists is required for performing the Contract, it is either the owner of the Intellectual Property Rights or has a valid and continuing licence under which it is entitled to use or sub-license such material and the Intellectual Property Rights for itself and for the Government Representative and its authorized users to use such material;
- (d) all and any materials to be supplied or provided by the Contractor to the Government Representative under the Contract including those statements under Clause 5 of the Terms of Tender (collectively, "Materials") are not eligible for and does not enjoy any Intellectual Property Rights including copyright protection and moral right protection or confidentiality or non-disclosure protection. Without prejudice to the generality of the foregoing, the Materials do not possess the degree of originality to warrant copyright protection. The Government Representative shall not be subject to any restriction and does not require any licence or consent or clearance from the Contractor or any other person in the use or disclosure of any such Materials; and
- (e) the Contractor will do, and will procure all other necessary parties to do, all things and sign all documents necessary to ensure consummation of the transactions contemplated in Clauses 40.2 and 40.3.

40.2 Notwithstanding the warranty in Clause 40.1(d), in the event and to the extent that any part of the Materials are treated as original materials created by the Contractor or any other person ("original materials"), the Contractor hereby agrees that, and shall ensure the creator of such original materials will agree, that the copyright and all other Intellectual Property Rights in such original materials (if any, and whether existing as at the date of the Contract or any time thereafter) shall vest in the Government absolutely immediately upon creation.

40.3 Notwithstanding the warranty in Clause 40.1(d), in the event that any moral right does subsist in the Materials or any part thereof, the Contractor hereby irrevocably waives and undertakes to procure at its own cost and expense all relevant authors of the Materials or any part thereof to irrevocably waive all moral rights (whether past, present or future) in the respective items. The waiver shall operate in favour of the Government, its authorized users assigns and successors-in-title and shall take effect upon creation of such items or upon delivery of such items to the Government Representative (as the case may be).

41. Mediation

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

42. Service of Notice

- 42.1 Any notice to be given herein shall be in writing and shall be sent to the address or fax number of the Government Representative set out below (in the case the Government Representative or the Government is the recipient) or the address or fax number of the Contractor set out in the Articles of Agreement (in the case the Contractor is the recipient) or to such other address or fax number 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 or by facsimile.
- 42.2 The Government Representative's details are as follows -
- Address: Mong Kok Stadium, 37 Flower Market Road, Mong Kok
- Fax number: 2895 7945
- Attention: Senior Assistant Manager (Turf Maintenance) Hong Kong Stadium
- 42.3 Any such notice shall be deemed given –
- (a) when left at the address of the recipient if delivered by hand during normal business hours; or
 - (b) one (1) working day after despatch by post; or
 - (c) when successfully despatched by facsimile.

43. Waiver of Remedies

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

44. Severability

- 44.1 In the event that any provisions of the Contract or any part thereof is at any time adjudged by a court of Hong Kong to be invalid, illegal or otherwise howsoever unenforceable, such provisions or such part thereof, as the case may be, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions hereof.
- 44.2 If at any time any one or more provisions hereof is adjudged by a court of Hong Kong to be invalid, illegal or otherwise howsoever unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be thereby impaired or affected.
- 44.3 Where, however, the provisions or any such applicable law of the Hong Kong Special Administrative Region may be waived, they are hereby waived by the parties hereto to the full extent permitted by such law to the end that the Contract shall be valid, binding and enforceable in accordance with its terms and conditions.

45. Entire Contract

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

46. Amendment

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

47. Further Assurance

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

48. Relationship of the Parties

48.1 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 or between the Government Representative and the Contractor.

48.2 Unless otherwise expressly provided for in the Contract, neither party is authorized to act in the name of, or on behalf of, or otherwise bind the other party.

49. Governing Law and Jurisdiction

The Contract shall be governed by and construed according to the laws of

Hong Kong and subject to Clause 41.1, the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region in relation to any dispute arising from or in connection with or in relation to the Contract.

50. Exclusion

50.1 It is noted that there is no provision in Contracts (Rights of Third Parties) Ordinance (Cap. 623) which states that Cap. 623 applies to the Government or contracts entered into by the Government.

