

QUOTATION FORM

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

QUOTATION
TO OPERATE THE BUSINESS AT

THE ARTS SHOP OF THE HONG KONG CITY HALL

(Quotation Ref.: LCSD/HKCH/AS/2016)

LODGING OF QUOTATION

To be acceptable as a quotation, this form, properly completed in triplicate (one original and two photocopies) and enclosed together with other documents listed in Clauses 4.1 and 4.2 of the Terms of Quotation, which must also be properly completed as required in triplicate, in a sealed plain envelope

marked “Quotation to Operate the Business at the Arts Shop of the Hong Kong City Hall”
and addressed to the Chairman of Quotation Opening Committee, Leisure and Cultural Services Department,
must be deposited in / mailed to the Leisure and Cultural Services Department Quotation Box situated at City Hall Office, Ground Floor, 5 Edinburgh Place, Central, Hong Kong
before 12: noon. on 7 July 2016. Late quotations will not be accepted.

Dated this 8 June 2016

Ms. Randa WAN
Senior Manager (Hong Kong City Hall)
Government Representative

Part I — Quotation Documents

These documents under the quotation reference LCSD/HKCH/AS/2016
consist of three (3) complete sets of :

- (a) Quotation Form (Parts I to II);
- (b) Interpretation (Sheets 1 to 7);
- (c) Terms of Quotation (Sheets 8 to 35);
- (d) Conditions of Contract (Sheets 36 to 91);
- (e) Contract Schedules 1 to 6 (Sheets 92 to 104);
- (f) Form of Security Deposit Election (Sheet 105);
- (g) Checklist before submitting Quotation (Sheets 106 to 107);
- (h) Draft Articles of Agreement (Sheet 108 to 109); and
- (i) Annexes A to E (Sheets 110 to 121).

Part II — Offer to be Bound

- 1. Having read the Quotation Documents, I / we* agree to be bound by all of the terms and conditions as stipulated therein.
- 2. I / We* do agree to carry out the Business mentioned in the Quotation Documents and pay the Monthly Licence Fee quoted by me / us in Contract Schedule 1, subject to and in accordance with the terms and conditions stipulated in the Quotation Documents.
- 3. I / We* have read Clause 3 (Quotation Preparation) and Clause 5 (Quotation Submission) of the Terms of Quotation and certify that the particulars given by me / us in completing the Quotation Documents are true and correct.

(Note : (A) The Bidder shall complete and submit the following parts of the Quotation Documents :

- (i) Quotation Form (Part II – Offer to be Bound);
- (ii) Contract Schedules 1 to 4; and
- (iii) Form of Security Deposit Election.

(B) The Bidder shall submit necessary documents such as documentary evidence of relevant experience as required in Clause 6 of the Terms of Quotation and Contract Schedule 4, and photocopies of all other relevant documents required in the Quotation Documents.

4. In case the Bidder is a company / firm, the Bidder shall complete 4(a) to 4(c) below. In case the Bidder is not a company / firm, the Bidder has to strike out 4(a) to 4(c).

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

– or –

The signatory below is a partner of the firm hereafter mentioned and duly authorized to bind the said firm and the partners therein for the time being by his signature.

- (b) The name of the company / firm is
- (c) The registered office of the company is situated at

– or –

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

.....
.....
.....

Name of Bidder :

Name and Title of Authorized Representative :

Signature of Bidder / Authorized Representative
for and on behalf of the Bidder*

(Signature)

(with firm / company chop)

Address(es) of person(s) signing :

Date :

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

INTERPRETATION

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

“Arts Shop”	means the arts shop of the Hong Kong City Hall at the Licence Area indicted in the floor plan in Annex C
“Authorized Merchandise”	means the commodities specified in Contract Schedule 5 , taking into account the information on the services, image, functions and activities and approved by the Government.
“Bidder”	means a person or firm or company which has submitted Quotation in response to this Invitation to Quotation.
“Business”	means the operation of a business to supply and sell Authorized Merchandise (and any Consignment Items as may be provided by the Government from time to time) as referred to in Clause 3 of the Conditions of Contract .
“City Hall”	means the Hong Kong City Hall, located at 5 Edinburgh Place, Central, Hong Kong.
“Companies Ordinance (Cap.622)”	means Cap.622 of the Laws of Hong Kong and includes the predecessor Companies Ordinance which has the meaning assigned to it in Section 2 of the Companies Ordinance (Cap.622).
“Consignment Items”	means the publications, novelty and souvenir items of the City Hall or the Government consigning to the Contractor for sale in accordance with Clause 3 of the Conditions of Contract .
“conditional acceptance of quotation”	has the meaning given to it in Clause 13.2 of the Terms of Quotation .

“Contract”	<p>means the contract between the Government and the Contractor comprising the following parts of the Quotation Documents and other items as specified below:</p> <ul style="list-style-type: none"> (a) the “Terms of Quotation”; (b) the “Conditions of Contract”; (c) the “Contract Schedules” (or “Schedules”) in the form as appearing in the Quotation Documents and those which were submitted by the Contractor as part of its Quotation, and accepted by the Government; (d) the “Annexes A to E”; (e) the “Articles of Agreement”; and (f) all other schedules, plans, drawings and other documents which form part of the successful Bidder’s Quotation or are incorporated by reference herein or in any of the above documents, <p>in each case subject to such further changes as the Government may stipulate in exercise of its powers under the Terms of Quotation, and / or otherwise subject to such further changes as the Government and the Contractor may agree.</p>
“Contractor”	<p>means the Bidder whose quotation to operate the Business at the Licence Area is accepted by the Government.</p>
“Gross Electricity Charge”	<p>means the total cost of electricity consumed within City Hall as shown and billed in the monthly bill issued by the power company</p>
“Contractor Electricity Consumption”	<p>means the amount of electricity consumed by the Contractor’s electricity equipment as measured by all Government meters over the same period to which the monthly electricity bill relates</p>
“Contractor Electricity Share”	<p>means the amount of electricity consumed by the Contractor within the Licence Area payable by the Contractor to the Government in a particular month calculated in accordance with the formula specified in Clause 18.2 of the Conditions of Contract</p>

“Contract Period”	means the period specified in Clause 2 of the Conditions of Contract as the same may be extended or earlier terminated in accordance with the applicable provisions of the Contract.
“Electricity Deposit”	means the electricity deposit which the Contractor is required to deposit with the Government in accordance with Clause 18.3 of the Conditions of Contract as security to pay Contractor Electricity Share
“Free Decoration Period”	means the maximum of up to one (1) month’s fitting out period commencing from the first day of the Contract Period.
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.
“Government Provisions”	means all items belonging to the Government specified in Contract Schedule 6 and such other property (movable or immovable) which are from time to time made available to the Contractor for use in operating the Business under and in accordance with the Contract.
“Government Representative”	means: (a) the Director of Leisure and Cultural Services; or (b) any public officer specified by the Director of Leisure and Cultural Services for the purposes of the Contract; and (c) any other public officer authorised by the public officer referred to in (b) 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 for the purpose of inspecting the Business carried out by the Contractor under the Contract.

“Invitation to Quotation”	means the invitation issued by the Government to invite quotations to operate the Business on the terms set out in the Quotation Documents.
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
“LCSD”	means the Leisure and Cultural Services Department.
“Licence Area”	means the areas as delineated in Annex C
“Monthly Licence Fee”	means the fixed monthly licence fee quoted by the successful Bidder in Contract Schedule 1 .
“person”	includes any body of persons, corporate or unincorporated; and “legal person” means any person which has the capacity to contract.
“Quotation” or “quotation”	means an offer to operate the Business as submitted by a Bidder in response to this Invitation to Quotation.
“Quotation Closing Date”	means 12:00 noon 7 July 2016 (Hong Kong time) as the same may be extended in accordance with Clause 5.2 of the Terms of Quotation .
“Quotation Documents”	means the documents as specified in Clause 1 of the Terms of Quotation and any addendum issued under Clause 31 of the Terms of Quotation .
“Quotation Validity Period”	means the period of time as stipulated in Clause 9 of the Terms of Quotation during which the quotation is to remain open.

- “Requisite Permits” has the meaning given to it in **Clause 9.1** of the **Conditions of Contract**.
- “Security Deposit” means the deposit which the Contractor is required to deposit with the Government via the Government Representative in accordance with **Clause 24** of the **Terms of Quotation** and **Clause 7** of the **Conditions of Contract** for the due and proper performance of the Contract.
- “Unit Rate” means the Gross Electricity Charge divided by the total amount of electricity consumed within City Hall as shown in the monthly bill issued by the power company
- “working day” means Monday to Friday other than a public holiday (as defined in the Interpretation and General Clauses Ordinance (Cap. 1)), or a day on which tropical cyclone warning signal no. 8 or above is hoisted or a black rainstorm warning is in force for any duration during normal business hours in Hong Kong.

2.1 In the Contract, unless the content otherwise requires, the following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated); and references to company include corporation;
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Quotation Documents or the Contract;
- (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in

accordance with the terms of the Quotation Documents or the Contract;

- (e) references to “Bidder” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” and “Government Representative” shall include their respective assigns, successors-in-title, and persons deriving title under them, regardless of whether or not any of these persons are mentioned in the relevant provisions;
- (g) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (h) any word or expression to which a specific meaning has been attached in any part of the Quotation Documents shall bear such meaning whenever it appears in the same and other parts of the Quotation Documents;
- (i) a time of a day shall be construed as a reference to Hong Kong time;
- (j) references to “normal business hours” mean 9:00 a.m. to 6:00 p.m.;
- (k) references to a day mean a calendar day;
- (l) references to a month mean a calendar month;
- (m) any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- (n) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
- (o) words importing the whole shall be treated as including a reference to any part of the whole;
- (p) the expressions “include” and “including” shall be construed without limitation to the words following;
- (q) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Quotation Documents or by reference to any other definition;
- (r) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by

electronic mail and other modes of representing and reproducing words in a legible form;

- (s) where a general obligation in the Quotation Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
 - (t) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622).
- 2.2 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any public officer.
- 2.3 Unless otherwise provided for in the Quotation Documents, all quotations and payments shall be made in Hong Kong dollars.

PART 1
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**THE GOVERNMENT OF
HONG KONG SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT**

**PART 1
TERMS OF QUOTATION**

ALL BIDDERS SHALL READ THE QUOTATION DOCUMENTS CAREFULLY PRIOR TO PREPARING THE SUBMISSION OF THEIR QUOTATIONS. ANY QUOTATION WHICH DOES NOT FOLLOW THE INSTRUCTIONS CONTAINED IN THE QUOTATION DOCUMENTS WILL BE CONSIDERED INCOMPLETE AND MAY BE DISQUALIFIED.

1. Quotation Documents

The Quotation Documents consist of a complete set of:

- (a) **Quotation Form** (Parts I to II);
- (b) **Interpretation** (Sheets 1 to 7);
- (c) **Terms of Quotation** (Sheets 8 to 35);
- (d) **Conditions of Contract** (Sheets 36 to 91);
- (e) **Contract Schedules 1 to 6** (Sheets 92 to 104);
- (f) **Form of Security Deposit Election** (Sheet 105);
- (g) **Checklist before submitting Quotation** (Sheets 106 to 107);
- (h) **Draft Articles of Agreement** (Sheet 108 to 109); and
- (i) **Annexes A to E** (Sheets 110 to 121).

2. **Invitation to Quotation**

Quotations are invited for the operation of a business to sell Authorized Merchandise (and any Consignment Items as may be provided by the Government from time to time) (“Business”) at the Licence Area within the City Hall during the Contract Period on such terms and conditions as set out in these Terms of Quotation, Conditions of Contract, Contract Schedules and Annexes. General information of the City Hall and the Licence Area is at **Annexes A to C**.

3. **Quotation Preparation**

- 3.1 All Quotations (including all necessary parts of the Quotation Documents) shall be completed and submitted in three (3) identical sets (one original and two photocopies) in the manner described in **Clause 5** below.
- 3.2 Quotations shall be completed in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for quotation evaluation.
- 3.3 Bidders shall complete the following parts of the Quotation Documents and provide all information they are required to submit in the Contract Schedules at the time of submission of the quotation:
- (a) **Quotation Form** – Part II - “Offer to be Bound”
(Cover Page)
 - (b) **Contract Schedule 1** – Monthly Licence Fee
(Sheets 93)
 - (c) **Contract Schedule 2** – Business Plan
(Sheets 94 to 96)
 - (d) **Contract Schedule 3** – Information of the Bidder
(Sheets 97 to 101)
 - (e) **Contract Schedule 4** – Details of Experience
(Sheets 102)

(f) **Form of Security Deposit Election**
(Sheet 105)

(g) **Checklist before submitting Quotation**
(Sheets 106 to 107)

Quotations may not be considered if complete information is not given with the quotations or if any particulars and data requested in these Quotation Documents are not furnished in full.

3.4 Bidders must ensure that there is no discrepancy between the original and the copies of the documents submitted to the Government. Should any discrepancies be found, the quotation may be rejected.

3.5 The Terms of Quotation, Conditions of Contract, Offer to be Bound, Contract Schedules and Annexes issued with these Quotation Documents must not be altered by Bidders. However, completion of documents in the manner required under the Quotation Documents will not be regarded as an alternation for the purposes of this Clause. Figures or words contained in a quotation should not be altered or erased unless the same is effected by striking through the incorrect figures or words and inserting the corrected figures or words above the original figures or words. All such amendments shall be initialed by the Bidder in ink.

4. Contents of the Quotation

4.1 Each Bidder shall submit the following information / items in its Quotation before 12:00 noon on the Quotation Closing Date:

(a) the “Offer to be Bound” of the **Quotation Form** duly signed by the Bidder;

(b) **Contract Schedule 1** – Monthly Licence Fee; and

(c) **Contract Schedule 2** – the Business Plan comprising of: (i) the Facilities and Decoration Plan; (ii) the Operation and Staff Plan and (iii) the Customer Services Plan.

Failure to submit any of the items above would render a Bidder’s Quotation not to be considered further.

4.2 In addition to **Clause 4.1** above, each Bidder is required to provide all other information / supporting documents which shall be originals or certified true copies of the same, requested in the Quotation Documents or relevant to its Quotation, including but not limited to the following:

(a) **Contract Schedule 3;**

(b) **Contract Schedule 4; and**

(c) **Form of Security Deposit Election.**

Bidders should provide all the above items specified in this **Clause 4.2** at the same time of submitting their Quotations. The Government may, but is not obliged to, exercise its discretion to request any of these items after the Quotation Closing Date where they are found missing in accordance with **Clause 15** below.

4.3 To ensure completeness and consistency of the information provided, potential Bidders should complete the “**Checklist before Submission of Quotations**” and submit the completed checklist together with other documents / information required for the quotation.

5. **Quotation Submission**

5.1 Completed quotations with all necessary information and documents required under the Terms of Quotation, in triplicate, must be enclosed in a sealed plain envelope clearly marked “**Quotation Ref.: LCSD/HKCH/AS/2016 – Quotation for the Grant of Licence to Operate the Business at the Arts Shop of the Hong Kong City Hall**” addressed to the Chairman, Quotation Opening Committee, Leisure and Cultural Services Department and must be deposited in or mailed to the Quotation Box situated at Ground Floor, 5 Edinburg Place, Central, Hong Kong before 12:00 noon (Hong Kong time) on Quotation Closing Date. **LATE QUOTATIONS WILL NOT BE CONSIDERED.** The envelope shall not bear any indication which may identify the Bidder.

5.2 In case of a black rainstorm warning is in force or tropical cyclone warning signal No. 8 or above is hoisted for any duration between 9:00 a.m. and 12:00 noon (Hong Kong time) on the Quotation Closing Date, the closing time of this quotation will be extended to 12:00 (Hong Kong time) on the next working day (excluding Saturday) after the black rainstorm warning signal or tropical cyclone warning signal No.8 or above is cancelled or lowered.

5.3 The Government will not be responsible for any mislaid quotations or those submitted by methods other than as those stipulated in **Clause 5.1** above.

6. Essential Requirement Concerning Experience

6.1 The essential requirement(s) concerning experience is listed below. In the event that a **Bidder fails to meet all of the essential requirement(s), its quotation will not be considered further.**

(a) The Bidder must have at least **Three (3)** aggregate years of experience in the operation of a retail business on gifts / souvenirs / publications / arts products / audio visual products / novelty products on its own account (i.e. as an owner) any time within the past ten (10) years immediately prior to the Quotation Closing Date, irrespective of any extension of the Quotation Closing Date that may be made under **Clause 5.2**.

6.2 The following are further explanatory notes concerning the scope and interpretation of the essential requirements set out in **Clause 6.1(a)** above:

Notes : (i) The Quotation Closing Date shall be the cut-off date for calculating the Bidder's years of experience, irrespective of any extension of the Quotation Closing Date that may be made pursuant to **Clause 5.2**.