50.2 Notwithstanding Clause 50.1, it is hereby declared that no person, who or which is not a party to the Contract, may enforce any term of the Contract under or pursuant to or for the purposes of Cap. 623 (including section 4 of Cap. 623).

50.3 Nothing in Clause 50.2 is intended to affect the following -

- (a) the power of the Government Representative to act for the Government including the exercise of any right under, or the enforcement of any claim or remedy, arising from or in connection with or in relation to, this Contract;
- (b) the power of a public officer under any law or regulation including any Ordinance or subsidiary legislation or any other legal instrument;
- (c) the power of a public officer to act by his own title or for the Government Representative or for the Government in any legal proceedings arising from or in connection with or in relation to the Contract (including the Secretary for Justice);
- (d) the rights and obligations of any personal representative, administrator or other successor-in-title of the Contractor;
- (e) the rights and obligations of any assignee or transferee of the Contractor under any assignment or transfer which has been approved by the Government pursuant to Clause 8.1 but not otherwise;
- (f) the rights and obligations of any Government's successor-in-title and person deriving title under any of them, and the Government's assignee and transferee (and in the case of assignee or transferee, in accordance with the terms of the assignment and transfer agreed by the Government); and
- (g) the rights of the Government and Government Representative under any guarantee or undertaking or insurance policy or other collateral contract granted or issued or entered into by any person other than the Contractor

pursuant to the terms of the Contract.

51. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity -

(a) Conditions of Contract;

(b) Articles of Agreement;

(c) First to Eighth Schedules in the original form set out in the Tender Documents;

(d) Terms of Tender and the Tender Attachments;

(e) Annexes A to C; and

(f) First and Second Schedules as submitted by the Contractor and in their form final as approved by the Government after the award of the Contract.

SCHEDULES**FIRST SCHEDULE**

SHORT PARTICULARS OF THE PREMISES	CONTRACT PERIOD AND DATE OF COMMENCEMENT	MONTHLY LICENCE FEE	PURPOSE FOR WHICH THE PREMISES MAY BE USED
All that piece or parcel of ground situated at Mong Kok Stadium comprising an area of <u>2,392</u> square metres or thereabout, which is for the purpose of identification only shown edged red on the two (2) plans attached to Annexes B and C hereto (“Licence Area”).	A fixed term of thirty-six (36) months certain commencing on the 12th day of April 2019 to the 11th day of April 2022 , subject to Government Representative’s right of extension and earlier termination as provided for in this Contract (the “Contract Period”).	I/We shall offer to pay to the Government in advance on the 12 th day of each and every month of the Contract Period a Monthly Basic Licence Fee of HK\$_____ and also within fourteen (14) days after the end of each and every month (i.e. 11 th day of each month) throughout the Contract Period, the Percentage Licence Fee, if any. The Percentage Licence Fee is calculated as an amount equal to the Percentage of the Monthly Gross Receipts as quoted by me/us at the bottom part of this Schedule.	For operation of a fee-paying public car park comprising 20 car parking spaces for parking of private car, van-type light goods vehicle, taxi, bus, light bus (up to 12 meters long) and motorcycle that hold valid licences issued by the Commissioner for Transport for use on public streets and roads under the Road Traffic Ordinance (Cap. 374).

SCHEDULES

FIRST SCHEDULE

I/We shall pay to the Government within fourteen (14) days after the end of each and every month (i.e. 11th day of each month) of the Contract Period (starting from the first month and up to including the last month of the Contract Period or as the case may be the remaining period after the last complete month) a Percentage Licence Fee in respect of that month, which is calculated an amount equal to _____% of the Monthly Gross Receipts of that month less the Monthly Basic Licence Fee payable for that month. If a negative amount is shown after deducting the Monthly Basic Licence Fee of the Licence Area, no Percentage Licence Fee is required to be paid for that month.

Name of
Tenderer : _____ Date : _____

Name of Authorized
Representative* : _____

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

* **Delete as appropriate**

SCHEDULES**SECOND SCHEDULE****Scale of Rates for Calculation of the Parking Charges at the Car Park at Mong Kok Stadium**

Period of parking	Type of Vehicle	Parking charge for each half hour of the first two hours (HK\$)	
		Monday to Friday (except General Holiday)	Saturday, Sunday & General Holiday
from 7:00 a.m. to 11:00 p.m. of the same day	Private Car, Van-type Light Goods Vehicle and Taxi		
	Bus and Light Bus (up to 12 meters long)		
	Motorcycle		
from 11:00 p.m. of a day until before 7:00 a.m. of the following day		Parking charge per each half hour (HK\$)	
	Type of Vehicle	Monday to Friday (except General Holiday)	Saturday, Sunday & General Holiday
	Private Car, Van-type Light Goods Vehicle and Taxi		
	Bus and Light Bus (up to 12 meters long)		
	Motorcycle		

Name of
Tenderer : _____ Date : _____

Name of Authorized
Representative* : _____

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

* Delete as appropriate

SCHEDULES**SECOND SCHEDULE**

- Notes : (1) Tenderers shall provide the rates as per the format above.
- (2) Throughout the Contract Period, the Contractor shall levy Parking Charges in accordance with the scale of charges specified in this Second Schedule for each half-hour or part thereof during the first two hours of parking for the parking period from 7:00 a.m. to 11:00 p.m. of the same day (“regular parking period”); and the scale of charges specified in this Second Schedule for each half-hour or part thereof for the parking period after 11:00 p.m. of a day until before 7:00 a.m. of the following day (“irregular parking period”). The parking charges for each half hour after the first two hours within the regular parking period shall be equal to 150% of the half hourly rate for the first two hours within the regular parking period. Parking fees shall be charged per every half an hour, or part thereof based on the aforesaid rate and calculation. In case of any half hour straddling the regular and irregular parking periods, and where that half hour commences in the regular parking period, the charges for regular parking period shall apply to the whole of that half hour. Where that half hour commences in the irregular parking period, the charges for irregular parking period shall apply to the whole of that half hour.
- (3) With the exception of fire engines, ambulances, police cars and other government vehicles on official duties which shall be given free access to the Car Park, vehicles other than those specified in this Schedule are not allowed to be parked in the Car Park unless prior written approval from the Government Representative is obtained.
- (4) Parking outside the car parking spaces designated by the Government Representative is not allowed. All vehicles are only allowed to be parked at car parking spaces designated by the Government Representative.
- (5) If the amount of parking charges turn out to be more than one (1) digit after the decimal point, the amount of parking charges shall be rounded up to the nearest ten (10) cents e.g. $\$1.5 \times 150\% = \2.25 , then the parking charges shall be \$2.30.

SCHEDULES**THIRD SCHEDULE****List of Appliances, Furniture, Fixtures and Fittings
Provided by the Government for Operation of the Car Park at
Mong Kok Stadium**

Item	Description	Quantity
1	Guard booth with shelter	1 no.
2	Drop bar with a length of 4.2M and its control system	2 set
3	Fluorescent lamp 48"	2 nos.
4	Air conditioner	1 no.
5	70W bollard lamp	10 nos.
6	150W lamp pole lamp	5 nos.

SCHEDULES

FOURTH SCHEDULE

Number of Car Parking Spaces at Mong Kok Stadium

Number of Fee-paying Car Parking Spaces for use by the Public			
Private Car/ Van-type Light Goods Vehicle/Taxi,	Bus/Light Bus (up to 12 meters long)	Motorcycle	Disabled Person's Car Parking Space
16	2	1	1

SCHEDULES

FIFTH SCHEDULE

Monthly Utilisation Report of Car Park at Mong Kok Stadium

Month: MM/YYYY

Utilisation Rate *

* Utilisation Rate of the car park, U, was calculated as follows -

$$U = 100\% \times \frac{Ag}{Tn \times D \times Ho \times 2}$$

where

Ag is the aggregated total number of fee-paying car parked every half hour during the operating hours of the Car Park at the Licence Area

Tn is the total number of fee-paying parking space available at the Car Park

D is the total number of days in a calendar month

Ho is the daily operating hours of the Car Park during the month

SCHEDULES

SEVENTH SCHEDULE

To : **Director of Leisure and Cultural Services**

Title : The grant of a licence to operate the fee-paying public car park at Mong Kok Stadium

**Declaration by Contractor
on compliance with the ethical commitments requirements**

I/We confirm that I/we have complied with the following provision and have ensured that our directors, employees, agents are aware of the following provision:

Prohibiting our directors, employees and agents who are involved in this Contract from offering, soliciting or accepting any advantage as defined in Section 2 of the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Contract.