(ii) The overlapping periods of the claimed experience will only be counted once when counting the length of cumulative years of experience. Experience obtained by a holding company or subsidiary or shareholder of the Bidder will not be taken into account. In the case the Bidder is a joint venture, the experience obtained by any of its joint venture parties will not be taken into account. The experience obtained by the Bidder through being a party to a joint venture will not be taken into account.

(iii) Each Bidder is required to submit documentary proof, shall be original or certified true copies of the original document, such as copies of contract to substantiate its claim of experience. Failure to do so will result in the claimed experience not being taken into consideration.

7. Monthly Licence Fee

- 7.1 During the Contract Period, in return for the right to operate the Business at the Licence Area, the successful Bidder (as the Contractor) is required to pay to the Government a Monthly Licence Fee as quoted by the Bidder in **Contract Schedule 1** during the Contract Period, except for the Free Decoration Period during which fitting out work of the Licence Area is being carried out. Such Monthly Licence Fee shall be denominated in Hong Kong dollars.
- 7.2 The Monthly Licence Fee quoted by Bidders shall remain valid and binding throughout the duration of the Contract Period. No request for price variation will be considered. A Bidder who proposes any price variation mechanism may be disqualified and its Quotation will not be considered further.
- 7.3 The Monthly Licence Fee does not include rates, Government rent and taxes payable in respect of the Licence Area. Apart from the Government Provisions, all assets required, and all liabilities to be incurred from carrying out the Business at the Licence Area, shall be the responsibility of the Contractor with no recourse against the Government or the Government Representative.
- 7.4 Bidders should make certain the Monthly Licence Fee quoted is accurate before submitting their Quotations. Without prejudice to the powers of the Government to seek clarification or to negotiate with a Bidder, the Government is not obliged to accept any request for price adjustment on whatsoever ground including that a mistake has been made in the Monthly Licence Fee quoted.

8. Information of the Bidder

Each Bidder shall provide the following details relating to itself in **Contract Schedule 3**:

- (a) name and address of the Bidder;
- (b) date of incorporation or establishment of the Bidder;
- (c) shareholders / partners / proprietor of the Bidder and their percentage of ownership (in the case of shareholders / partners);
- (d) names and correspondence addresses of the following:

- (i) managing director / partners;
 - (ii) all other directors; and
 - (iii) sole proprietor (as may be applicable);
- (e) a copy of a valid Business Registration Certificate and copies of other documents evidencing its business status;
- (f) where the Bidder is a company incorporated under the laws of Hong Kong, its memorandum and articles of association (if any), a Certificate of Incorporation, Certificate of Change of Name (if any), and latest annual return filed with the Companies Registry or equivalent documents where the Bidder is not a company incorporated under the laws of Hong Kong; and
- (g) where the Bidder is a partnership or joint venture, a copy of the partnership agreement or joint venture agreement.

9. Quotations to Remain Open

- 9.1 Quotations submitted shall remain valid and open for acceptance on these terms for a period not less than one hundred and eighty (180) days from the Quotation Closing Date (“Quotation Validity Period”).
- 9.2 A Bidder who counter-proposes a Quotation Validity Period shorter than the period specified in **Clause 9.1** will be disqualified and its Quotation will not be considered further.
- 9.3 Without prejudice to the Government’s rights and claims vis-à-vis any Bidder, if before the expiry of the Quotation Validity Period, a Bidder withdraws its offer, the Government will take due notice of the Bidder’s action and this may prejudice the Bidder’s future status as a Government supplier or bidder.

10. Selection of Quotation

Without prejudice to other rights and powers of the Government not to consider a Quotation under other applicable provisions in the Quotation Documents, the evaluation of Quotations will be conducted as follows:

(a) **Completeness Check**

A completeness check will be conducted by checking whether the Quotation has been submitted in accordance with the requirements of the Quotation Documents. If a Bidder fails to submit any of the items stipulated in **Clause 4.1** before the Quotation Closing Date, its Quotation will **NOT** be considered further.

(b) **Assessment of Compliance with Essential Requirements**

(i) A Quotation will be checked for its compliance with all the essential requirements stipulated in the Quotation Documents, including the essential requirement(s) as specified in **Clause 6**.

(ii) A Bidder which fails to meet any of the essential requirements will not be considered further.

(c) **Price Assessment**

Bidders who have passed the completeness check and complied with all essential requirements will be evaluated according to the amount of the total Monthly Licence Fee specified in **Contract Schedule 1**, i.e. the total amount of Monthly Licence Fee payable to the Government over the entire Contract Period (excluding the Free Decoration Period).

11. Basis of Acceptance

11.1 The Government is not bound to accept the highest or any quotation or to give any reasons for doing so, and reserves the right to cancel this Invitation to Quotation in case the Monthly Licence Fee of the quotation is unreasonably low with reference to the advice of the Commissioner of Rating and Valuation.

11.2 Bidders should note that their offers will be considered on an overall basis. Bidders with only partial offers will not be considered.

11.3 Unless the Government decides that it is in the public interest not to award the Contract, subject to the other provisions of the Quotation Documents, the Contract will normally be awarded to the Bidder who passes the completeness check and assessment of compliance with essential requirements as mentioned in **Clauses 10(a)** and **10(b)** and submits the highest total Monthly Licence Fee as determined in accordance with **Clause 10(c)**, and the Bidder whom the Government considers to be fully capable of performing the Contract.

12. Negotiation

The Government reserves the right to negotiate with all or any Bidder about any terms of the Bidder's offer in the Quotation and the terms and conditions of the Contract.

13. Award of the Contract

13.1 Unless and until the Articles of Agreement have been executed by both the successful Bidder and the Government, there shall be no binding Contract between the Government and any Bidder.

13.2 The successful Bidder will be notified within the Quotation Validity Period of the Government's conditional acceptance of its quotation (such notification is referred to as "conditional acceptance of quotation"). Upon receipt of such conditional acceptance of quotation, the successful Bidder shall be obliged to fulfil all of the following conditions to the satisfaction of the Government within seven (7) days from the date of the conditional acceptance of quotation (or such later date as the Government may allow):

(a) deposit the Security Deposit as required under **Clause 24**;

(b) satisfy / perform such other requirements / conditions as the Government may stipulate in the conditional acceptance of quotation.

13.3 Unless and to the extent waived by the Government in writing, upon fulfilment of all of the conditions by the Bidder specified in **Clause 13.2** above to the satisfaction of the Government, the Government will, subject to its other rights and powers, enter into the Contract with the successful Bidder by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government, the Quotation submitted by the successful Bidder (subject to such other changes as the Government may stipulate in exercise of its powers under the Quotation Documents or such changes as the parties may agree). Notwithstanding anything in the Quotation Documents or in the conditional acceptance of quotation to the contrary, in the event that the Government

exercises any of its discretion under **Clause 17** or **18**, the Government shall be entitled **not** to enter into the Contract with a Bidder even if the Bidder has received a conditional notification of acceptance and fulfilled all the conditions specified in **Clause 13.2**.

- 13.4 If a Bidder fails to fulfil all or any of the conditions mentioned in **Clause 13.2** above (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the Articles of Agreement upon notification by the Government (such Bidder referred to as the “defaulting Bidder”), the conditional acceptance of quotation will immediately become void and be of no further force and the defaulting Bidder will immediately be disqualified.
- 13.5 In the event where the Government has disqualified the defaulting Bidder as described in **Clause 13.4**, the Government may, but is not obliged to, award the Contract to another Bidder. Without prejudice to other rights and remedies of the Government, the defaulting Bidder shall be responsible for the difference in the total Monthly Licence Fee for the whole Contract Period submitted by the defaulting Bidder and the Contractor who is eventually awarded the Contract (whether appointed pursuant to this Invitation to Quotation exercise or another subsequent invitation to quotation exercise).
- 13.6 Bidders who do not receive any conditional acceptance of quotation within the Quotation Validity Period shall assume that their quotations have not been accepted.

14. Counter-proposals

- 14.1 The Bidder must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Quotation Documents; and / or (b) all provisions in the Quotation Documents concerning the preparation, submission and evaluation of Quotations and award of the Contract.
- 14.2 If a Bidder fails to comply with **Clause 14.1**, subject to any clarification which the Government may, but is not obliged to, make under **Clause 15**, its Quotation will be disqualified and will not be considered further by the Government.
- 14.3 For counter-proposals to provisions other than those as specified in **Clause 14.1** or **Clause 14.4**, it shall equally be the case that no Bidder may make any counter-proposals to any such requirement. Counter-proposals from a Bidder in contravention of this restriction will entitle the Government to disqualify the Bidder unless the Government in its absolute discretion elects to negotiate with the Bidder concerning such counter-proposal. Following such negotiation, if the Bidder is still unwilling to

withdraw such counter-proposal, or otherwise revise it on terms acceptable to the Government, the Government may still disqualify the Bidder. Any accepted counter-proposal following from a successful negotiation shall be deemed as part of the Bidder's Quotation and forms part of the Contract and shall be binding on the Bidder if the Contract is eventually awarded to it.

- 14.4 Without prejudice to **Clause 14.1**, any Bidder who submits a quotation that directly or indirectly attempts to preclude or limit the effect of any provisions of these Terms of Quotation will also be disqualified.

15. Request for Information

- 15.1 In the event that the Government determines, in this absolute discretion, determines that clarification of any quotation is necessary, it will advise the Bidder accordingly indicating whether the Bidder should provide any clarification or further information relating to its quotation. Each Bidder shall thereafter within five (5) working days or such other period as specified in the Government's request for clarification(s) submit such information in the manner specified by the Government. Quotations may not be considered if complete information is not provided as required.
- 15.2 Notwithstanding **Clause 15.1** above, the Government may not consider the quotation further or may proceed to evaluate the quotation on an "as is" basis.
- 15.3 Unless otherwise expressly stated by the Government in writing, any statement whether oral or written made in response to any enquiry made by a prospective Bidder shall be for information only. No such statement constitutes a representation or warranty of whatsoever nature, express or implied, and no invitation is made by the Government to any Bidder or prospective Bidder to reply on the accuracy or completeness of such statement. Unless in the context of an issued addendum to the Quotation Documents, the statement will not be deemed to form part of these Quotation Documents and it shall not alter, negate or waive any of the provisions set out in these Quotation Documents.

16. Bidder's Commitment

All quotations, proposals, information and responses submitted by each Bidder shall be the representation of the Bidder and may by law or at the Government's sole option be incorporated into and made part of the Contract to be made between the Government and

the successful Bidder in such manner as the Government considers appropriate. The Government may, and, in submitting a quotation, the Bidder irrevocably authorizes the Government to, make such changes to the terms and conditions of the Contract as may be necessary as a result of such incorporation without the need to obtain any prior agreement of the successful Bidder.

17. Government Discretion

17.1 Notwithstanding anything to the contrary in these Quotation Documents, the Government reserves the right to disqualify a Bidder 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 Bidder or its related person;
- (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Quotation or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Quotation;
- (c) in the event of a claim or allegation made any time during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award or the Government having grounds to believe that any thing(s), service(s) or material(s) supplied or previously supplied by the Bidder or its related person infringe or will infringe any Intellectual Property Rights of any person;
- (d) any time during the twenty-four (24) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract, the Bidder or a related person of the Bidder 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 / have been remedied (“Contract Default”);

- (e) the Bidder or a related person or a director or management staff of the Bidder 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 Quotation Closing Date and thereafter up to the date 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 Quotation Closing Date and thereafter up to the time of Contract award that adversely reflects on or casts doubt on the commercial integrity of the Bidder or a related person or a director or management staff of the Bidder; or
- (g) any failure of the Bidder or its related person to pay taxes to the Government during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award

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

17.2 For the purposes of **Clause 17.1**, each Bidder shall provide in **Contract Schedule 3** at the time of submission of its Quotation (and thereafter up to the time of award of the Contract in relation to any event occurring between the time of submission of its Quotation and the time of award of the Contract) 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 as mentioned in **Clause 17.1(a)**;
- (b) details of conviction as mentioned in **Clause 17.1(e)** in Hong Kong or any overseas jurisdiction;
- (c) details of all infringement claims or allegations and / or settlement agreement as mentioned in **Clause 17.1(c)**;
- (d) details of all Contract Defaults as mentioned in **Clause 17.1(d)**;

- (e) details of any professional misconduct or act or omission that adversely reflects or casts doubt on the commercial integrity of the Bidder or a related person as mentioned in **Clause 17.1(f)**; and
- (f) details of any failure to pay taxes as mentioned in **Clause 17.1(g)**.

If none of the events as mentioned in **Clauses 17.2(a) to 17.2(f)** above has ever occurred within the applicable period as mentioned in relevant sub-paragraph in **Clause 17.1**, the Bidder shall provide a statement to that effect by completing the relevant part of the **Contract Schedule 3** at the time of submission of its Quotation. If found missing, the Government reserves the right to seek clarification.

17.3 In addition to the information mentioned in **Clause 17.2**, the Government reserves the right to request from a Bidder or from other source and take into account all information about:

- (a) the Bidder itself (viz. in relation to any information relevant to any of the events mentioned in **Clause 17.1**);
- (b) any of the directors or management staff of the Bidder (viz. information relevant to any of the events mentioned **Clauses 17.1(e) and 17.1(f)** as applicable to any such person(s)) ;
- (c) any of the related persons of the Bidder (viz. information relevant to any of the events mentioned in **Clause 17.1** as applicable to any such person(s));
- (d) the manufacturer of any proposed commodities to be sold (viz. information relevant to the events mentioned in **Clause 17.1(c)** applicable to any such person(s)),

and such other information which is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under **Clause 17.1**.

17.4 The information relating to any of the persons mentioned in **Clause 17.3** may include, without limitation, details of any claims or allegations of infringement or settlement agreement as referred to in **Clause 17.1(c)**; details of any Contract Defaults referred to in **Clause 17.1(d)**; details of any conviction referred to in **Clause 17.1(e)**; details of any professional misconduct, acts or omissions referred to in **Clause 17.1(f)** and details of any failure to pay taxes to the Government referred to in **Clause 17.1(g)** above.

- 17.5 If the Bidder fails to comply with the request made by the Government pursuant to **Clause 17.3** above within such time as required by the Government, the Government may disqualify the Bidder pursuant to **Clause 15**. If the Bidder has submitted false, inaccurate or incomplete information or forged a document as referred to in **Clause 17.1(b)**, the Government may disqualify the Bidder.
- 17.6 In providing the information required under **Clauses 17.2** and **17.3** above, the Bidder may show cause to satisfy the Government that the petition or proceeding, conviction, 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 Bidder to perform the Contract to be awarded in this Invitation to Quotation.
- 17.7 If the Bidder is a company or corporation, the expression “related person” of the Bidder 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 Bidder (“majority shareholder”); or
 - (b) a holding company, corporation or a subsidiary of the Bidder; or
 - (c) a holding company, corporation or a subsidiary of a majority shareholder of the Bidder; or
 - (d) a company in which a majority shareholder (being an individual) of the Bidder 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).

- 17.8 If the Bidder is a sole proprietor or partnership, the expression “related person” includes any one of the following:
- (a) any partner of the Bidder (if it is a partnership);

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

17.9 References to related persons, directors and management staff of the Bidder or of a related person include persons who were in such capacity at such time of any of the events referred to in **Clause 17.1**.

18. Cancellation of the Invitation to Quotation

18.1 Notwithstanding anything to the contrary in the Quotation Documents, if it is in the public interest to do so, the Government may:

- (a) reserve the right to cancel this Invitation to Quotation, and not to award the Contract; or
- (b) re-conduct the evaluation specified in **Clause 10** to identify the successful Bidder notwithstanding the issue of any conditional acceptance of quotation under **Clause 13.2** to the same or another Bidder.

18.2 After cancellation pursuant to **Clause 18.1(a)**, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Quotation on such terms and conditions as the Government considers appropriate.

19. Undisclosed Agency

The person who signs a quotation as Bidder 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 and address of its principal.

20. Consent to Disclosure

20.1 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 Bidder) without any further reference to or consent from the successful Bidder or any other Bidder, the

Quotation Documents, particulars (including the nature and quantity) of the Business to be provided by the successful Bidder, the date of the award of the Contract, the name and address of the successful Bidder, and the Monthly Licence Fee.

20.2 Nothing in **Clause 20.1** shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in **Clause 20.1**) 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 20.1**, to the extent the information relates to a Bidder, with the prior written consent of that Bidder.

21. Personal Data Provided

21.1 All personal data provided in a Quotation will be used by the Government for the purposes of the Invitation to Quotation and all other purposes arising from or incidental to it (including for the purposes of quotation evaluation, the award of the Contract and resolution of any dispute arising from this Invitation to Quotation). In the case of the successful Bidder, the purposes shall be extended to include Contract enforcement and management, and resolution of dispute 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.

- 21.2 By submitting a Quotation, a Bidder is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Quotation, its consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in **Clause 21.1**.
- 21.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22, and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Quotation.
- 21.4 Enquiries concerning the personal data collected by means of the Invitation to Quotation, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of LCSD.