Name of Contractor : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Contractor or Authorized Representative for and on behalf of the Contractor* : _____
(with firm / company chop, if applicable)

*** Delete as appropriate**

SCHEDULES**EIGHTH SCHEDULE****Past Utilisation Figures**

Car Park at Mong Kok Stadium

Month/ Year	Utilisation Rate*	Month/ Year	Utilisation Rate*	Month/ Year	Utilisation Rate*
4/2016	15.12%	4/2017	12.60%	4/2018	12.50%
5/2016	16.32%	5/2017	13.06%	5/2018	16.72%
6/2016	14.95%	6/2017	11.91%	6/2018	14.15%
7/2016	17.94%	7/2017	11.11%		
8/2016	12.72%	8/2017	10.59%		
9/2016	12.69%	9/2017	16.13%		
10/2016	15.73%	10/2017	14.14%		
11/2016	16.15%	11/2017	14.05%		
12/2016	19.73%	12/2017	13.78%		
1/2017	34.72%	1/2018	12.92%		
2/2017	17.88%	2/2018	11.73%		
3/2017	13.38%	3/2018	14.08%		

*Utilisation Rate of the car park, U, was calculated as follows –

$$U = 100\% \times \frac{Ag}{Tn \times D \times Ho \times 2}$$

where

Ag is the aggregated total number of fee-paying car parked every half hour during the operating hours of the Car Park at the Licence Area

Tn is the total number of fee-paying parking space available at the Car Park

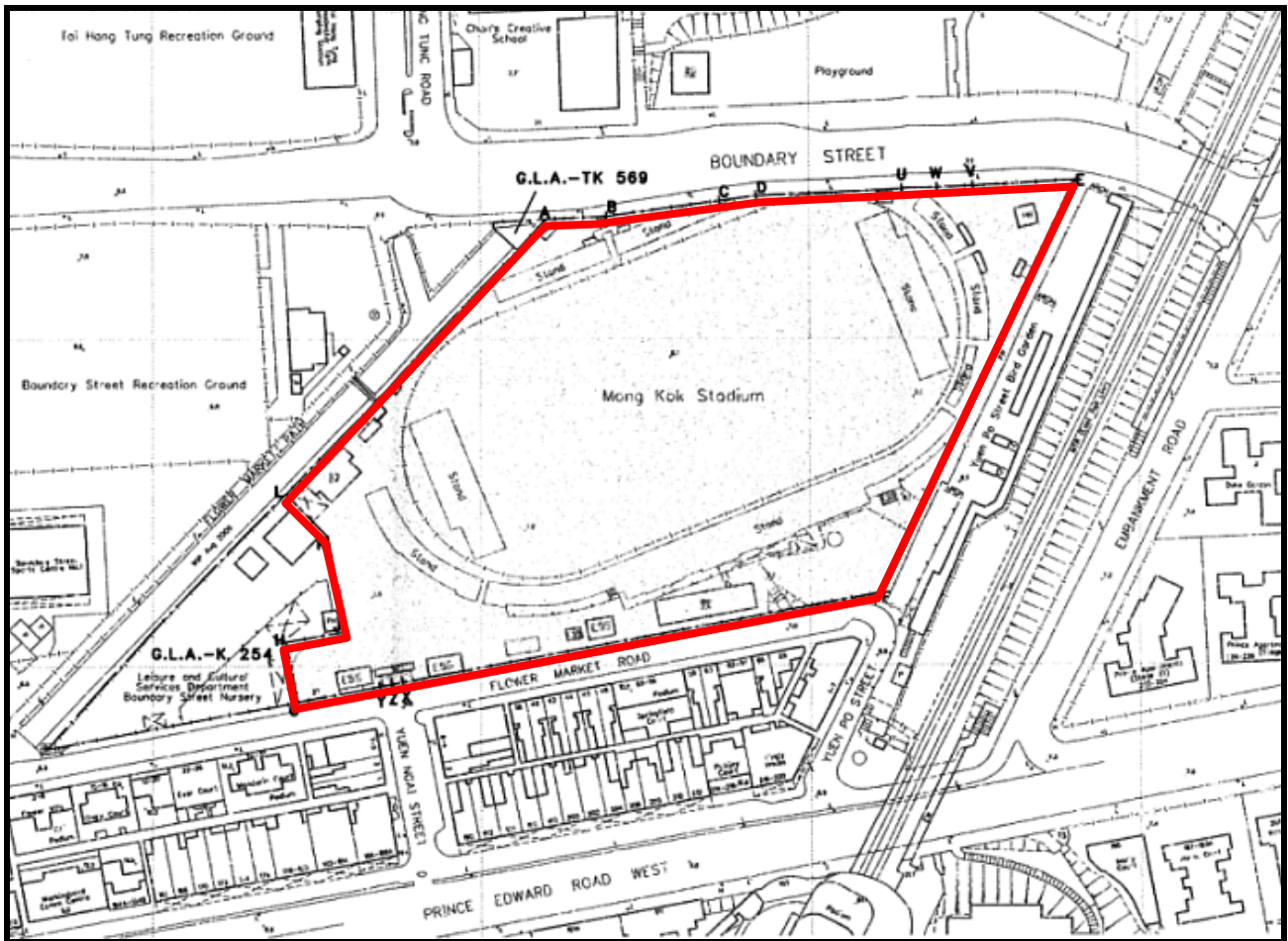
D is the total number of days in a calendar month

Ho is the daily operating hours of the Car Park during the month

ANNEXES

ANNEX A

Location Plan of Mong Kok Stadium
(Venue as delineated and shown edged red)

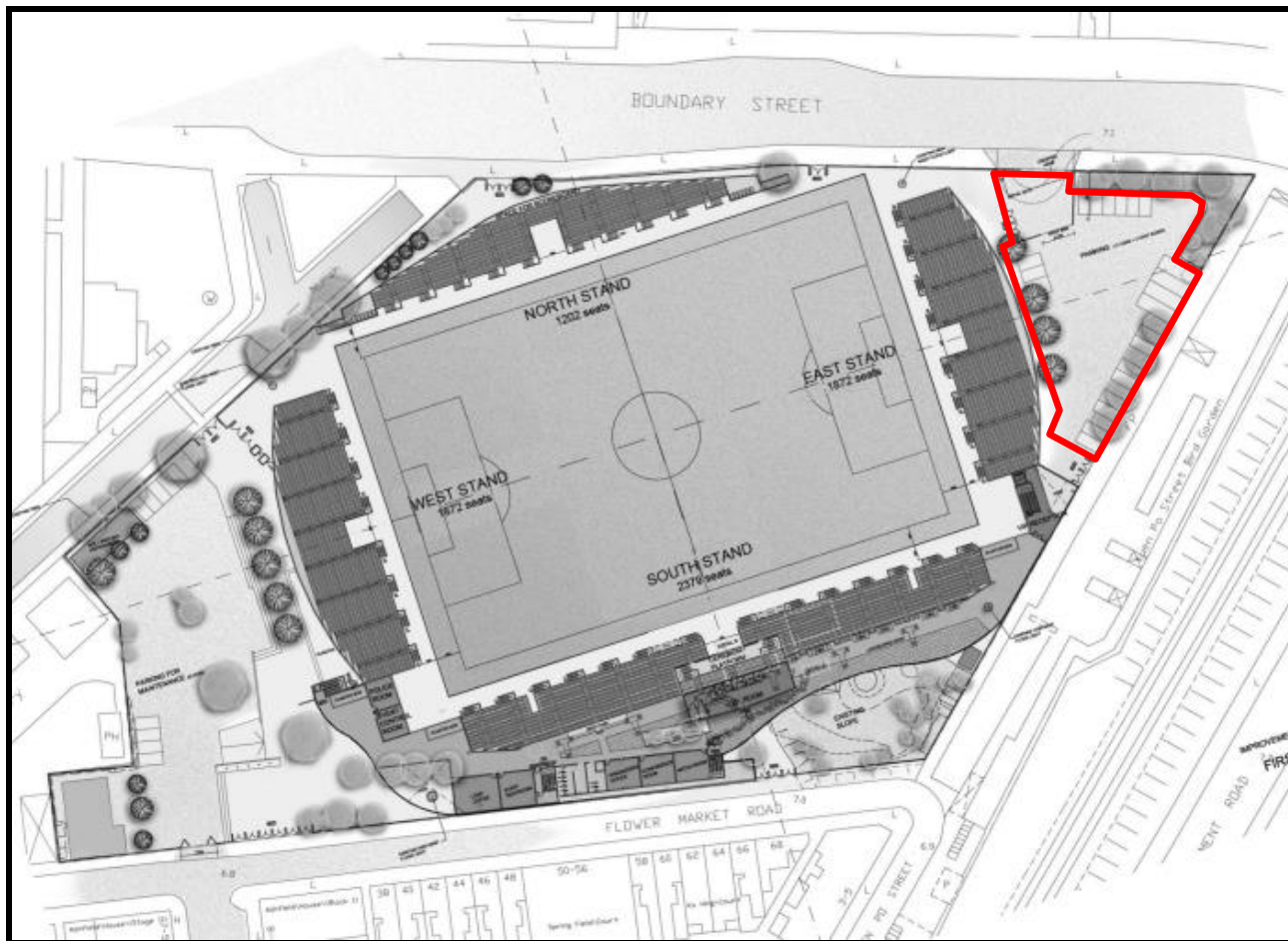


(Not to scale)