22. Commencement Date of the Contract Period

Subject to the confirmation by the Government in the Articles of Agreement, the tentative commencement date of the Contract Period is specified in **Clause 2** of the **Conditions of Contract**. Notwithstanding the aforementioned tentative commencement date, the Government 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 such date.

23. Licences, Permits and Certificates

Bidders 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 of Hong Kong to operate the Business at the Licence Area during the Contract Period. The responsibility to apply for or to renew the necessary licences, permits and certificates lies with the successful Bidder. Neither the Government nor the Government Representative shall be held responsible in the event of the Bidder's failure or inability for any reason to obtain or renew any such licences, permits and certificates. The successful Bidder who has been awarded the Contract shall observe and comply with the requirements / conditions of any licence, permit and certificate issued to it in relation to its performance of the Contract as the Contractor.

24. Security Deposit

The successful Bidder shall, within seven (7) days from the date of conditional acceptance of quotation, deposit with the Government via the Government Representative an amount equivalent to four (4) times of the quoted Monthly Licence Fee in **Contract Schedule 1** (“Security Deposit”) as security for the due and faithful performance of the Contract. The successful Bidder shall pay the Security Deposit either in cash or in the form of a banker’s guarantee on the terms set out at **Annex E** and issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government for the purpose of issuing Security Deposits. Each Bidder should state clearly in the **Form of Security Deposit Election** the method of providing the Security Deposit, i.e. whether in cash or in the form of a banker’s guarantee. If the successful Bidder fails to elect the method of providing the Security Deposit, it will be regarded to have undertaken to pay the Security Deposit to the Government in cash.

25. Free Decoration Period

The successful Bidder may, upon the commencement of the Contract Period, be allowed a period not exceeding one (1) month as Free Decoration Period for fitting out of the Licence Area. No Monthly Licence Fee shall be payable where the successful Bidder actually uses such Free Decoration Period for fitting out but the successful Bidder shall pay and bear all outgoing and charges, including but not limited to water and electricity consumption, in respect of the Licence Area during the Free Decoration Period. Notwithstanding the aforementioned, the portion of the Monthly Licence Fee in respect of the Arts Shop shall immediately be payable on a pro rata basis as soon as the successful Bidder commences Business at the Licence Area during the Free Decoration Period.

26. State of Premises

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

27. Quotation Documents of the Unsuccessful Bidder

Quotation Documents of unsuccessful Bidders will be destroyed three (3) months after the Contract has been awarded and the Articles of Agreement signed by the successful Bidder and the Government.

28. Costs of Preparation of Quotation

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

29. Performance Monitoring

29.1 Where a Bidder is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other tenders / quotations exercises are evaluated.

29.2 A quotation may be rejected if the Bidder is in default in respect of any LCSD quotation(s) which is the same or substantially similar in nature as this Invitation to Quotation within six (6) months of the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract.

30. New Information

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

31. Quotation Addenda

- 31.1 Should the Government require any amendments to be made to the Quotation Documents, the Government will issue to every person who is known to have collected the Quotation Documents Bidder numbered addenda giving full details of such amendments. The Bidder shall acknowledge receipt of these addenda. These addenda shall form a part of the Quotation Documents and shall take priority over the documents previously issued.
- 31.2 Quotation Documents downloaded from the website of LCSD may be subject to updating and notwithstanding **Clause 31.1**, and it is the responsibility for Bidders to check for any latest updates or addendum to the Quotation Documents online before the Quotation Closing Date. These addenda shall form a part of the Quotation Documents and shall take priority over the documents previously issued. Should potential Bidders would like to be informed of any updates or addendum to the Quotation Documents, they should let LCSD have their email addresses for contact.

32. Disclaimer

- 32.1 The Bidder should study all attachments to the Quotation Documents (including the **Annexes** and **Contract Schedules**) carefully before submitting their quotations. The Bidder should note that all information and statistics provided by the Government and the Government Representative in connection with this quotation are for reference only.
- 32.2 Forecast or estimation and all other information, statistics and forecast set out in the Quotation Documents or any information or clarification provided from time to time or given at the briefing session (collectively “briefings”), are provided purely for the Bidder’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 Quotation Documents or any information or clarification provided from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.

- 32.3 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 Bidder arising from the use of, or reliance on, any information, statistics or forecast provided in the Quotation Documents, or any information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Business do not meet the expectation or projection of the successful Bidder or do not recoup the investment cost incurred or by any margin.

33. Warning against Bribery

- 33.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Bidder or any of its officers, including directors, employees or agents, will render its Quotation null and void.
- 33.2 The successful Bidder shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the operation of the Business and the Optional Services (if any) that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The successful Bidder shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

34. Authentication of Documents

- 34.1 By submitting a quotation in response to the Invitation to Quotation, each Bidder authorizes the Government to obtain from:

- (a) any person whose particulars are set out in the quotation submitted by the Bidder; and
 - (b) any issuing body of any of the certificates or documentary evidence required in the Quotation Documents, all information which the Government considers appropriate and relevant to the evaluation of the quotation including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Bidder. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Bidder represents that such consent has been duly obtained.
- 34.2 All documents submitted by a Bidder to the Government in relation to its Quotation shall be original documents or certified true copies of the original documents. If a Bidder fails to comply with this requirement or fails to provide such verification as the Government may require to prove the authenticity of a document submitted to the Government, the Government may not further consider the Quotation.

35. Communication with the Government

- 35.1 All communications given or made by the Government or a Bidder in relation to the Invitation to Quotation shall be in writing and sent or delivered to the other party in the manner provided in **Clause 51** of the **Conditions of Contract**, save that the Government may, by prior notice to a Bidder, require the Bidder to send or deliver a written communication by post or facsimile only. The Bidder should note that the Government will not accept the use of a postal box as the Bidder's correspondence address for any purpose whether before or after the award of the Contract.
- 35.2 All communications in relation to the Invitation to Quotation shall be conducted directly between the Government and the Bidder.
- 35.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Bidder shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Bidder or prospective Bidder to rely on such statement. No such statement shall form part of the Quotation Documents or alter, negate or constitute a waiver of any provision of the Quotation Documents.

36. Bidder's Enquiries

- 36.1 Any enquiries concerning this Quotation Documents up to the date of lodging its quotation with the Government shall be in writing and submitted to Manager (City Hall) (Building Management), Hong Kong City Hall, 5 Edinburgh Place, Central, Hong Kong or to facsimile number 2877 0353.
- 36.2 After lodging the quotation with the Government, the Bidder shall not attempt to initiate any contact, whether direct or indirect, with the Government or the Government Representative on its quotation or the Quotation Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Bidder thereto shall be in writing or formally documented in writing.

37. Quotation Briefing Session / Site Visit

- 37.1 Bidders are invited to attend a quotation briefing cum site visit session to be held by the Government Representative on **22 June 2016 (Wednesday) at 3 p.m. at VIP Lounge of Hong Kong City Hall** before submitting their quotations in order to acquaint themselves with the requirements of the Government Representative.
- 37.2 Each Bidder may send no more than two (2) representatives to attend the quotation briefing session cum site visit.
- 37.3 Bidders are required to fill in the “**Enrolment Form for Quotation Briefing Session**” at **Annex D** and send it by fax to Assistant Manager (City Hall) (Building Management), Hong Kong City Hall at (852) 2877 0353 **on or before 20 June 2016** for registration.

38. Licence to Use the Quotation Documents

- 38.1 A Quotation once submitted will become the property of the Government. Quotations of unsuccessful Bidders may be destroyed in accordance with **Clause 27**. Without prejudice to all other rights and powers of the Government under the Quotation Documents (including in particular its right to disclose information in the Quotation) and under the Contract, each Bidder 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 Quotation for the purposes of quotation evaluation and for all other

purposes incidental thereto or in connection therewith and also for the purposes of disclosure under **Clause 20**. Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Quotation (or any part thereof) under any applicable law, including the laws of Hong Kong.

- 38.2 The Bidder shall keep the Government informed in writing of any materials that are subject matters of the licences granted or to be granted to which the Bidder is not empowered to grant licences pursuant to **Clause 38.1** above and any restrictions whatsoever affecting the use thereof.
- 38.3 The Bidder 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 38.1**.
- 38.4 The Bidder 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 Bidder comprised in the Quotation, 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.
- 38.5 The Bidder 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 38** 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.
- 38.6 By submitting a quotation, the Bidder represents and warrants that none of the materials comprised in the Quotation submitted infringes the Intellectual Property Rights of any person.
- 38.7 The Bidder shall indemnify the Government, the Government Representative, their respective assigns, successors-in-title, and authorised users from and against everything stated in **Clause 38.2 (a) and (b)** of the **Conditions of Contract** in the event that the exercise by any of them of the rights set out in this **Clause 38** infringes or is alleged to infringe the Intellectual Property Rights of any person.

39 Warranty against Collusion

- 39.1 By submitting a quotation, the Bidder represents and warrants to the Government that in relation to the quotation and / or the Invitation to Quotation:
- (a) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of the Monthly Licence Fee submitted in its quotation (“quotation price”);
 - (b) it has not fixed and will not fix the amount of any quotation price by arrangement with any person;
 - (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a quotation; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the quotation process.
- 39.2 In the event that the Bidder is in breach of any of the representations and / or warranties in **Clause 39.1**, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the quotation;
 - (b) if the Government has issued a conditional acceptance of quotation, withdraw its conditional acceptance of quotation; and
 - (c) if the Government has entered into the Contract with the Bidder, terminate the Contract.
- 39.3 By submitting a quotation, the Bidder is regarded to have undertaken to indemnify and keep indemnified the Government, and its respective assigns and successors-in-title, 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 39.1**
- 39.4 Any breach of any of the representations and / or warranties in **Clause 39.1** by the Bidder may prejudice the Bidder’s future standing as a Government contractor or service provider.

- 39.5 **Clause 39.1** shall have no application to the Bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the quotation price, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of quotation submission.
- 39.6 The rights of the Government under **Clauses 39.2 to 39.4** are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

40. Complaints About Quotation Process or Contract Awards

The quotation process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Bidder 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 quotation boards for consideration if it relates to the quotation system or procedures followed. Bidder shall lodge the complaint before disposal of documents of unsuccessful Bidders which shall be within three (3) months upon the award of the Contract.

41. Survival

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

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PART 2
CONDITIONS OF CONTRACT

1. Nature of Contract

It is expressly agreed between the Government and the Contractor that this Contract creates no tenancy or lease or any form of legal rights on land whatsoever between the Government and the Contractor except the right to use the Licence Area in accordance with the provisions of the Contract.

2. Contract Period

2.1 Subject to all rights and powers of the Government under the Contract, and any early termination or extension pursuant to any applicable provision of the Contract, the Contract Period shall be for a term of thirty-six (36) months to commence from the date specified in **Clause 2.2**, inclusive of a Free Decoration Period not exceeding one (1) month for fitting out the Licence Area upon the commencement of the Contract Period.

2.2 The commencement date of the Contract Period shall be **1 January 2017** unless another 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. The Government shall not be liable for any losses suffered or expenses incurred whatsoever by the Contractor due to such variation.

2.3 If the total accumulated days of closure or suspension of the Business which will likely affect the Business under **Clause 6** of the Conditions of Contract exceeds thirty (30) days, notwithstanding the provisions under **Clauses 2.1 and 2.2**, the Contract will be extended accordingly by the same number of days equivalent to the period of closure or suspension with the other terms and conditions of the Contract remain unchanged. Partial closure of some part(s) but not the entire Licence Area will not lead to any extension of the Contract Period.

3. Obligation to operate the Business

3.1 Subject to the terms and conditions of the Contract, the Government hereby grants the entitlement to the Contractor to operate the Business at the Licence Area for the supply and sale of Authorized Merchandise in compliance with all terms and conditions set out in the Contract.

- 3.2 The Contractor shall operate the Business at the Licence Area within the opening hours as set out at **Annex A**, except when otherwise authorized by the Government in writing, and at such additional or alternative opening hours as may be approved or prescribed by the Government in writing.
- 3.3 The Business shall be operated by the Contractor as principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative.
- 3.4 The Government may at any time and from time to time provide to the Contractor and the Contractor shall stock and display for sale in the Licence Area to the reasonable satisfaction of the Government:
- (a) such Government publications in reasonable quantity as the Government may from time to time prescribe; and
 - (b) such publications, novelty and souvenir items in reasonable quantity as the Government may from time to time prescribe
- (hereinafter referred to as “Consignment Items”).
- 3.5 The sale price of Consignment Items shall be agreed between the Government and the Contractor, or in default of such mutual agreement, shall be such reasonable price as the Government may prescribe.
- 3.6 The Government reserves the right to arrange promotional sale of the Consignment Items through other channels outside the Licence Area and the discounts to be offered will be prescribed by the Government.
- 3.7 All proceeds from the sale of any and all of the Consignment Items shall be paid by the Contractor to the Government in such manner and at such times as the Government may from time to time require. For each Consignment Item sold, the Government shall pay to the Contractor a commission at the rate prescribed for that item by the Government. Total proceeds from the sale of the Consignment Items shall be included in the calculation of the Contractor’s gross monthly turnover from the Business. All Consignment Items shall remain the property of the Government until sold by the Contractor in the Arts Shop or until the Contractor pays to the Government the sale price of the Consignment Items, whichever is the earlier.

- 3.8 The Contractor shall submit to the Government at such intervals as the Government may approve or prescribe, but such intervals not to be less than one (1) month, a statement in a form approved by the Government showing inter alia details of all Consignment Items sold during the period since the last submission of such statement and the sale price at which each Consignment Item was sold as well as the remaining inventory level.
- 3.9 The Government reserves the right to withdraw any Consignment Items from the Licence Area at any time prior to their being sold without incurring any liability whatsoever to the Contractor.
- 3.10 The Government further reserves the right at all reasonable times and upon having given prior notice to the Contractor to enter the Licence Area and carry out stocktaking on the Consignment Items and, at the request of the Government, the Contractor shall give the Government access to all books and records relating to the inventory level, sale and proceeds of the Consignment Items.
- 3.11 The Contractor shall be liable to the Government for loss of or damage to any Consignment Items.
- 3.12 For the avoidance of doubt, nothing in this **Clause 3** shall serve to relieve the Contractor of its obligation under this Contract to stock and sell publications, souvenirs and novelty items on its own account as part of the Business to the reasonable satisfaction of the Government and in accordance with the Contract.
- 3.13 Where a person can produce at the time of purchase a current and valid identification as shall be prescribed by the Government from time to time, the Contractor shall offer a discount of ten percent (10%), or such other discounts or discount packages as shall be agreed between the Government and the Contractor from time to time, off the marked price of all Authorized Merchandise and Consignment Items, except for special sale items, that are offered for sale at the Licence Area.

- 3.14 For goods and souvenir items produced by the Contractor with the prior written approval of the Government to use the name of “City Hall” or its related images, designs or exhibits, the Government may at its discretion charge a royalty fee based on a percentage of the sale proceeds of such goods and souvenir items sold. The Contractor shall pay to the Government such royalties and submit to the Government a statement showing inter alia details of all royalties in such manner and at such times as the Government may from time to time require.
- 3.15 The Contractor shall keep and maintain proper books and records in respect of the Business including inter alia record of gross monthly turnover. The Contractor shall cause all such books and records to be made up on a monthly basis and retain the same for at least three (3) years from the commencement date of the Contract. The Contractor shall allow such person or persons as may be authorized by the Government at all reasonable times upon prior notice access to all books and records of the Contractor relating to the gross monthly turnover of the Business, and if required, to make copies of the same.

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 within the City Hall or otherwise.
- 4.2 The Contractor shall use the Licence Area only for the purpose of carrying out 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 within Licence Area and shall not use, cause, suffer or permit to be used for any purposes whatsoever any part of the City Hall outside the Licence Area without the prior written consent of the Government for such purpose or for any other purpose.
- 4.4 The name of the Arts Shop shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government 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, such name shall not be changed.
- 4.5 Notwithstanding any other provisions in the Contract, the area delineated as ARTS SHOP STOREROOM in **Annex C** shall only be used for storage purpose only.

5. Payment of Monthly Licence Fee

- 5.1 In consideration for the entitlement to operate the Business at the Licence Area, in respect of each month of the Contract Period (apart from the Free Decoration Period), the Contractor shall pay to the Government in advance a Monthly Licence Fee in the amount as specified in **Contract Schedule 1**, exclusive of any rates, Government rent, taxes, fees, charges and all other outgoings payable in respect of the Licence Area, and all costs and deposits of utilities incurred in the operation of the Business including telephone line, electricity, and necessary cleansing and servicing work for the Licence Area, and without any deduction or set-off whatsoever.
- 5.2 In respect of the Free Decoration Period:
- (a) no Monthly Licence Fee shall be payable during the Free Decoration Period, but the Monthly Licence Fee shall be payable immediately on a pro-rata basis upon the Contractor's commencement of operation of the Business, whether in whole or in part, during the Free Decoration Period; and
 - (b) without prejudice to the obligation of the Contractor to commence the Business no later than one (1) month after the date of commencement of the Contract Period in **Clause 3**, the Monthly License Fee shall be payable immediately upon expiry of the Free Decoration Period even if the fitting out work continues beyond the Free Decoration Period.
- 5.3 Subject to **Clause 5.1**, for each and every successive calendar month during the Contract Period, the Contractor shall pay to the Government in advance the Monthly Licence Fee as specified in **Contract Schedule 1** on or before the first day of each and every calendar month without any reduction.
- 5.4 If the Contractor fails to pay a Monthly Licence Fee by the due date specified in the demand note issued by the Government, the Contractor shall pay a surcharge on the Monthly Licence Fee calculated at a rate equivalent to the average of the best lending rates of the three note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made.
- 5.5 No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in the individual provisions of the Contract.
- 5.6 In the event that the first day of the second month of the Contract Period does not start on the first day of a calendar month, there shall be pro-rata adjustment of the Monthly Licence Fee for the second month of the Contract Period. In the event that the remaining period of the Contract Period after the last complete month is not a complete month, there shall be pro-rata adjustment of the Monthly Licence Fee for such remaining period. In the event that there is any temporary closure of the Licence Area under **Clause 6** in which the duration is within one (1) month of the

Contract Period, there shall be pro-rata adjustment of the Monthly Licence Fee for that month. In each case mentioned above, the adjustment shall be arrived at by multiplying the daily rate of the Monthly Licence Fee with the actual number of days of the relevant period or, in the case of any temporary closure, the actual number of days of that month which is unaffected by the temporary closure. The daily rate of the Monthly Licence Fee shall be arrived by dividing the Monthly Licence Fee as quoted in **Contract Schedule 1** by the actual numbers of days in the month in which the relevant period falls.

6. Temporary Closure of the Licence Area

- 6.1 Without prejudice to the rights and powers of the Government (including under **Clause 23** to effect a Suspension for Default), the Government may require a temporary closure of the Licence Area for any operational or other reason, including any of the reasons as specified in **Clause 6.2**, 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. Upon such temporary closure, including a temporary closure due to any ground specified in **Clause 6.2** for more than seven (7) days (on a single occasion basis but not on an accumulative basis), the Monthly Licence Fee shall not be payable for so long as such closure continues and, subject to **Clause 2.3**, the Contract Period will not be correspondingly extended after the temporary closure.
- 6.2 Without prejudice to the generality of **Clause 6.1**, the Government reserves the right to require a temporary closure of the Licence Area in whole or in part, by reason of fire or storm or damage or spread of any epidemic illness as mentioned in **Clause 22** (not being the result of willful default or misconduct or negligence of the Contractor, its employees or agents) or an act of God or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Contract Period.
- 6.3 Upon any temporary closure pursuant to this **Clause 6**, the Contractor shall cease operating the Business at the Licence Area for so long as the temporary closure continues.
- 6.4 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any temporary closure or cessation of the Business under this **Clause 6**.

6.5 Notwithstanding anything herein to the contrary, the government reserves the right to give less than seven (7) days' notice for urgent closure due to emergency events which are beyond its reasonable control.

6.6 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof arising from one single event (but not on an aggregate basis) for a period of less than seven (7) days' will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

7. Security Deposit

7.1 The Contractor shall, within seven (7) days from the date of the conditional acceptance of quotation, deposit with the Government via the Government Representative an amount equivalent to four (4) times of the quoted Monthly Licence Fee in **Contract Schedule 1** as security for the Contractor's due and faithful performance of the Contract. The Contractor shall pay the Security Deposit either in cash or in the form of a banker's guarantee on the terms set out in **Annex E** and issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government for the purpose of issuing Security Deposits.

7.2 The Security Deposit, if in the form of cash, shall be retained by the Government, or if in the form of a banker's guarantee, shall come into effect on the date of the commencement of the Contract Period and remain in force until the date specified in (a), (b) or (c) below, whichever is the applicable and the later:

- (a) the date falling six (6) months after the expiry of the Contract;
- (b) where the entire Security Deposit is wholly forfeited under **Clause 41.1**, the date of termination of the Contract; or
- (c) where there is no forfeiture but upon expiry or early termination of the Contract, 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, the date on which all such obligations and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

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

- 7.3 Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash and if any is remaining) be refunded to the Contractor without interest; or if in the form of a banker’s guarantee, be discharged or released.
- 7.4 The Government shall have the right to deduct from time to time from the Security Deposit in cash or call on the banker’s guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Security Deposit (whether in cash or in the form of a banker’s guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 7.5 If any deduction shall be made by the Government from the Security Deposit in cash or a call shall be made on the banker’s guarantee during the Guarantee Period, the Contractor shall, within fourteen (14) days on demand in writing by the Government, deposit a further sum or provide a further banker’s guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue of and form part of the Security Deposit. If the Contractor is required to provide a further banker’s guarantee under this **Clause 7.5**, the further banker’s guarantee must comply with the requirements in **Clause 7.1**, and shall come into operation on the date of its execution and remain in force until the date specified in **Clause 7.2(a), (b)** or **(c)**, whichever is the applicable and the later.
- 7.6 In the event that this Contract is early terminated under **Clause 40.1**, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government upon such termination without prejudice to the Government’s claims and demands under the Contract which cannot be satisfied by the Security Deposit.

8. **Restriction on Assignment and Sub-contracting**

- 8.1 Unless otherwise with the prior written consent of the Government, the Contractor shall not, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract (including without limitation the parting possession of the Licence Area in any manner whatsoever or the sub-contracting of the operation of the Business or any part thereof). The performance of the Contract by the Contractor shall be personal to it.
- 8.2 The Government may refrain from giving any written consent under **Clause 8.1** without giving any reason. If the Government does agree 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-contractor.
- 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 level), and employees and agents of any such sub-contractor as if they were its own.

9. **Licences, Permits and Certificates**

- 9.1 The Contract does not confer any licence, permit, certificate, waiver or exemption which the Contractor is obliged to apply under all applicable laws and regulations of Hong Kong in order to operate the Business at the Licence Area (“Requisite Permits”). Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.
- 9.2 The Contractor shall apply for or renew all Requisite Permits during the Contract Period. 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 Requisite Permits. The Contractor shall observe and comply with the requirements / conditions of any Requisite Permits issued to it in relation to the performance of the Contract.

- 9.3 The entitlement to operate the Business at Licence Area is conditional on the Contractor to have obtained all Requisite Permits, and that they remain valid and in force throughout the Contract Period and that the Contractor complies with all conditions and requirements stated therein.
- 9.4 The Contractor shall produce copies of all Requisite Permits, including but not limited to the Business Registration Certificate, from time to time upon demand by the Government.
- 9.5 Without affecting the generality of the foregoing, the Contractor shall make no claim of any kind whatsoever against the Government in the event of the Contractor's failure or inability for any reason to obtain or renew any Requisite Permits. The Contractor understands and agrees that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor cannot operate the Business pending the consideration of its applications and issuance or renewal of the Requisite Permits. The non-issuance of any of the Requisite Permits by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.

10. Warranties and Representations

- 10.1 The Contractor warrants and undertakes to the Government that:
- (a) the Contractor shall operate and maintain the Business at the Licence Area to the satisfaction of the Government during the Contract Period as may be approved or prescribed by the Government from time to time;
 - (b) it has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
 - (c) it has all necessary licences, permits and consents to enter into this Contract and to operate the Business at 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;
 - (d) this Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;

- (e) all consents, approvals, licences and certificates have been duly obtained for the manufacture, sale, supply and use of the Authorized Merchandise and the aforementioned activities will not contravene any applicable laws;
- (f) the entry into this Contract, the performance of the Contractor's obligations under the Contract, and the Contractor's operation of the Business will not conflict or result in breach of:
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum and articles of association);
 - (ii) any contract or arrangement to which it is a party or by which it is bound;
 - (iii) any order, judgment or decree of any court or government agency to which it is a party or by which it is bound; or
 - (iv) any applicable laws and regulations.
- (g) it shall comply with and observe all applicable laws and regulations in the operation of the Business at the Licence Area and in the performance of its obligations under this Contract;
- (h) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorize the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect;
- (i) the Authorized Merchandise conforms in all respects to the requirements specified in **Contract Schedule 5** and, where applicable, with any sample approved by the Government;
- (j) the Contractor owns, has obtained and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract, and it shall not infringe or cause, suffer or allow infringement of any Intellectual Property Rights of any person in the course of operation of the Business at the Licence Area;

- (k) all items to be stocked, displayed or for sale at the Licence Area do not consist of or contain any materials which infringe the Intellectual Property Rights of any person ;
- (l) in respect of any items to be stocked, displayed or for sale at the Licence Area, and in respect of which any Intellectual Property Rights are vested in a third party, the Contractor has or shall have a valid and continuing licence or right under which it is entitled to stock, display or sell such items;
- (m) the Government, its authorized users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person by the Contractor's possession, stocking, display or sale of any item of whatsoever nature used or provided in the Licence Area or any activity conducted in the Licence Area or in connection with the operation of the Business in the Licence Area;
- (n) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Quotation and the Contract are true, accurate and complete;
- (o) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (p) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (q) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and
- (r) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

- 10.2 The warranties, representations and undertakings, expressed or implied, contained in **Clause 10.1** and other provisions of the Contract (collectively, “Warranties” and each, a “Warranty”) shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.
- 10.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

11. Fitting Out

- 11.1 The Contractor shall accept the Licence Area and the Government Provisions in the state and condition in which possession is given with effect from the first day of the Contract Period. The Government makes no warranty or representation of whatsoever nature concerning the Licence Area. The Licence Area shall be provided on an “as is” basis.
- 11.2 The Contractor warrants and undertakes to perform all of the following:
- (a) during the Free Decoration Period, to fit out the Licence Area at the Contractor’s own cost and expense in accordance with such plans and specifications as shall have been first submitted to and approved in writing by the Government in a good and proper workmanlike fashion and in all respects in a style and manner appropriate to the City Hall as a Grade 1 historic building and to maintain the same throughout the Contract Period in good repair and condition to the satisfaction of the Government;
 - (b) Prior to the commencement of any work, to submit to the Government for prior written approval all such plans, drawings, specifications, and other details as the Government may require of all the works which are required to be carried out by the Contractor under **Clause 11.2(a)**; and
 - (c) during the Free Decoration Period, to decorate the Licence Area in a décor approved in advance in writing by the Government and to a standard satisfactory to the Government and to maintain the standard of décor at all times to the Government’s satisfaction.

12. Maintenance and Repair

- 12.1 The Contractor shall furnish and provide all such equipment and furniture necessary for the efficient operation of the Business. All such equipment and furniture shall be of a design and standard to the satisfaction of the Government.
- 12.2 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 material 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 apparatus in good clean and proper repair condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 12.3 The Contractor shall keep and maintain at all times the equipment and furniture more particularly referred to in **Clause 12.2** in good repair and condition to the Government Representative's satisfaction and to replace the same or any or the same with new ones whenever necessary or when the Government Representative reasonably demands.
- 12.4 The Contractor shall repair or replace at the expense of the Contractor all the electrical wiring installations and fittings within the Licence Area and all such electrical wiring installations and fittings of the equipment/system belonging to the Contractor, if any, in any other part of the Licence Area if so required by the Government Representative and the relevant authority.
- 12.5 The Contractor shall be liable to the Government for any damage or loss to the Licence Area. If the Licence Area is found damaged, 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 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.

- 12.6 Except for the fitting-out work and other work expressly required under the Contract, the Contractor shall not make any alteration or addition to the Licence Area without the prior permission in writing by the government Representative and shall not carry out the repairs to the same without first obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government Representative and of a standard acceptable to the Government Representative.
- 12.7 For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Licence Area under the Occupiers Liability Ordinance (Cap. 314) (“Cap 314”) during the Contract Period. The Contractor shall indemnify each of the Government and the Government Representative fully from and against everything stated in **Clauses 38.2(a)** and **38.2(b)** including claims arising from any incident occurring within the Licence Area which constitutes as a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in Section 3 of Cap 314. To the extent permitted under Cap 314, neither the Government nor the Government Representative shall be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under section 5 of Cap 314.

13. Services

- 13.1 The Contractor shall 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. Without prejudice to the generality of the foregoing, the Contractor shall at all times ensure that the customer service provided at the Licence Area as part of the Business shall at all times suffice to meet the reasonable needs of the users of the City Hall and its facilities including but not limited to members of the general public, persons attending the functions and activities being held in the City Hall and group visitors to the City Hall.
- 13.2 The Contractor shall ensure that a high standard of customer service is maintained and all staff working in the Arts Shop conducts themselves in a courteous manner to the satisfaction of the Government.
- 13.3 The Contractor shall accept payment for all items sold at the Licence Area by all internationally recognized credit cards.

14. Other Covenants

- 14.1 The Contractor shall not request or receive any charges for admission to the Licence Area or its surroundings, nor to request or receive any other additional charges whatsoever whether by way of service charges or otherwise.
- 14.2 The Contractor shall not use any gramophone, radio or television loudspeaker, musical or karaoke instrument or similar apparatus or equipment in such a way that the same shall be audible inside and outside the Licence Area.
- 14.3 The Contractor shall not permit any smoking activities by:
- (a) patrons at the Licence Area; and
 - (b) employees and agents at the non-smoking area of the City Hall.

If the Government so requires, the Contractor shall display in a prominent position in the Licence Area a sufficient number of signs to indicate that smoking is prohibited in the Licence Area and such signs shall be of a design and size as approved or prescribed by the Government and shall be maintained at all times by the Contractor in good and legible condition.

- 14.4 The Contractor shall not 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.
- 14.5 The Contractor shall not 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.
- 14.6 The Contractor shall not 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 City Hall outside the Licence Area without the prior written consent of the Government.
- 14.7 The Contractor shall not allow the preparation, cooking, reheating or otherwise of food in nor delivery of food to the Licence Area or any part thereof.

15. Not to Employ Illegal Workers

The Contractor shall not employ illegal workers in the performance of this Contract. Any employment by the Contractor in breach of this Clause shall entitle the Government to terminate this Contract under **Clause 40.1** hereof, and the Contractor shall be liable for all expenses necessarily incurred by the Government and the Government Representative as a result of such termination of Contract.

16. Access by Government for Repair

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

17. Premises Hygiene and Safety

17.1 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 to take all such steps and precautions to the reasonable satisfaction of the Government to prevent the Licence Area or any part thereof from becoming infested by any pests or vermin.

17.2 The Contractor shall take all reasonable precautions to protect the Licence Area from damage by fire, storm, typhoon or the like and shall install and provide suitable equipment and systems, and so on to protect the Licence Area and Government Provisions from any such damage, and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government previously in writing and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government. Such installation shall thereupon become the property of the Government free of any costs or charges. The Contractor shall be responsible to maintain and repair such installation in safe and proper condition at its own expense as well as to remove the same should the Government so direct.

- 17.3 The Contractor shall assume full responsibility for the safety and security of all operations and methods of operations.
- 17.4 The Contractor shall be responsible for the safety of any vehicle which it uses or brings alongside or onto the Theatre and it shall indemnify each of the Government and the Government Representative from and against everything specified in **Clauses 38.2(a) and (b)** arising from the use of such vehicles.

18. Outgoings

- 18.1 The Contractor shall pay all outgoings, charges and deposits including but not limited to the costs and deposits of utilities incurred the operation of the Business including telephone line installed in, and electricity supplied to the Licence Area and necessary cleaning and servicing work, and shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and the Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons.
- 18.2 Due to technical reasons, the Contractor may not apply for separate meters from the power company for the metering of electricity consumed by the Contractor's electrical equipment. Separate meters shall be installed by the Government Representative for this purpose ("Government Meters"). The Government will pay the entire amount of the monthly electricity bill for all electricity consumed within City Hall (including fuel clause adjustment) ("Gross Electricity Charge"). The Contractor shall throughout the Contract Period be obliged to reimburse the Government its share of the Gross Electricity Charge ("Contractor Electricity Share"). The Contractor Electricity Share based on each monthly electricity bill shall be paid by the Contractor to the Government within fourteen (14) days upon presentation of a demand note from the Government together with a copy of that electricity bill. The Contractor Electricity Share shall be calculated in accordance with the following formula:

The Gross Electricity Charge as shown in a monthly bill issued by the power company shall be divided by the total electricity consumption as shown in that monthly bill ("Unit Rate"). This Unit Rate shall then be multiplied by the electricity consumption by the Contractor's Electrical Equipment over the same period to which the monthly bill relates as measured by all Government Meters ("Contractor Electricity Consumption"). Where there is any period covered by a

monthly bill issued by the power company which is outside the Contract Period, there shall be further pro rata adjustment of the Unit Rate by dividing it by the number of days in the month to which the monthly bill relates. Such adjusted Unit Rate will then be multiplied by the Contractor Electricity Consumption and further multiplied by the number of days of the Contract Period which is covered by the month to which the monthly bill relates

- 18.3 In addition to the Contractor Electricity Share payable under **Clause 18.2**, the Contractor shall pay a deposit to the Government Representative as security for its obligation under **Clause 18.2** in the amount of Hong Kong Dollars One Thousand (HK\$1,000) (“Electricity Deposit”). The Electricity Deposit shall be payable within thirty days (30) days from the date of the notification of conditional acceptance of tender in cash or cashier order under **Clause 13.2(b)** of the Terms of Quotation.
- 18.4 In the event that the Contractor fails to pay a Contractor Electricity Share under **Clause 18.2**, without prejudice to other rights and claims of the Government, the Government Representative shall be entitled to make deduction from the Electricity Deposit and/or from the Security Deposit in satisfaction of such Contractor Electricity Share in such order as the Government Representative in its absolute discretion deems fit. The Electricity Deposit may be deducted, 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.
- 18.5 If any deduction is made by the Government Representative from the Electricity Deposit, the Contractor shall, within twenty-one (21) days on demand in writing by the Government Representative, deposit a further sum in a sum equal to the amount so deducted, which further sum shall be added to the residue of and form part of the Electricity Deposit.
- 18.6 The Electricity Deposit (if any amount is remaining) will only be refunded to the Contractor without interest when the Contractor has duly discharged its obligations under **Clause 18.2** in respect of all Contractor Electricity Shares payable throughout the Contract Period.

- 18.7 The Government Representative will conduct an assessment every year within the Contract Period to review the amount of the Electricity Deposit. In the event that two times the amount of the average Contractor Electricity Share over the past 12 months is more than the Electricity Deposit, the Contractor shall be required to top up the Electricity Deposit by such further amount as the Government Representative may require. Alternatively, the Government Representative may not require any top up depending on the excess amount.
- 18.8 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.
- 18.9 The Contractor shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons.

19. Cleansing, Collection and Disposal of Refuse and Litter

- 19.1 The Contractor shall maintain to the reasonable satisfaction of the Government the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition. If the Government in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof the Government may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government in its reasonable opinion may allow the necessary cleaning and servicing work in the Licence Area. In the event that the Contractor fails to carry out the works as directed, the Government may without further notice suspend the right of the Contractor to carry out the Business at the Licence Area under **Clause 23.1** in order to cause the Licence Area and its immediately vicinity to be cleaned and serviced and the Contractor shall pay the costs thereof to the Government on demand and shall remain liable to pay the Monthly Licence Fee to the Government without any deduction.
- 19.2 The Contractor shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government and shall collect all refuse and litter therein.

- 19.3 The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government at any time and from time to time for the removal and disposal of all refuse and litter thus collected in the course of the Business, or which is otherwise deposited by customers of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Licence Area nominated by the Government at any time and from time to time in such manner as approved or prescribed by the Government.
- 19.4 In the event of failure to comply with this **Clause 19**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government if the removal and disposal of such refuse and litter is being carried out by the Government or in cleansing any of the ventilation systems due to the act, default or negligence of the Contractor or any of its employees or agents.
- 19.5 At the sole cost of the Contractor, the Contractor shall employ or use only such cleaner or cleaning agent within the Licence Area as the Government shall approve or prescribe provided always that such approval may be withdrawn by the Government upon notifying the Contractor that it has reasonable ground for such withdrawal.

20. On-site Personnel

- 20.1 The Contractor shall require all persons employed or appointed to work at the Licence Area (whether by the Contractor or by any of its sub-contractors of whatever tier) (collectively, "On-site Personnel") to submit to such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Licence Area any person found by the medical practitioner to be likely to spread a communicable disease.
- 20.2 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance at the Licence Area at all times to supervise the On-site Personnel.
- 20.3 The Contractor shall be responsible for the good conduct of all On-site Personnel while they are in the Licence Area or any other parts of the City Hall in carrying out the Business, and shall ensure that they will behave accordingly.

- 20.4 The Contractor should establish strategies, including but not limited to providing customer service training to staff engaged for the Business for enhancing customer service to encourage repeated visits.
- 20.5 The Contractor should set up policies on refund / exchange of substandard goods and handling of customer complaints, etc.
- 20.6 The Government shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any member of the On-site Personnel.
- 20.7 The Government shall be entitled to refuse to admit to the Licence Area or any part thereof any member of the On-site Personnel, whose admission will be, in the reasonable opinion of the Government, undesirable.
- 20.8 Any removal demanded or refusal made under **Clause 20.6** and **Clause 20.7** shall not be construed as a breach of the Contract by the Government and the Contractor shall continue to carry out its obligations under the Contract.
- 20.9 The Government and the Government Representative shall in no circumstances be liable either to the Contractor or any of its sub-contractors or any member of On-site Personnel in respect of any liabilities, losses or damages occasioned by such removal demanded or refusal made as stipulated in **Clause 20.6** and **Clause 20.7** and the Contractor shall fully indemnify the Government and the Government Representative against everything stated in **Clause 38.2(a)** and **(b)** arising from any such removal or refusal.
- 20.10 The Contractor shall ensure that at all times when all On-site Personnel are at work or on duty in the Licence Area they shall wear such clothes and uniforms in a clean and tidy manner.
- 20.11 The Contractor shall ensure that all On-site Personnel shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 20.12 The Contractor shall ensure that a high standard of customer service is maintained and all On-site Personnel conducts themselves in a courteous manner to the satisfaction of the Government.

- 20.13 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for operating the Business. Such record shall include the name, Hong Kong Identity Card number and photograph and to produce such record for inspection by the Government on request. All personal data submitted by the Contractor will be used by the Government for the purpose of this Contract only.
- 20.14 The Contractor shall comply with the Employment Ordinance (Cap. 57). The Government may terminate the Contract under **Clause 40.1** if the Contractor is convicted of any offence under the Employment Ordinance (Cap. 57).
- 20.15 The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). The Government may terminate the Contract under **Clause 40.1** if the Contractor is convicted of any offence under the Minimum Wage Ordinance (Cap. 608).
- 20.16 The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). The Government may terminate the Contract under **Clause 40.1** if the Contractor is convicted of any offence under the Employees' Compensation Ordinance (Cap. 282).
- 20.17 The Contractor shall comply with the Immigration Ordinance (Cap. 115). If the Contractor is convicted of an offence under the Immigration Ordinance (Cap. 115) for employing a person who is not lawfully employable in Hong Kong, or is convicted of an offence for aiding and abetting another person to breach his condition of stay, the Government may terminate the Contract under **Clause 40.1**.
- 20.18 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 any other parties who may be affected by the Contractor's operation of the Business and provision of the Optional Services (if any). The Government may terminate the Contract under **Clause 40.1** if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance (Cap. 509).
- 20.19 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). The Government may terminate the Contract under **Clause 40.1** if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

20.20 Any conviction mentioned in **Clause 20.14** to **Clause 20.19** or any other provision of this Contract does not have to relate to this Contract. The conviction of a related person (as defined in **Clauses 17.7 and 17.8** of the **Terms of Quotation**) 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 40.1(g)**.

21. Electricity Supply

21.1 The Contractor, if so permitted by the Government, may consume electricity from supply points which are available at the Licence Area to operate the Business and shall pay all deposits, fees and charges in connection therewith. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatus 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 with respect to the utilities.

21.2 If electricity supply is not available at the Licence Area, or permission to use available supply is not granted or withdrawn, the Contractor shall at its own expense install and provide its own source of electricity supply required for the Business and pay all fees and charges in connection herewith.

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

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 for Default

- 23.1 In the event that the Contractor is in breach of any term and condition of the Contract, the Government shall be entitled to suspend the Contractor's right to operate the Business at the Licence Area ("Suspension for Default", and the Arts Shop affected by the Suspension for Default is "Suspended Business") by notice in writing to the Contractor for a period as specified in such notice and the Suspension of Default may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice ("Suspension for Default"). Without prejudice to the generality of the foregoing, the Government may suspend the Contractor's right to operate the Business at the Licence Area upon the default of the Contractor as mentioned in **Clause 9**, **Clause 20.1** or **Clause 34.2** where applicable.
- 23.2 Upon a Suspension for Default under **Clause 23.1**, 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 still remain liable to pay the Monthly Licence Fee in respect of the period of Suspension for Default and remain liable to perform and observe all other obligations under the Contract.
- 23.3 In the event that any default leading to the Suspension for Default under **Clause 23.1** has been remedied to the satisfaction of the Government, the Government may cancel the Suspension for Default by notice in writing to the Contractor ("Notice of Resumption"). Upon receipt of such Notice of Resumption, the Contractor shall resume the Business at the Licence Area by such date as specified in the Notice of Resumption. The Contract Period will not however be correspondingly extended due to any suspension under **Clause 23.1**.
- 23.4 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any Suspension for Default under **Clause 23.1**.

24. Non-exclusive Right of the Contractor

- 24.1 Nothing in this Contract shall confer on the Contractor any exclusive right to operate the Business in the City Hall.
- 24.2 Nothing in this Contract shall be regarded as in any way precluding, or negating, prejudicing or otherwise restricting the right of the Government to authorize any person (a) to bring into the City Hall or distribute freely or supply any commodities for consumption, for use or for sale; or (b) to operate any business and / or to provide any services of a similar / the same nature as the Business.

25. Intellectual Property Rights

The Contractor warrants to the Government that:

- 25.1 the Contractor will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person or persons in the operation of the Business at the Licence Area;
- 25.2 all items to be stocked, displayed or for sale in or from the Licence Area do not consist of or contain any materials which infringe the Intellectual Property Rights of any person;
- 25.3 in respect of any items to be stocked, displayed or for sale in the Licence Area, and in respect of which any Intellectual Property Rights are vested in a third party, the Contractor has or will have a valid and continuing licence or right under which it is entitled to stock, display or sell such items;
- 25.4 the Government, the Government Representative, their respective authorized users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person by the Contractor's possession, stocking, display or sale of any item of whatsoever nature used or provided in or from the Licence Area or any activity conducted in the Licence Area or in connection with the operation of the Business in the Licence Area; and
- 25.5 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;

- 25.6 if and to the extent any material in which Intellectual Property Right subsists is required for performing the Services, 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 materials and the Intellectual Property Rights for itself and for the Government Representative and its authorised users to use such materials; and
- 25.7 all and any materials to be supplied or provided by the Contractor to the Government Representative under the Contract and the plans submitted and form part of the Contract Schedules (“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 shall not be subject to any restriction and does not require any licence or consent or clearance from the Contractor in the use or disclosure of any such Materials

26. Stock and Sale of Commodities

- 26.1 Unless with the prior written approval of the Government at its absolute discretion, the Contractor shall tie in with the service, image, function and activities of the City Hall and for the promotion of performing and /or visual arts as well as sell in the Arts Shop commodities including gifts, souvenirs, audio visual products, publications, arts products and novelty products in accordance with **Contract Schedule 5** .
- 26.2 Unless otherwise specified in the Contract, the Contractor shall stock in sufficient quantities and sell only the Authorized Merchandise and other items approved or prescribed by the Government of a standard to the satisfaction of the Government.
- 26.3 Unless otherwise specified in the Contract, the Contractor shall not sell any commodities that are not Authorized Merchandise as listed in **Contract Schedule 5** unless with the prior written approval of the Government. Any alternation of the Authorized Merchandise may only be made after obtaining the prior written approval of the Government.
- 26.4 Notwithstanding the prior approval of any items appearing in **Contract Schedule 5** or other prior approval from time to time, the Contractor shall forthwith remove from display and cease to sell or to continue to stock, display or sell any commodities or merchandise or any other items and materials whatsoever used or provided in or from the Licence Area or in connection with the performance of the Contract:

- (a) to which the Government has notified its objection to the Contractor as being inconsistent with the objectives of the Business or the objectives / images of the City Hall, or that of the Government;
- (b) of which there is an allegation of infringement of Intellectual Property Rights of any person or persons; or
- (c) which consists of or contains any materials that infringe or may infringe the Intellectual Property Rights of any person or persons. The Government shall not liable for any losses suffered or expenses incurred whatsoever by the Contractor as a result of such suspension from sale or removal of item concerned.

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

- 26.5 The Contractor shall not stock, display, sell or provide at the Licence Area any alcoholic products, cigarettes, cigars or tobacco products whatsoever.
- 26.6 The Contractor shall abide by any directions as to the quality of the commodities sold or offered for sale at the Licence Area as may be given by the Hong Kong Consumer Council.
- 26.7 The Contractor shall provide to customers receipts of commodities sold in the Arts Shop, which specify the commodities sold and the respective prices.

27. Display of Commodity Prices

- 27.1 The Contractor shall prominently display at all times the prices of all items sold at the Arts Shop. The displays must be in both Chinese and English and shall be put up in such form, manner and at such locations as shall be approved or prescribed by the Government.

27.2 The Contractor shall display clearly the fixed prices for all commodities for sale in a style to be approved by the Government and not on any occasion to charge a price exceeding the fixed price so displayed. In the case of commodities which have a wholesaler or manufacturer recommended Hong Kong retail price, then a price not higher than that price shall be adopted and where such prices are stated in foreign currency(ies), the Contractor shall make available for inspection the Hong Kong dollar exchange rate(s) applied by the Contractor for the time being to the foreign currency(ies) concerned to any customer who so requests, and to notify the Government of any changes to the said exchange rate(s). Where no recommended Hong Kong retail price is available, the commodities will be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlets or in the case where such commodities are not sold by the Contractor at its other retail outlets then within the range of prices charged in similar types of retail outlets in Hong Kong.

28. Erection of Structure

28.1 Unless with the prior written approval from the Government, the Contractor shall not allow or permit any structure to be erected in or at the Licence Area and its immediate vicinity, apart from signboard(s) bearing the trade name of the Business in both Chinese and English approved in writing by the Government.

28.2 The number, size, location of and ways of erecting the signboard(s) stipulated in **Clause 28.1** shall be those approved or prescribed by the Government in writing.

29. Watchman

29.1 The Contractor shall not allow any person including but not limited to any watchman to remain in the Licence Area overnight without the prior permission in writing by the Government. The Contractor shall immediately remove such person from the Licence Area if the Government notifies the Contractor in writing of the withdrawal of its approval for such person to stay overnight at the Licence Area.

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

30. Store of Dangerous Goods and Prohibited Goods

The Contractor shall not keep, store or cause, permit or suffer to be kept or stored in the Licence Area any dangerous or prohibited goods or liquid petroleum gas or any other types of fuel within the meaning of the Dangerous Goods Ordinance (Cap. 295) or any arms, ammunition, explosives or combustible substance.

31. Fire Precautions

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

31.2 No naked flame is permitted in the Licence Area.

32. Government Provisions

32.1 The Contractor shall keep and maintain the Government Provisions as stipulated in **Contract Schedule 6** and all other Government property located in the Licence Area (movable or immovable) or otherwise from time to time provided to the Contractor for use (if any) in good, clean and serviceable condition to the satisfaction of the Government. The Contractor shall be responsible for the due and immediate return of all such Government Provisions in good repair, clean and serviceable condition at any time upon request by the Government and / or at the expiry or early termination of the Contract.

32.2 The Contractor shall not make any alteration or addition to the Government Provisions provided by the Government therein without the prior permission in writing by the Government and shall not carry out the repairs to the same without first obtaining the prior approval of the Government. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government and of a standard acceptable to the Government.

32.3 The Contractor shall be liable to the Government for any damage or loss to any of the Government Provisions. If any of the Government Provisions is found damaged or lost, as the case may be in whatsoever scale and from whatsoever cause while in the possession or control of the Contractor, the Government shall be entitled to recover

from the Contractor as a debt due to the Government all losses, liabilities, costs and expenses that it has incurred in the execution of such repair or replacement together with all costs and expenses incurred by the Government 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.

- 32.4 All Government Provisions shall remain the property of the Government and the Government reserves the right to take stock checking of the same at any time and the Contractor shall provide every assistance to the Government for this purpose.

33. Access Granted to the Contractor

- 33.1 The Contractor shall have, during the continuance of the Contract Period but subject always to all rights and powers of the Government under the Contract the non-exclusive, non-transferable, non-assignable right to access and to occupy the Licence Area as delineated at **Annex C** 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.

- 33.2 Save and except with the prior permission of the Government and other than the Licence Area, the Contractor shall not cause, suffer or permit any of its servants or agents to enter into any part of the City Hall where the general public does not have access to.

- 33.3 The right of access and use as specified in **Clause 33.1**, unless approved otherwise by the Government, will only be limited to the opening hours of the Licence Area as stated at **Annex A**.

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

34. Inconvenience or Annoyance Caused at City Hall

- 34.1 The Contractor shall ensure that all On-site Personnel, suppliers, and permitted sub-contractors perform their duties in an orderly manner and in as quiet a manner as

may reasonably be practicable having regard to the nature of the duties being performed by them.

- 34.2 The Contractor shall not do anything in or upon the Licence Area or any part of the City Hall 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 City Hall, the Government, its employees or agent working in City Hall. The Government shall be entitled to suspend the Contractor's right to operate the Business at the Licence Area under **Clause 23.1** for non-compliance with this **Clause 34.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.
- 34.3 The Contractor shall not place or leave, or cause, suffer or permit to be placed or left any of its trade equipment, stores, provisions, furniture, fixtures, fittings, chattels or other things whatsoever at any places within the Licence Area or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government if the Government in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this Clause and without prejudice to any other rights and remedies which the Government has or may have under the Contract, the Government shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Contractor to seize and dispose of any such property in such manner as the Government may see fit without any liabilities whether towards the Contractor or any person otherwise and the Contractor shall pay the Government on demand all the costs in relation with such removal and / or disposal which are incurred by the Government.

35. Inspection and Rejection

- 35.1 The performance of any obligation by the Contractor of this Contract including the operation of the Business at the Licence Area shall be subject to inspection by the Government at any time.
- 35.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government 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 result of such action which does not strictly conform to the terms and conditions of the Contract including any action that may constitute as non-compliance with any condition stated in Requisite Permits or will lead to revocation of any of such Requisite Permits.

- 35.3 Within twenty-four (24) hours of being notified in writing of the rejection of any action undertaken by the Contractor or result of such action pursuant to **Clause 35.2**, the Contractor shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government.
- 35.4 If the Contractor shall fail to rectify such rejected action or result of action, the Government may without prejudice to any other rights and remedies available to the Government carry out and complete such rectification by its own employees or agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith on demand or otherwise in accordance with the express provisions applicable to the relevant failure. The staff of the Government will normally carry out such rectification on working days during normal business hours. In addition to the administrative costs recoverable from the Contractor for performing any such work within the normal working hours, if any work is carried out by the staff of the Government outside working days and / or normal business hours, the Contractor shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

36. Contractor's Act and Default

Any act, default, neglect or omission of any officer, employee, agent, or sub-contractor of the Contractor, or any patron or visitor of the Licence Area (collectively "Contractor Responsible Group"), shall be deemed to be the act, default, neglect or omission of the Contractor and the Contractor shall be responsible for them as if they are its own.

37. Government to Recover Cost

If the Contractor shall fail to carry out any of its obligations or duties under this Contract and the Government executes such obligations or duties on behalf of the Contractor, without prejudice to the other rights and claims of the Government, the Government shall be entitled to recover from the Contractor as a debt due to the Government all costs and expenses that it has incurred in executing such obligations or duties or procuring the service of a third party to execute such obligations or duties including all administrative and legal costs for supervising and monitoring the performance of such obligations and duties and enforcing its rights under this **Clause 37**.

38. Liability and Indemnity

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

- (a) any loss of or damage to any of the Contractor's property or the property of any member of the Contractor Responsible Group however caused (save in the case it is caused by the gross negligence or wilful default of the Government);
or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any any member of the Contractor Responsible Group, save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents (in the course of their employment).

38.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title and the public officers of the Government (each an "Indemnified Person") from and against:

- (a) all and any claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings, or judgments, joint or several, threatened, brought, instituted or established by any person against an Indemnified Person ("Third Party Claims");
- (b) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses (including without limitation those liabilities and indebtedness, losses, damage, injury or death arising from any Third Party Claim, and liabilities to pay damages or compensation, and all legal and expert fees and other awards, costs, payments, charges and expenses on a full indemnity basis whether incurred in any Third Party Claim or incurred in any claim or proceedings or arbitration brought by an Indemnified Party);

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 by any person of the Contractor Responsible Group;
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, or by any person of the Contractor Responsible Group;
- (iii) any warranty or representation made by the Contractor in the Contractor in the quotation 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 person of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority;
- (v) any death or injury or loss or damage of property as mentioned in **Clause 38.1** except for 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); or
- (vi) any default, unauthorized act or willful misconduct of the Contractor, its employees, agents or sub-contractors.

38.3 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).

38.4 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 or 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 Responsible Group.

38.5 The Contractor shall notify the Government Representative in writing of any of the following:

- (a) any injury to or death of any of the Contractor Responsible Group; or

- (b) any loss of or damage to the Government Provisions or other property of the Government or to the property of any of the Contractor or of Contractor Responsible Group,

as early as possible and in any event within forty-eight (48) hours of the occurrence of such injury, death, loss or damage or after such injury, death, loss or damage comes to the Contractor's knowledge, and deliver to the Government a written report within seven (7) working days after the occurrence of the injury, death, loss or damage. The requirement of notifying and reporting to the Government and / or the Government Representative under this Clause shall not exempt or excuse the Contractor from compliance with any law.

39. Public Liability Insurance

- 39.1 The Contractor shall effect at its own expense a public liability insurance policy ("Public Liability Insurance 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 Companies Ordinance (Cap. 41) on such terms and conditions to be approved by the Government in writing in advance.
- 39.2 The Public Insurance Liability Policy shall:
- (a) indemnify the insured in respect of all sums which each of the insured shall become legally liable to pay as compensation for any death of or injury to or illness suffered by any person (other than an employee where such death or personal injury arises out of and in the course of employment) or any loss or damage of property belonging to any person; and
 - (b) indemnify each of the insured from and against payment of legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.
- 39.3 The Contractor shall keep the Public Liability Insurance Policy in force throughout the continuance of the Contract Period and shall, if required, deposit with Government for record such Public Liability Insurance Policy together with the receipt for payment of the current premiums.

- 39.4 Where the terms of the Public Liability Insurance Policy taken out by the Contractor require the insured parties to bear any excess amount in the event of claims, the Contractor shall be personally and solely responsible for the payment of such excess amount and shall reimburse the Government for such payment (if paid by the Government).
- 39.5 The Public Liability Insurance 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. Under no circumstances whatsoever shall the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 39.6 The Public Liability Insurance Policy shall include a cross liability clause so that it shall be treated that a separate policy has been issued to each of the Contractor and the Government.
- 39.7 The Contractor is responsible for lodging all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage provided that the Government shall have right to liaise with the insurance company on any matter of such claims.
- 39.8 If the Contractor fails to effect or to keep in force the Public Liability Insurance Policy or any other insurance which it may be required to effect under the terms and conditions of the Contract, the Government may effect and keep in force any such insurance and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with **Clause 7** or may recover the same as a debt due to the Government from the Contractor.
- 39.9 The Contractor shall conform to the terms and conditions of the Public Liability Insurance Policy and Product Liability Insurance Policy, and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby these policies shall be rendered void or voidable, or which would otherwise amount to a breach of these. The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against everything stated in **Clauses 38.2(a) and (b)** which may arise from any failure of the Contractor to observe and comply with this Clause.

39.10 The Contractor shall take out and maintain the employees' compensation insurance as required under the Employees' Compensation Ordinance, Cap 282 of the Laws of Hong Kong.

40. Termination

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

- (a) the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract and in the case of a breach capable of being remedied, the Contractor fails within fourteen (14) days (or such longer period as the Government Representative may allow) to remedy the breach following from the issue of a notice from the Government Representative requiring it to do so (such notice shall contain a warning of the Government's intention to terminate the Contract);
- (b) if the Contractor is at any time adjudged bankrupt, or has a receiving order or orders for administration of its estate made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6) for the time being in force, or makes any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports to do so, or suffers any execution to be levied on its goods and assets in the Licence Area, or a petition is filed for the bankruptcy or winding up of its Business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government in writing; or
- (c) if the Contractor, being a company, passes a resolution, or the court makes an order for the liquidation of its assets, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances which have arisen entitle the court or debenture holders to appoint a receiver or manager; or
- (d) if the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the bidding process of the Contract;

- (e) If the Contractor assigns or transfers or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government; or
 - (f) if the Contractor unilaterally ceases the Business at the Licence Area and / or unilaterally terminate the Contract at any time prior to the expiry of the Contract; or
 - (g) if there is any claim or allegation or the Government has reasonable grounds to believe that the Contractor in the course of performing the Contract, or any goods or materials supplied or to be supplied by the Contractor, has infringed or may infringe the Intellectual Property Rights of any person; or
 - (h) any event or circumstance occurs which gives the Government the right to terminate the Contract under any provision of the Contract.
- 40.2 If the Government is at any time prevented from performing the Contract by force majeure, then the Government shall serve a notice on the Contractor to this effect whereupon the Contract shall terminate immediately.
- 40.3 For the purpose of **Clause 40.2**, “force majeure” means acts of God, strikes, lockouts, acts of war affecting Hong Kong and / or any other parts of the People’s Republic of China (“PRC”), hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and / or the government of the PRC, civil war, riot, civil disorders or disturbances, civil commotion, supervening epidemic outbreak in Hong Kong, or other similar or different events or contingencies beyond the reasonable control of the parties to this Contract. For these purposes an event shall not be deemed to be within the control of the Government on the ground that the Government could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.
- 40.4 Notwithstanding anything herein to the contrary, the Government may without cause early terminate this Contract at any time during the Contract Period by giving not less than thirty (30) days’ prior notice to the Contractor in writing of termination specifying the date of termination.

40.5 The grounds for termination specified in this **Clause 40** are separate and independent, and shall not be limited by reference to or inference from the other of them.

41. Effect of Termination

41.1 Unless otherwise specifically stated, in the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in **Clause 40** or otherwise (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breach(es) of the Contract by the Contractor (including any breach(es) which entitle(s) the Government to terminate the Contract);
 - (ii) any accrued rights or liabilities of either party prior to the Termination; and
 - (iii) the coming into force or the continuance in force and the validity of all provisions of the Contract which are expressed to or which in their context by implication come into or continue in force on or after the Termination (including but not limited to **Clauses 5, 8, 10, 36 to 38, 40 to 46, 48 to 57 and 60**)
- (b) neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract;

- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under **Clause 38.2**, in the event that this Contract is terminated under **Clause 40.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government arising from the Termination including without limitation to:
- (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination;
 - (ii) all administrative and legal costs incurred by the Government for the Termination; and
 - (iii) all administrative and legal costs incurred by the Government for issuing an invitation to bid for a new replacement contract similar to the Contract;
- (d) the Contractor shall forthwith pay up all unpaid Monthly Licence Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in **Clause 5.4**;
- (e) in the event that the Termination is under **Clause 40.1**, there shall be a forfeiture of the Security Deposit in its entirety without prejudice to the Government's claims and demands under the Contract which cannot be satisfied by the Security Deposit;
- (f) the Contractor shall immediately deliver up vacant possession of the Licence Area and all Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government in good repair (fair wear and tear excepted) and in clean and hygienic condition, provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government's consent, the Government may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government's fixtures and installations thereof by such deadline date as specified by the Government (whether to fall before or

after the Termination) before delivering up the Licence Area to the Government. Alternatively, the Government may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government so chooses without any compensation to the Contractor whatsoever. For the avoidance of doubt, the Contractor shall be entitled to remove its own trade fixtures and trade equipment;

- (g) the Contractor shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Government or do not form part of the Government Provisions 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;
- (h) the Contractor and all persons of the Contractor Responsible Group shall vacate the Licence Area and deliver up all keys and access cards to the Licence Area;
- (i) if the Contractor shall fail to comply with **Clause 41.1(f)** or **(g)** or **(h)**, the Government may forthwith enter the Licence Area to remove any persons therein, or to remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in a good repair and clean and serviceable condition. The Government reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Contractor upon the Termination. All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due to the Government from the Contractor.

42. Set-off

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

from the Government to the Contractor under the Contract or any other contract made between the Government and the Contractor.

43. Recovery of Sums Due

If the Contractor fails to pay any amount due or payable or otherwise upon demand by the Government pursuant to any applicable provision of the Contract, the Government shall be entitled to deduct the same from the Security Deposit in accordance with **Clause 7** and / or may recover the same as a debt due to the Government from the Contractor in such order as it deems appropriate regardless of whether it is specifically stated in the relevant provision that such amount may be recovered as a debt due to the Government from the Contractor.

44. Corrupt Gifts

If the Contractor or any employee or agent of the Contractor shall be 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 may terminate the Contract under **Clause 40.1**.

45. 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 as soon as possible and a written receipt obtained therefrom.

46. Publicity and Advertisement

46.1 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.

46.2 Save and except where the Government at its discretion may permit or require, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the License 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.

- 46.3 Without prejudice to the generality of **Clause 46.2**, 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.
- 46.4 Whether before, during or after the expiry or early termination of the Contract, the Contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 46.5 Subject to **Clause 46.4**, the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Authorized Merchandise or other commodities supplied or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.
- 46.6 Notwithstanding any consent or approval given under this **Clause 46**, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

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

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

48. Conflict of Interest

- 48.1 The Contractor shall during the Contract Period and for three (3) months thereafter:
- (a) ensure that it (including each and every employee of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons, shall not undertake any service, task, or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the Government (which approval shall not be unreasonably refused or delayed); and
 - (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Contractor or any of the Contractor's sub-contractors or any of their respective employees, officers and agents deployed for the performance of the Contractor's obligations hereunder or their respective associates or associated persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.
- 48.2 The Contractor shall ensure that each of its associate and associated person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of the Contractor's obligations hereunder and their respective associates and associated persons shall keep themselves informed and inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.
- 48.3 In the Contract:
- (a) "associate" in relation to any person means:
 - (i) a relative or partner of that person; or

- (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- (b) “associated person” in relation to another person means:
 - (i) any person who has control, directly or indirectly, over the other;
 - (ii) any person who is controlled, directly or indirectly, by the other; or
 - (iii) any person who is controlled by, or has control over, a person at (i) or (ii) above;
- (c) “control” in relation to another person means the power of a person to secure:
 - (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person;
 - (ii) by virtue of powers conferred by any constitution, articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
 - (iii) by virtue of holding office as a director in that or any other person;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;
- (d) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and
- (e) “relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.

49. Confidentiality

- 49.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor (“Confidential Information”). The Contractor’s obligations under this **Clause 49** shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 49.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all action, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
 - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486), which action and / or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
 - (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).
- 49.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or early termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the Government’s prior written consent.

- 49.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of the Contract.
- 49.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- 49.6 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this **Clause 49** and the Official Secrets Ordinance (Cap. 521).
- 49.7 The Contractor undertakes, if so requested by the Government, to deliver to the Government on such date as specified by the Government, separate confidentiality agreements duly executed by the Contractor and / or each person to whom any Confidential Information is to be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this Clause unless each confidentiality agreement is executed on terms prescribed by the Government.
- 49.8 The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.
- 49.9 If the Contractor becomes aware of any breach of confidence by any of its employees, agents or sub-contractors, it shall promptly notify the Government and give the Government all reasonable assistance in connection with any action or proceedings which the Government may take or institute against any such persons.
- 49.10 The provisions of this **Clause 49** shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

50. Probity

50.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200); and
- (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted.

50.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Cap. 201)) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

50.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

51. Service of Notice

51.1 Any notice, demand, invoice, correspondence or other communication to be given or made under the Contract by a party shall be in writing and shall be delivered or sent to the other party at the address, facsimile number or email address of the recipient set out below (in the case the recipient is the Government) or in **Clause 4** of the **Articles of Agreement** (in the case the recipient is the Contractor) or to such other address as either party shall notify the other in writing by no less than five (5) days' prior written notice. Notice may be delivered personally, by post, by facsimile or by email.

51.2 The Government Representative's details are as follows:

Address : 5 Edinburgh Place, Central, Hong Kong
Fax Number : 2877 0353
Email Address : mchbm@lcsd.gov.hk
Attention : Manager (City Hall) Building Management

51.3 Such notices, demands, invoices, correspondences or other communications shall be addressed as provided in **Clause 51.1** and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post, four (4) days (for any place in Hong Kong) and seven (7) days (for any place outside Hong Kong) after the date of posting;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by a transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
- (d) if sent by email, when actually received in a form readable by an individual.

52. **Waiver of Remedies**

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

- 52.2 Without prejudice to the generality of **Clause 52.1**, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.
- 52.3 Acceptance of any payment by the Government shall not be deemed to operate as a waiver by the Government of any right to proceed against the Contractor in respect of any breach, non-observance or non-performance by the Contractor of any of the terms and conditions of this Contractor on the Contractor's part to be observed and performed.
- 52.4 No condoning, excusing or overlooking by the Government of any default, breach, non-observance or non-performance by the Contractor of any of the obligations of the Contractor under the Contract shall operate as a waiver of the Government's right under the Contract in respect of any continuing or subsequent default, breach, non-observance or non-performance.

53. Severability

- 53.1 In the event that any provisions of the Contract or any part of any such provisions shall at any time be found by any authority or adjudged by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provisions or such part of such provisions, as the case may be, shall be severed from the remaining provisions of the Contract and rendered ineffective so far as possible without modifying the remaining provisions of the Contract.
- 53.2 If at any time any one or more provisions hereof shall be found by any authority or adjudged by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the remaining provisions of the Contract, all of which shall remain in full force and effect.

54. Entire Agreement

The Contract embodies the entire understanding of the parties and supersedes any and all previous agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government.

55. Variations

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to any provision of the Contract shall be valid unless made by a written instrument duly signed by the Government and the Contractor.

56. Further Assurance

The Contractor shall at its own cost and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions in this Contract 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.

57. Relationship of the Parties

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. 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.

58. Applicability of Public Health and Municipal Services Ordinance

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

59. Contracts (Rights of Third Parties) Ordinance

- 59.1 It is noted that there is no provision in Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (“Cap 623”) which states that the Ordinance applies to the Government or contracts entered into by the Government.
- 59.2 Notwithstanding **Clause 59.1**, it is hereby declared that no person may be treated as a third party who or which may enforce any term of the Contract under or for the purposes of section 4 of Cap 623.
- 59.3 Nothing in **Clause 59.2** 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 (including the Government Representative) 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** 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 Representative or the Government 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.

60. Governing Law and Jurisdiction

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

PART 3
CONTRACT SCHEDULES

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CONTRACT SCHEDULE 1

Monthly Licence Fee

Failure to fill in the amount of Monthly Licence Fee below or submit this Contract Schedule 1 before 12:00 noon on the Quotation Closing Date will result in the Quotation not being considered further.

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

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

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

Period	Monthly Licence Fee
For each month of the Contract Period of thirty-six (36) months, subject to a Free Decoration Period of up to one (1) month (as stipulated in Clause 2.1 of the Conditions of Contract) but subject to any extension or early termination or suspension under any applicable provision of the Contract.	Amount (HK\$)
	HK\$ _____ per month

Name of Bidder: _____

Date : _____

Name and title of Authorized Representative: _____

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

(with firm / company chop)

* Delete as appropriate

CONTRACT SCHEDULE 2

Business Plan

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

Failure to submit this Contract Schedule 2 or any of the plans requested below before 12:00 noon on the Quotation Closing Date will result in the Quotation not being considered further.

The plans submitted below shall be binding on the Bidder and form part of the Contract in the event that the Contract is awarded to it. The Contractor has to seek written approval from the Government to revise plan(s) and proposal(s) incorporated in paragraphs 1 to 2 below.

1. Facilities and Decoration Plan

Bidders must provide information on items (i) and (ii):

- (i) a facilities and decoration plan with details such as the description of the proposed overall design theme for the decoration, shop front design, furniture and facilities of the Licence Area to blend with the service, image, functions and activities of the Hong Kong City Hall; and

- (ii) sketch drawing of design layout and colour scheme to tie in with the architectural design and artistic identity of the Hong Kong City Hall.

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

Name of Bidder: _____

Date : _____

Name and title of Authorized Representative: _____

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

(with firm / company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 2

Business Plan

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

2. Operation and Staff Plan

Bidders must provide information on items (i) and (ii):

- (i) an operation plan which includes aspects such as purchase of commodities, inventory control, safe-keeping and replenishment of stock; and

- (ii) a staff plan which includes information on staff deployment in running the business, information of the proposed work force including the number of staff for the Licence Area, the requirement of operations / marketing / administration staff's working experience and qualification.

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

Name of Bidder: _____

Date : _____

Name and title of Authorized Representative: _____

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

(with firm / company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 2

Business Plan

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

3. Customer Service Plan

Bidders must provide information on items (i), (ii) and (iii):

(i) the plan provision of customer services training to staff engaged for the business so as to provide courteous and efficient services to customers;

(ii) the strategy for enhancing customer services to encourage repeat visits; and

(iii) Policy on refund / exchange of substandard goods, handling of customers' complaint, etc.

Name of Bidder: _____

Date : _____

Name and title of Authorized Representative: _____

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

(with firm / company chop)

* Delete as appropriate

CONTRACT SCHEDULE 3**Information of the Bidder****(Information provided can be written in English or Chinese or both)**

1. In support of my / our* offer for the grant of the Contract, I / we* would provide the following information:

(A) If the Bidder is a Sole Proprietor

(If the Bidder is a sole proprietor, please complete (A) and strike out (B) and (C).)

(a) Name of Sole Proprietor: _____ (in English)
 _____ (in Chinese)

(b) Hong Kong Identity Card No.: _____

(c) Residential Address: _____

(d) Tel. No.: _____ Fax No.: _____

(e) Date of establishment of the sole proprietorship: _____

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

Expiry Date of Business Registration Certificate (if applicable):

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

Address of Banker and Branch: _____

Bank Account Number: _____

(h) I submit this quotation personally as the sole proprietor with details as shown above.

Signature of Sole Proprietor (i.e. the Bidder): _____

Date: _____

* Delete as appropriate

CONTRACT SCHEDULE 3

Information of the Bidder

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

(B) If the Bidder is a partnership (i.e. firm)

(If the Bidder is a partnership, please complete (B) and strike out (A) and (C).)

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

(b) Address of the Firm: _____

(c) Tel. No.: _____ Fax No.: _____

(d) Date of establishment of the Firm : _____

(e) Business Registration Certificate Number of the Firm:

Expiry Date of Business Registration Certificate: _____

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

Address of Banker and Branch:

Bank Account Number: _____

(g) Names of all Partners (in BLOCK letters) and Percentage (%) of Ownership of each of the Partners:

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

(h) I myself am a partner of the above-mentioned firm and am duly authorized to bind the firm and all its partners by my signature.

Signature of the Partner: _____

 (with firm chop)

Name of the Partner: _____

Date: _____

* Delete as appropriate

CONTRACT SCHEDULE 3

Information of the Bidder

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

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

Address of Banker and Branch:

Bank Account Number: _____

(m) I am the Managing Director / Company Secretary / Authorized Representative * (please specify) _____ of the above-mentioned company / corporation* and am duly authorized to bind the above-mentioned company / corporation* by my signature. I attach to the Quotation Form a certified true copy of the above-mentioned company / corporation*'s Minutes of its board of directors / governing body* showing that I have been duly authorized by the its board of directors / governing body* to sign and submit this Quotation for and on behalf of the above-mentioned company / corporation*.

Signature of Authorized Representative
for and on behalf of the above-mentioned
company / corporation*:

(with company / corporation* chop)

Name of Authorized Representative: _____

Date: _____

* Delete as appropriate

(D) Other business being run at present:

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

(E) Proposed investment:

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

(F) Proposed number of staff to be employed for operating the business bidding for:

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

(G) Other information:

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

CONTRACT SCHEDULE 3**Information of the Bidder****(Information provided can be written in English or Chinese or both)**

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

Name: _____ Tel. No. _____

Contact information of Bidder or Authorized Representative signing this document:

Name(s): _____ Tel. No.: _____

Address(es): _____

Fax No.: _____ Email: _____

3. I / We* confirm that none of the events as mentioned in **Clauses 17.2(a) to 17.2(f)** of the **Terms of Quotation** has ever occurred within the applicable period(s) as mentioned in the respective sub-paragraphs of **Clause 17.1** of the **Terms of Quotation**.*

OR

I / We* hereby provide the details as required in **Clauses 17.2(a) to 17.2(f)** of the **Terms of Quotation** where applicable*:

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

(with firm / company chop)

* *Delete as appropriate*

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

CONTRACT SCHEDULE 4**Details of Experience**

In accordance with **Clause 6** of the **Terms of Quotation**, Bidders are required to submit the following information for evaluation. A Quotation will not be considered further if a Bidder fails to provide the required information upon request by the Government under **Clause 15** of the **Terms of Quotation**.

1. Trade Experience

The Bidder must have at least **Three** (3) aggregate year of experience in running retail business on products / services for its own account (i.e. as an owner) or as a contractor pursuant to one or more service contract(s) entered into by the Bidder, any time within the past ten (10) years immediately prior to the Quotation Closing Date as specified on the Quotation Form, irrespective of any extension of the Quotation Closing Date that may be made under **Clause 5.2** of the **Terms of Quotation**.

Name and location of the retail business	Date of commencement of operation	Length of period of operation	Mode of operation (as an owner or as a service provider)

Note:

- (i) The date specified in the Quotation Form as the latest date by which quotations must be lodged shall be the cut-off date for calculating the Bidder's years of experience, irrespective of any extension of the Quotation Closing Date that may be made under **Clause 5.2** of the **Terms of Quotation**, and experience obtained in different contracts / venues during overlapping period will be counted once only.
- (ii) A Bidder is required to **submit documentary proof, which shall be originals or certified true copies of the originals**, such as copies of contract to substantiate its claim of experience. Failure to do so will result in claimed experience not being taken into consideration.
- (iii) A Bidder is required to submit list of commodities of its business during the period counted as documentary proof, such as copies of contract, to substantiate its claim of experience.

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

_____ (with firm / company chop)

* Delete as appropriate

CONTRACT SCHEDULE 5

List of Authorized Merchandise

Subject to the prior written approval of the Government and taking into account the services, image, functions and activities of the City Hall, the Contractor is required to sell in the Arts Shop commodities including gifts, souvenirs, audio visual products, publications, arts products and novelty products, etc. **related to performing arts and visual arts** (“Authorized Merchandise”). Such Authorized Merchandise may include but not limited to the following categories:

- | | |
|---------------|-------------------------------|
| 1. Stationery | 7. Music book / publication |
| 2. Accessory | 8. Painting / sketching |
| 3. Instrument | 9. Postcard / greeting cards |
| 4. Ornament | 10. Poster |
| 5. CD/DVD | 11. Hand-crafted / wood-craft |
| 6. Magazine | 12. Pottery |

Bidders must provide the list of proposed commodities which can be written in English or Chinese or both

Commodities which, in the reasonable opinion of the Government, do not fall within the definition of Authorized Merchandise nor commensurate with the services, image, functions and activities shall not be accepted and permitted to be put up for sale in the Arts Shop, unless otherwise approved by the Government.

- Note:
- (i) The sale of Authorized Merchandise in the Arts Shop shall be subject to the grant of all necessary permits / certificates required under all applicable laws and regulations.
 - (ii) All Authorized Merchandise and their respective prices and fees must be prominently displayed in the Arts Shop.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

CONTRACT SCHEDULE 6**Government Provisions Made Available to the Contractor at the Licence Area**

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
1.	Roller shutter	1 set
2.	63 Amp single phase power supply	1
3.	Automatic smoke detector system	1
4.	Visual fire alarm	1

FORM OF SECURITY DEPOSIT ELECTION

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

To: The Chairman of Quotation Opening Committee,
Leisure and Cultural Services Department

If my / our* Quotation is accepted, I / we* shall elect, pursuant to **Clause 7 of Conditions of Contract**, to deposit with the Government , within seven (7) days from the date of the conditional acceptance of quotation or at such time as shall be directed by the Government, an amount equivalent to four (4) times of the quoted Monthly Licence Fee as specified in **Contract Schedule 1**, as security for the due and faithful performance of the Contract:

- * (a) in cash; or
- * (b) by way of a banker’s guarantee in the form set out at **Annex E** and issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government for the purpose of issuing Security Deposits.

Note: Delete as appropriate. In the event that the Bidder fails to elect which method of providing the Security Deposit it prefers in this Form of Security Deposit Election, it will be regarded to have undertaken to pay the Security Deposit to the Government in cash.

* *Delete as appropriate*

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

CHECKLIST BEFORE SUBMITTING QUOTATION

(The checklist serves to assist in completing and submitting the quotation. Please complete as appropriate.)

- | | Please ✓ if completed |
|--|------------------------------|
| Completion of Part II of Quotation Form - “Offer to be Bound” | |
| 1. Have you completed Part II of the Quotation Form - “Offer to be Bound” with all the required information (i.e. name of Bidder, address, name of authorized representative (if applicable), etc.)? | <input type="checkbox"/> |
| 2. If you are a sole proprietor, have you crossed out 5(a) to 5(c) in Part II of the Quotation Form ? | <input type="checkbox"/> |
| 3. If you are a firm / company, have you completed 5(a) to 5(c) in Part II of the Quotation Form ? | <input type="checkbox"/> |
| 4. Have you / your authorized representative <u>signed Part II of the Quotation Form</u> ? | <input type="checkbox"/> |
| Completion of Contract Schedule 1 – Monthly Licence Fee | |
| 5. Have you completed Contract Schedule 1 with the quotation of the Monthly Licence Fee? | <input type="checkbox"/> |
| 6. Have you / your authorized representative <u>signed Contract Schedule 1</u> ? | <input type="checkbox"/> |
| Completion of Contract Schedule 2 – Business Plans | |
| 7. Have you submitted with the quotation the plans as described in Contract Schedule 2 , including (i) the Facilities and Decoration Plan; (ii) the Operation and Staff Plan and (iii) Customer Services Plan as required under Clause 4.1(c) of the Terms of Quotation ? | <input type="checkbox"/> |
| Completion of Contract Schedule 3 – Information of the Bidder | |
| <i><u>If you submit the quotation in the capacity of a sole proprietor -</u></i> | |
| 8. Have you crossed out Paragraphs 1(B) and 1(C) of Contract Schedule 3 ? | <input type="checkbox"/> |
| 9. Have you filled in the required information in Paragraph 1(A) (i.e. name, Hong Kong Identity Card No., address, telephone No., date of establishment, Business Registration Certificate No., bank account No., etc.)? | <input type="checkbox"/> |
| 10. Have you <u>signed Contract Schedule 3</u> ? | <input type="checkbox"/> |
| <i><u>If you submit the quotation in the capacity of a firm -</u></i> | |
| 11. Have you crossed out Paragraphs 1(A) and 1(C) of Contract Schedule 3 ? | <input type="checkbox"/> |
| 12. Have you filled in the required information in Paragraph 1(B) (i.e. name of the firm, address of the firm, telephone No., date of establishment, Business Registration Certificate No., name and address of partners, bank account No., etc.)? | <input type="checkbox"/> |
| 13. Has one of your partners <u>signed Contract Schedule 3</u> ? | <input type="checkbox"/> |

CHECKLIST BEFORE SUBMITTING QUOTATION

If you submit the quotation in the capacity of a company / corporation

- Have you crossed out **Paragraphs 1(A) and 1(B) of Contract Schedule 3?**
14. Have you filled in the required information in **Paragraph 1(C)** (i.e. name of company / corporation and its parent company, address of registered office, telephone No., Certificate of Incorporation No., Business Registration Certificate No., name and address of the managing director and company secretary, bank account No., etc.)?
15. Have you attached a certified true copy of the minutes of the meeting of the Board of Directors of your company showing that your authorized representative is authorised to sign and submit the quotation on behalf of your company as per **Paragraph 1(C)(j) of Contract Schedule 3?**
16. Have your authorized representative **signed Contract Schedule 3?**

Completion of Contract Schedule 4 – Details of Experience

17. Have you provided the information required in **Contract Schedule 4** the descriptions and history of your past service experience to show that you have the minimum years of experience in operating **retail business** as required under **Clause 6.1** of the **Terms of Quotation?**
18. Have you **attached documentary proof** such as contracts, reference letters, etc., to substantiate the claimed experience?
19. Have you / your authorized representative **signed Contract Schedule 4?**

Completion of Contract Schedule 5 – List of Proposed commodities

20. Have you provided the information required in **Contract Schedule 5** the list of proposed commodities?
21. Have you / your authorized representative **signed Contract Schedule 5?**

FINAL CHECK

22. Have you initialed against any marked amendments on the Quotation Documents to be submitted?
23. Have you / your authorized representative **signed** on all required documents in particular:
- (a) Part II of Quotation Form; and
- (b) Contract Schedules 1 to 5?

DRAFT ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT made this day of , 2016
BETWEEN

The Director of Leisure and Cultural Services, whose office is situated at Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, N.T., Hong Kong for and on behalf of the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Government") of the one part;

AND

_____, whose address is at
("the Contractor") of the other part.

WHEREAS:

- (A) By an Invitation to Quotation (Quotation Ref.: LCSD/HKCH/AS/2016, the Government has invited quotations to operate the Business at the Licence Area within the Hong Kong City Hall.
- (B) The Contractor's quotation for the Contract was accepted in principle by the Government by a conditional acceptance of quotation to the Contractor pursuant **Clause 13.2** of the **Terms of Quotation**.
- (C) The Contractor has fulfilled all conditions specified in the conditional acceptance of quotation.
- (D) Pursuant to **Clause 13.3** of the **Terms of Quotation**, the parties hereto enter into these Articles of Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Quotation Documents published by the Government in connection with the Invitation to Quotation 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 which are:
 - (i) these Articles of Agreement;
 - (ii) the Quotation Documents (which are specified in **Clause 1** of the **Terms of Quotation**) completed, modified or expanded as necessary or appropriate to include the terms accepted by the Government and the Contractor; and
 - (iii) all other schedules, plans, drawings and other documents which form part of the Contractor's Quotation or are incorporated by reference herein or in any of the above documents.

All of the above items are annexed to these Articles of Agreement for identification purposes.

DRAFT ARTICLES OF AGREEMENT

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

4. For the purposes of **Clause 51** of the **Conditions of Contract**, contact details including the address, facsimile number and email address of the Contractor are as follows:

Name of the Contractor: _____

Address: _____

Facsimile number: _____

Email address: _____

Attention (Post Title): _____

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

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

Name of the Authorized Representative: _____
Title of the Authorized Representative: _____
in the presence of: _____

Name of witness: _____
Title of witness: _____

SIGNED BY THE ASSISTANT DIRECTOR)
(PERFORMING ARTS) for and on behalf of THE)
DIRECTOR OF LEISURE AND CULTURAL)
SERVICES)
)

Name of the Authorized Representative: _____
Title of the Authorized Representative: _____
in the presence of: _____

Name of witness: _____
Title of witness: _____

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ANNEXES

Annex A

General Information on the Hong Kong City Hall

1. Introduction

- 1.1 The Hong Kong City Hall is situated at 5 Edinburgh Place, Central, Hong Kong. It is a multi-purpose cultural complex built to enhance the quality of life amongst the Hong Kong community. Located in the heart of Central district, it has become synonymous with the development of culture and arts in Hong Kong and recognized as one of the Hong Kong's most prominent centers of culture and arts. The City Hall Complex comprises of two separate blocks with a connecting Memorial Garden in the centre. The Low Block houses a 1,434-seat Concert Hall, a 463-seat Theatre, a 590 m² Exhibition Hall, an arts shop, a Chinese restaurant, a western restaurant and a foyer bar. The 12-storey High Block contains a 260 m² Exhibition Gallery, a 111-seat Recital Hall, two 40-seat Committee Rooms, a 7-level Public Library, a Marriage Registry and a fast food kiosk.

2. Services and Image of the Hong Kong City Hall

- 2.1 Currently, the range of arts activities at the Hong Kong City Hall includes concerts, theatrical, dance and variety shows performances; lectures of various kinds; exhibitions on calligraphy, photography, sculpture, printing, ceramics displays. Currently, it is highly patronized by music, drama, Cantonese operatic songs audience as well as students, library users and restaurant-goers. In 2015/2016, a total of 639 functions were staged attracting patronage of over 373,000 at the Concert Hall and Theatre. The figures exclude a great amount of visitors of other venue facilities such as Exhibition Hall, Exhibition Gallery, Recital Hall, Committee Rooms, Public Library, Marriage Registry, etc. and the general public. More details on the Hong Kong City Hall are available at www.cityhall.gov.hk
- 2.2 A location map of the Hong Kong City Hall is at **Annex B**.

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3. Opening Hours of the Hong Kong City Hall

- 3.1 The Hong Kong City Hall opens 7 days a week daily from 9:00 a.m. to 11:00 p.m. The Arts Shop should be open on all days when the venue is open. The opening hours should not be less than 9 hours a day and the Arts Shop should stay open until after the first intermission of the evening performances in the two major performance venues, i.e. the Concert Hall and Theatre
- 3.2 The Venue will be closed when typhoon signal no. 8 or above is hoisted until the signal is lowered to no. 3 or below. The Venue will remain closed if typhoon signal no. 8 is lowered or cancelled less than 2 hours before the normal closing hour.
- 3.3 The Venue will open as usual when the Amber Rainstorm Warning or Red Rainstorm Warning is issued. The Venue will remain open to provide shelter to visitors and staff if the Black Rainstorm Warning is issued during the Venue's opening hours. The Venue will be closed when the Black Rainstorm Warning is issued before the opening hour of the Venue and will remain closed if the warning is lowered or cancelled less than 2 hours before the normal closing hour.

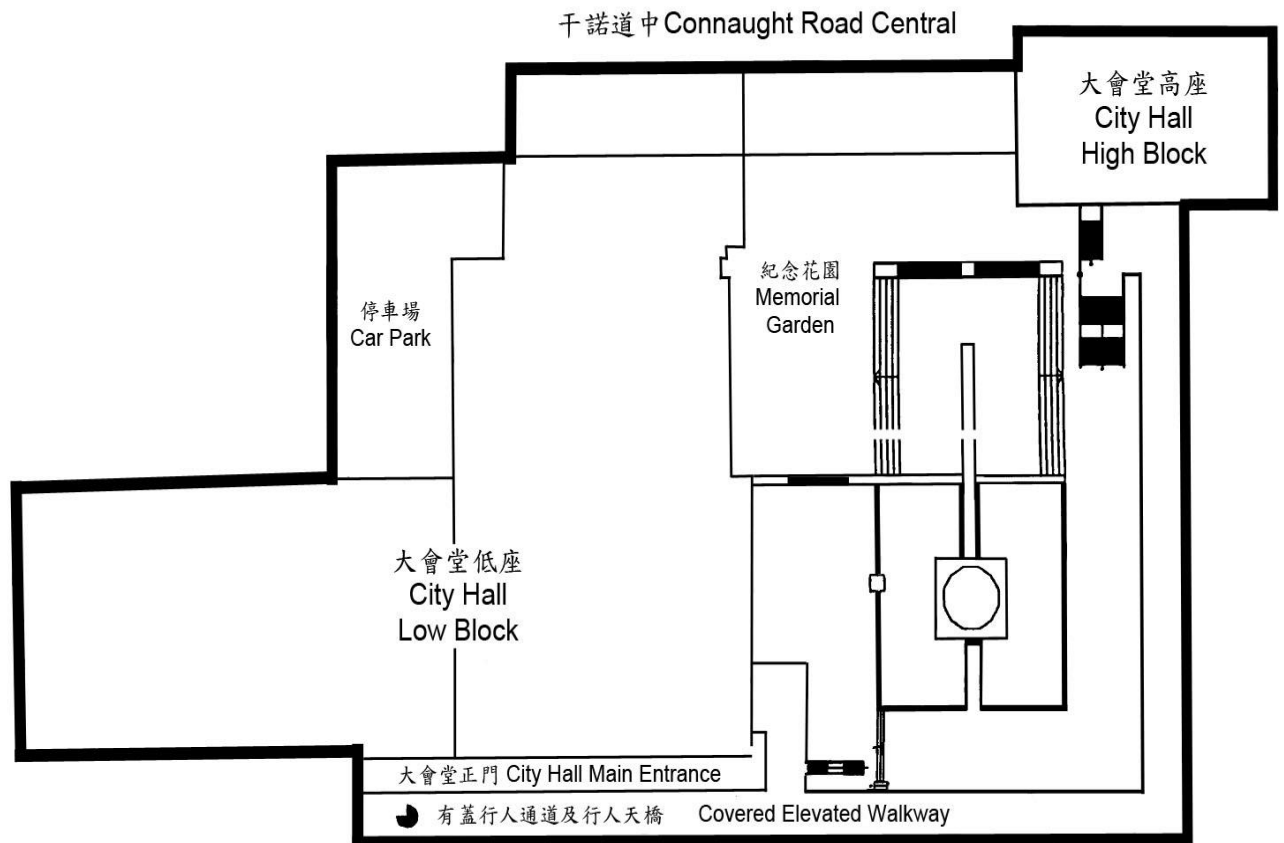
4. The Arts Shop at the Hong Kong City Hall

- 4.1 The Arts Shop is situated on the first floor of the Low Block offering arts-related commodities including but not limited to gifts, souvenirs, audio visual products, publications, arts products and novelty products to patrons and members of the public visiting the City Hall. It occupies an area of about 24 square metres with a 4 square-metre storeroom on the second floor. A floor plan of the Licence Area is at **Annex C**.
- 4.2 The Arts Shop is required to sell Authorized Merchandise including but not limited to gifts, souvenirs, audio visual products, publications, arts products and novelty products, etc. related to performing arts and visual arts as stated in **Contract Schedule 5**.
- 4.3 The Arts Shop within the Licence Area is to be open on all days when the City Hall is open. The opening hours should not be less than 9 hours a day and the Arts Shop should stay open until after the first intermission of the evening performances in the two major performance venues, i.e. the Concert Hall and Theater.

ANNEXES

Annex B

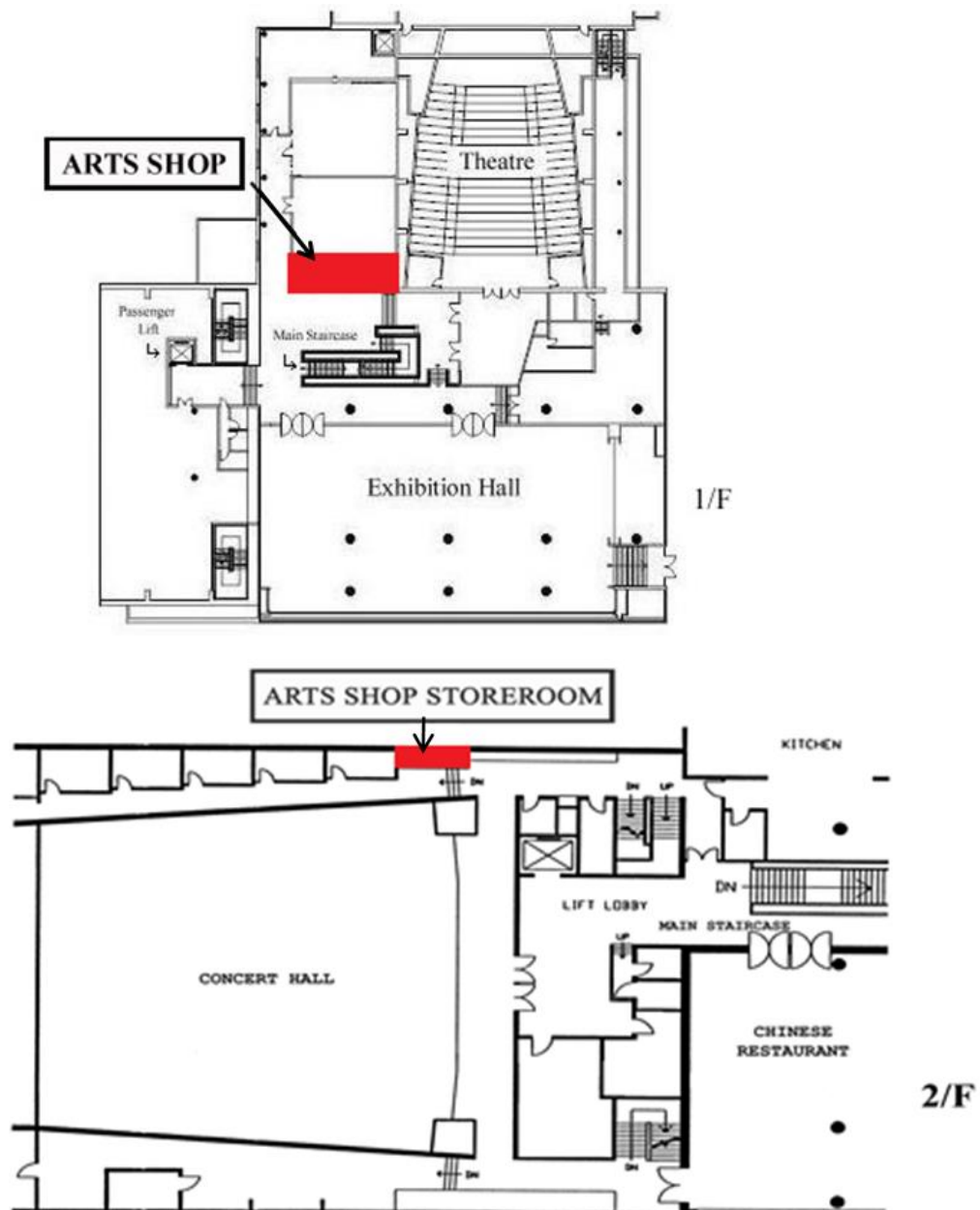
Location Map of the Hong Kong City Hall
(Not to Scale)



ANNEXES

Annex C

Floor Plan of the Arts Shop and Storeroom



The approximate floor area of the Arts Shop is 24 m² on 1/F with a storeroom of 4 m² on 2/F of the Hong Kong City Hall Low Block (Not to scale)

ANNEXES

Annex D

**ENROLMENT FORM FOR THE QUOTATION BRIEFING SESSION ON
22 June 2016 (Wednesday) at 3 p.m.**

To: Assistant Manager (City Hall) Building Management
(Fax No.: 2877 0353)

**Quotation for the Grant of Licence to operate the Arts Shop
at Hong Kong City Hall**

(please return this form by fax on or before **20 June 2016**)

In accordance with **Clause 37.3** of the **Terms of Quotation**, I / we* would like to attend the following quotation briefing session:

Name of Proprietor / Firm / Company :

_____ (in English)

_____ (in Chinese)

Name & Title of Representatives attending the Site Visit: 1. _____

2. _____

Details of Proprietor / Firm / Company:

Contact Person : _____

Title : _____

Address : _____

Telephone No. : _____

Fax No. : _____

E-mail : _____

The Bidder is advised to bring along the Quotation Documents to the Quotation Briefing Session.

* *Delete as appropriate*

ANNEXES

Annex E

FORM OF BANKER’S GUARANTEE

THIS GUARANTEE is made on the day of 2016
BY.....
..... of, a bank within the meaning of the
Banking Ordinance (Cap. 155) (“Guarantor”)

IN FAVOUR OF

The Director of Leisure and Cultural Services for and on behalf of the Government of the
Hong Kong Special Administrative Region of the People’s Republic of China
(“Government”).

WHEREAS

- (A) By a contract (“Contract”) to be made
between
of
 (“Contractor”) of the one part and the Government (designated as Leisure and
Cultural Services Department Contract No. of), the
Contractor agrees and undertakes to operate a business at the Licence Area in
the Hong Kong City Hall upon the terms and conditions of the Contract.
- (B) It is a condition precedent to the Government agreeing to enter into the Contract
with the Contractor (by signing the Articles of Agreement) that, inter alia, the
Guarantor executes this Guarantee in favour of the Government.
- (C) 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 the Guarantor HEREBY AGREES with the Government as follows:

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

ANNEXES

- (2) In consideration of the Government agreeing to enter into the Contract with the Contractor:
- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and not as a surety, and as a continuing security, the due and punctual performance and observance by the Contractor of all of its obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government 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, regardless of any dispute between the Government and the Contractor.
 - (b) The Guarantor, as a primary obligor and not as a surety, and as a separate, independent and continuing obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government from and 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 or observe fully or punctually any of its obligations, terms, conditions, stipulations or provisions of the Contract.
 - (c) The Guarantor further agrees that all dividends, compositions and payments which the Government may at any time receive from the Contractor or from its estate or estates, whether in liquidation, bankruptcy or otherwise, in respect of all such losses, damages, costs, charges and expenses shall be taken and applied by the Government as payments in gross, and that this Guarantee shall stand good in respect of the balance to the full amount of _____.
- (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.

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- (5) Without prejudice to clause (4) above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of:
- (a) any suspension, termination, variation, amendment, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the Contractor's obligations under the Contract;
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract or 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 or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligations by the Government.
- (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 authorizes the Government and the Contractor to make any such variation, novation, amendment or supplemental agreement without its notice or assent.

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- (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 six (6) months after the expiry of the Contract; or
 - (b) the entire amount of this Guarantee as stated in clause (14) below is wholly forfeited upon termination of the Contract under Clause 41.1 of the Conditions of the Contract; or
 - (c) where there is no forfeiture but upon expiry or early termination of the Contract, 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, the date on which all such obligations and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract.
- whichever is the applicable and the later.
- (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.

ANNEXES

- (12) All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon the Government, to Hong Kong City Hall (Administration Office), G/F City Hall Low Block, 5 Edinburgh Place, Central, Hong Kong marked for the attention of The Manager (City Hall) (Building Management), facsimile number (+852) 2877 0353.
 - (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 facsimile addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed _____.
- (15) The Guarantor hereby acknowledges that:
 - (a) 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; and
 - (b) no Government officer is authorised to advise on, make representations regarding or amend (other than by a written instrument signed by both the Guarantor and the Government) the terms and conditions of this Guarantee.

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

The Common Seal/Seal* of the said Guarantor was hereunto affixed)
 and signed)
 by
 Name and Title
 duly authorised by its board of directors:)
 In the presence of: _____)
 Signature of witness: _____
 Name of witness: _____
 Title of witness: _____)

ANNEXES

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

Name and Title _____)

In the presence of: _____)

Signature of witness: _____)

Name of witness: _____

Title of witness: _____

* Delete as appropriate.

@ See Powers of Attorney Ordinance (Cap. 31).

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