ANNEXES

ANNEX B

**Location Plan Showing the Car Park at Mong Kok Stadium
(Licence area as delineated and shown edged red)**

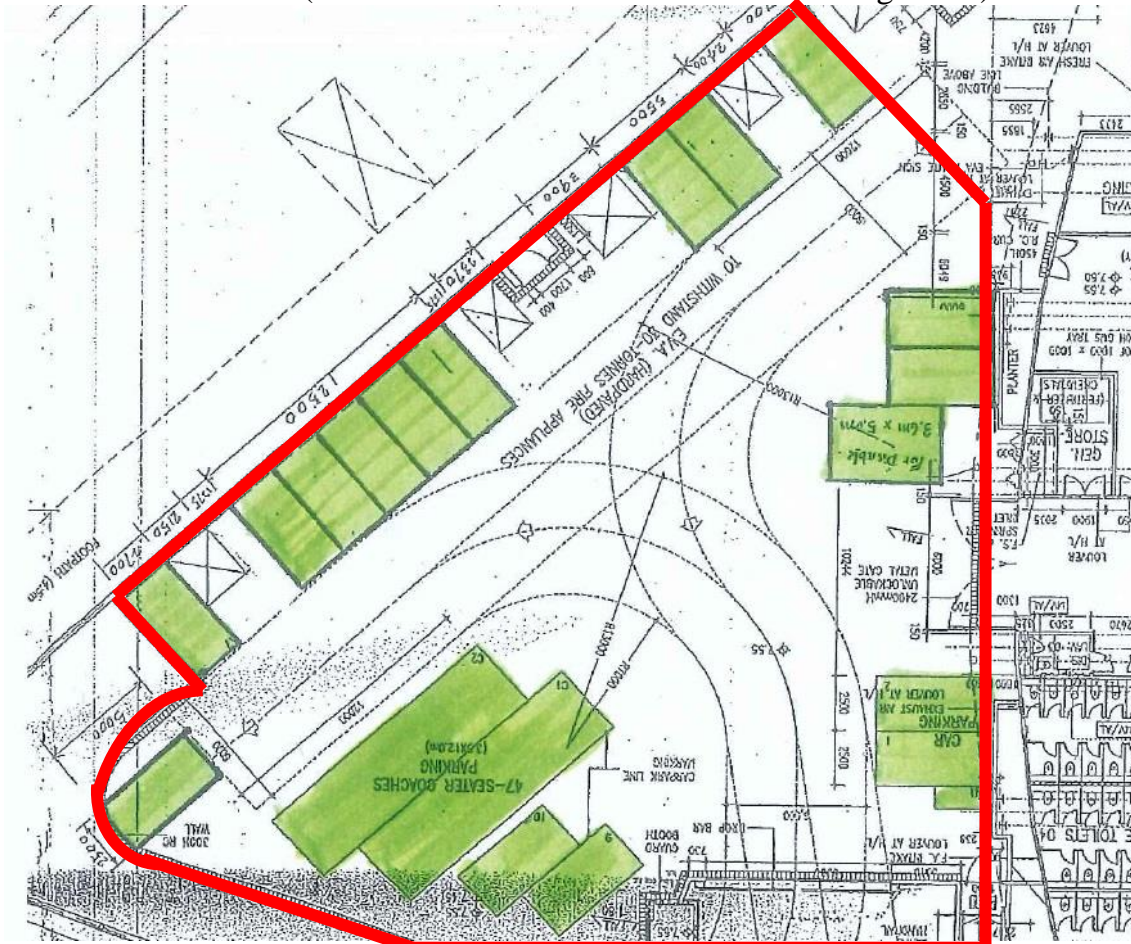


(Not to scale)

ANNEXES

ANNEX C

**Layout Plan Showing the Car Park at Mong Kok Stadium
(Licence area as delineated and shown edged red)**



(Not to scale)

Car Parking Space No.	Quantity (Nos.)	For use by
1	1	Fee-paying car parking space for the public Motorcycle
2, 3 and 5 – 16, 19-20	16	Fee-paying car parking space for the public (Private Car/Van-type Light Goods Vehicle/Taxi)
4	1	Fee-paying car parking space for vehicles displaying “Disabled Person’s Parking Permit”
17 - 18	2	Fee-paying car parking space for the public (Bus / Light Bus)

ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT are made the _____ day of _____ 2019 BETWEEN THE ASSISTANT DIRECTOR (LEISURE SERVICES)² OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1 – 3 Pai Tau Street, Sha Tin, New Territories acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (hereinafter referred to as “Government”) of the one part,

AND

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

WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LCSD/MKS/CP2019), the Government has invited tenders to operate the car park at Mong Kok Stadium.
- (B) The Contractor’s tender for the Contract was accepted in principle by the Government by a notification of conditional acceptance of tender to the Contractor pursuant to Clause 14.2 of the Terms of Tender.
- (C) The Contractor has apparently fulfilled all conditions specified in the notification of conditional acceptance of tender.
- (D) Pursuant to Clause 14.3 of the Terms of Tender, the parties hereto enter into these Articles of Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
- 2. The Contract between the Government and the Contractor is hereby constituted and shall comprise the following documents:
 - (i) Articles of Agreement
 - (ii) Tender Form
 - (iii) Interpretation
 - (iv) Terms of Tender and the Tender Attachments [plus the pro forma bank guarantee] (if applicable)
 - (v) Conditions of Contract
 - (vi) First to Eighth Schedules (in their original form as found in the Tender Documents)

(vii) First, Second and Seventh Schedules (in the form as submitted by the Contractor as part of its tender subject to any modifications as the parties may agree or as the Government may stipulate in exercise of its powers under the Tender Documents)

(viii) Annexes A to C

3. The commencement date of the Contract Period shall be: 12th day of April 2019. The Contract shall only come into effect upon commencement of the Contract Period notwithstanding that these Articles of Agreement may be signed and dated earlier than the aforesaid commencement date.

4. For the purposes of Clause 42 of the Conditions of Contract, the address and facsimile number of the Contractor are as follows:

Name of the Contractor: _____
Address: _____
Facsimile Number: _____
Attention (Post Title): _____

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

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

Name of the Contractor / Authorized Representative: _____
(with Contractor's chop, if applicable)

Title of the Contractor / Authorized Representative: _____

in the presence of:
Name of witness: _____

Title of witness: _____

Signature of witness: _____

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

Name

in the presence of:

Name of witness:

Title of witness:

Signature of witness:
