

# TENDER FORM

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

TENDER FOR  
THE GRANT OF LICENCE TO OPERATE  
A Fee-paying Public Car Park at Sha Tin Town Hall of  
the Leisure and Cultural Services Department

(Tender Reference : STTH/R01/2018 )

## LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked "Tender for the Grant of Licence to Operate a Fee-paying Public Car Park at the Sha Tin Town Hall of Leisure and Cultural Services Department" and addressed to the Chairman, Government Logistics Department Tender Opening Committee, must be deposited in the Government Logistics Department Tender Box situated on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong

before 12:00 noon (Hong Kong Time) on 3 July 2018 (date). Late tenders will not be accepted.

Dated this 5 June 2018

Ivy NGAI  
Government Representative

## Part I — Tender Documents

These documents under the tender reference STTH/R01/2018 consist of one (1) complete set of :

- (a) Tender Form;
- (b) Interpretation (Sheets 1 to 4);
- (c) Terms of Tender (Sheets 5 to 19);
- (d) General Conditions of Contract (Sheets 20 to 24);
- (e) Special Conditions of Contract (Sheets 25 to 59);
- (f) Contract Schedules (Sheets 60 to 75);
- (g) Form of Tender (Sheet 76);
- (h) Form of Banker Guarantee (Sheets 77 to 80);
- (i) Articles of Agreement (Sheet 81 to 82); and
- (j) Annexes (Sheets 83 to 87).

**Part II — Offer to be Bound**

- 1. Having read the Tender Documents, I/we agree to be bound by the terms and conditions as stipulated therein.
- 2. I/We do agree to carry out the Business mentioned in Special Conditions of Contract 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 Tender Documents.
- 3. I/We have read **Clause 3 Tender Preparation** and **Clause 5 Tender Submission** of Terms of Tender and certify that the particulars given by me/us in completing the Tender Documents are true and correct.
- 4. I/We have read **Clause 6 of Terms of Tender**. I/We agree to be bound by the terms and conditions as stipulated therein.
- 5. In case the Tenderer is a company/firm, the Tenderer is required to complete 5(a) to 5(c). In case the Tenderer is not a company/firm, the Tenderer is required to strike out 5(a) to 5(c).

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

– or –

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

(b) The name of the company/firm is .....

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

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

.....

– or –

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

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

Name of Tenderer/Authorized Representative \* \_\_\_\_\_

Signature of Tenderer/Authorized Representative \* \_\_\_\_\_  
(Signature) (Name in block letters)

(with firm/company chop, if applicable)

Address(es) of person(s) signing : \_\_\_\_\_

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

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

\* Delete as appropriate.

## INTERPRETATION

1. In the Tender Documents, the following have the meaning hereby assigned to them except when the context otherwise requires:
  - ‘Business’ means the Contractor’s business as described in Clause 2 of Special Conditions of Contract.
  - ‘Commencement Date’ means the date of commencement of the Contract as specified in the Articles of Agreement.
  - ‘Contract’ means the contract made between the Government and the Contractor for the operation of the Business on the terms and conditions set out in the Tender Documents, the tender submitted by Contractor (to the extent accepted by the Government), the Articles of Contract signed by the parties, and the attachments to any of the above.
  - ‘Contractor’ means the Tenderer whose tender in response to this invitation to tender is accepted by the Government Representative.
  - ‘Contract Period’ means the period as specified in Clause 4.1 of the Special Conditions of Contract commencing from the Commencement Date, as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.
  - ‘Contract Year’ means every successive twelve (12) months’ period within the Contract Period or the remainder of the Contract Period after the last complete twelve (12) months’ period (as the case may be).
  - ‘Department’ means the Leisure and Cultural Services Department of the Government.
  - ‘Financial Year’ means the 12 months’ period commencing on the 1<sup>st</sup> Day of April of each year and ending on the 31<sup>st</sup> Day of March in the following year (both dates inclusive).
  - ‘General Holiday’ means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).

‘Government’	means the Government of the Hong Kong Special Administrative Region.
‘Government Representative’	means the Director of the Department or any officer of the Department authorised to act for the Director purpose of the Contract.
‘Gross Monthly Receipts’	means the gross proceeds or receipts as received or receivable by the Contractor from operating the Business at the Premises, plus all other incomes (except profits arising from the sale of capital assets) deriving from or in respect of the Business and shall be free and clear of any deduction during a calendar month.
‘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.
‘Monthly Basic Licence Fee’	means the monthly minimum guaranteed lump sum to be paid by the Contractor to the Government for operation of the Business on a monthly basis during the Contract Period as quoted by the Tenderer in Contract Schedule 1 and as accepted by the Government and as detailed in Clause 5 of Special Conditions of Contract.
‘Monthly Licence Fee’	means the monthly licence fee that shall comprise either the sum of a Percentage of the Monthly Gross Receipts or the Monthly Basic Licence Fee as quoted by the Tenderers in Contract Schedule 1, whichever is greater.
‘Monthly Percentage Licence Fee’	means the amount payable by which the percentage of the Gross Monthly Receipts is higher than the Monthly Basic Licence Fee, as calculated by the formula as set out in Clause 5 of Special Conditions of Contract.

‘Parking Terms’	means the terms and conditions to be erected or displayed at such place and in such manner by the Contractor as may be approved by the Government Representative in advance in writing at the Premises under which the Contractor offers the Premises to the general public for use.
‘Percentage of Gross Monthly Receipts’	means the percentage of Gross Monthly Receipts as quoted by the Tenderer in Contract Schedule 1 and as accepted by the Government and as specified in Clause 5 of the Special Conditions of Contract.
‘Person’	includes any body of persons, corporate or unincorporated.
‘Premises’	means the areas designated for operation of fee-paying public car park business at the Sha Tin Town Hall as delineated and shown edged red in Annex A2 and A3 (a)-(b).
‘Reserved Car Parking Spaces’	means the car parking spaces as designated in Contract Schedule 3, and as delineated in Annex A3 (a) for the exclusive use of the Government and its approved users as detailed in Contract Schedules 3-4.
‘Security Deposit’	means the deposit which the Contractor deposits with the Government Representative in accordance with clause 15 of the Terms of Tender and Clause 6 of the Special Conditions of Contract for the due and proper performance of the Contract.
‘Security Guard’	means a person who holds a valid Category B Security Personnel Permit issued under the Security and Guarding Services Ordinance (Cap. 460) and is deployed by the Contractor to perform the duties set out in Clause 15 in the Special Conditions of Contract;
‘Sha Tin Town Hall’	means the Sha Tin Town Hall, located at 1 Yuen Wo Road, Sha Tin, New Territories, Hong Kong as indicated in Annex A1(b).
‘Tenderer’	means the firm or company submitting this tender.
‘Tender Closing Date’	means the latest date and time by which tenders shall be lodged and it shall be used as the cut-off

date for calculation of years of experience of the Tenderers in running the fee-paying public car park business. If the Tender Closing Date is extended, the extended Tender Closing Date will be used for counting Tenderers' experience/records.

'Tender Documents' means the documents as specified in Clause 1 of Terms of Tender.

'Tender Validity Period' means the period of time as described in Clause 18.1 of Terms of Tender during which the tender is to remain open.

2. In these Tender Documents, unless the content otherwise requires, the following rules of interpretation shall apply –
  - 2.1 "Month" and "Monthly" refer to a calendar month.
  - 2.2 The masculine includes the feminine.
  - 2.3 The singular includes the plural and vice versa.
  - 2.4 Reference to any ordinance, enactment, order, regulation or other similar instrument shall be construed as a reference to the ordinance, enactment, order, regulation or instrument as amended by any subsequent ordinance, enactment, order, regulation or instrument. Reference to an ordinance or enactment shall include all subsidiary legislation made thereunder.
  - 2.5 The heading to individual clauses and provisions of the Tender Documents is for ease of reference only and shall not affect the interpretation or construction of the Tender Documents.
3. Unless otherwise provided, all payment shall be made in Hong Kong currency.

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

**TERMS OF TENDER**

**1. Tender Documents**

The Tender Documents identified as STTH/R01/2018 consist of :

- (a) Tender Form;
- (b) Interpretation (Sheets 1 to 4);
- (c) Terms of Tender (Sheets 5 to 19);
- (d) General Conditions of Contract (Sheets 20 to 24);
- (e) Special Conditions of Contract (Sheets 25 to 59);
- (f) Contract Schedules (Sheets 60 to 75);
- (g) Form of Tender (Sheet 76);
- (h) Form of Banker's Guarantee (Sheets 77 to 80);
- (i) Articles of Agreement (Sheets 81 to 82); and
- (j) Annexes (Sheets 83 to 87).

**2. Invitation to Tender**

Tender submissions are invited for the grant of a Licence to operate the fee-paying public car park at the Premises **for a period of thirty-six (36) months tentatively from 1<sup>st</sup> December 2018 to 30<sup>th</sup> November 2021 (both dates inclusive)** on such terms and conditions as set out in the Tender Documents.

**3. Tender Preparation**

3.1 A tender must be completed in English or Chinese and in ink or typescript and submitted in accordance with the "Lodging of Tender" section of the Tender Form and the Terms of Tender.

3.2 Tenderers must complete and submit the following documents together with all necessary information including documentary evidence in **triplicate (one original and two photocopies)**:-

- (a) Offer to be Bound (i.e. Part II of Tender Form);
- (b) Contract Schedules 1-7; and
- (c) Form of Tender.

3.3 Any failure to complete or submit the documents and/or information required under Clause 3.2 above may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. However, a Tenderer should note that **its Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit:**

- (i) a duly signed "Offer to be Bound";
- (ii) Contract Schedules 1 – 7 with the price information required therein duly completed; and



## (iii) Form of Tender

- 3.4 In addition to Clause 3.2 above, each Tenderer is required to provide all other information / supporting documents requested in the Tender Documents or relevant to its Tender, including but not limited to the following –
- (a) in the case where the Tenderer is a partnership or sole proprietor, the Tenderer is required to submit with its tender a photocopy of its current certificate of business registration and certified extracts of information on the business register issued by the Commissioner of Inland Revenue under the Business Registration Ordinance (Cap. 310) that contain the name of the sole proprietor or the names of all the partners (as the case may be) of the partnership or sole proprietor; and
  - (b) in the case where the Tenderer is a company, the Tenderer is required to submit with its tender a photocopy of its current Memorandum of Association and Articles of Association, the latest Annual Return and the Notification of Changes of Secretary and Directors (filed after the date of the latest Annual Return) filed with the Companies Registry, or equivalent documents, that shows the details of its current directors and shareholders as at the Tender Closing Date.
- 3.5 A Tenderer should study the Tender Documents very carefully to ensure that it fully understands the requirements in the Tender Documents before submitting its tender. Tenderer should note that all information and statistics provided by the Government, in connection with the Tender Documents are for reference only. The Government (including its servants and agents), gives no warranty, statement or representation, expressed or implied, as to its accuracy, availability, completeness, usefulness or future changes of such statistics and information. A Tenderer should conduct its own independent assessment of the statistics and information. The Government, does not accept any liability for the accuracy, completeness or otherwise of such information and statistics.
- 3.6 Tenderers will not be allowed to alter or make any changes to their bids once they are submitted to the Government. Any addition or removal of any page of the Tender Documents may render the tender submission invalid.
- 3.7 The Government will not admit any liability nor entertain any claim in respect of a Tenderer's misunderstanding of the provisions of the Tender Documents.
- 3.8 A Tenderer must ensure that there is no discrepancy between the original and the copies of the documents submitted to the Government. If there is any discrepancy, the tender submitted may be rejected.

- 3.9 When completing the Tender Documents, any correction or alteration in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the originals. All such amendments shall be initialed by the Tenderer in ink. Any unauthorized alterations or erasures to the text of the Tender Documents may cause the tender to be disqualified.
- 3.10 Tender will not be considered if any false or misleading information is given in the tender or in the course of the tender assessment.
- 3.11 Each Tenderer should inform the Government Representative in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Documents. The Government Representative reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

#### **4. Licence, Permit and/or Certificate**

Tenderers are strongly advised to examine and assess the site conditions in advance to determine all necessary licences, permits and certificates which are required under all applicable laws and regulations to run the Business at the Premises. The responsibility for applying the necessary licences, permits and certificates and fulfillment of the requirements stated therein lies with the Contractor. Neither the Government nor the Government Representative shall be held responsible in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits and certificates. Nothing contained in the Tender Documents or in the Contract shall be construed to fetter the discretion of any public officer or authority as the licensing authority.

#### **5. Tender Submission**

- 5.1 A Tender together with all information and documents required under the Tender Documents must be enclosed in a sealed envelope clearly marked with the tender reference "Tender Ref: STTH/R01/2018" and "Tender for the Grant of Licence to Operate a Fee-paying Public Car Park at Sha Tin Town Hall of the Leisure and Cultural Services Department" on the outside of the sealed envelope, and that the sealed envelope should not bear any indication which may relate the tender submission to the Tenderer and addressed to the Chairman, Government Logistics Department Tender Opening Committee. All Tenders must be deposited in the Government Logistics Department Tender Box located on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon on the Tender Closing Date.
- 5.2 **Tenders submitted after the Tender Closing Date) will not be considered.** Tender submitted in a form other than in the manner described in Clause 5.1 above may not be accepted.

- 5.3 In case a black rainstorm warning signal is issued or typhoon signal no. 8 or above is in effect between 9:00 a.m. (Hong Kong Time) and 12:00 noon (Hong Kong Time) on the Tender Closing Date, the closing time of this invitation to tender will be extended to 12:00 noon (Hong Kong Time) on the first working day, except Saturday and General Holiday, after the black rainstorm warning signal or typhoon signal no. 8 or above is cancelled.

## **6. The Premises**

- 6.1 Subject to the due signature of the Articles of Agreement, possession of the Premises will be given to the successful Tenderer **upon the Commencement Date** or such other date as specified by the Government in the Articles of Agreement.
- 6.2 Tenderers should note that the Contract shall only entitle the Contractor to occupy the Premises or the operation of the Business in accordance with the terms and conditions of the Contract. A Tenderer shall note that no assignment, underletting, or parting with the possession of the Premises or any part thereof or any interest therein will be permitted save to the extent provided for in the Contract.

## **7. Tender Documents of Unsuccessful Tenders**

Tenders and documents submitted by the unsuccessful Tenderers will be destroyed three (3) months after the Contract has been awarded.

## **8. Tenderer's Response to Government Representative's Enquiries**

- 8.1 In the event that the Government Representative determines that clarification of any Tender is necessary, he will advise the Tenderer accordingly indicating whether the Tenderer should supplement its Tender. Each Tenderer shall thereafter within three (3) working days or such period as specified in the request for clarification submit such information in the manner as requested by the Government Representative.
- 8.2 Failure to submit the required information in accordance with Clause 8.1 above or the Government Representative's request may render a Tender invalid.

## **9. Monthly Licence Fee**

- 9.1 Tenderers must quote in **Contract Schedule 1** the Monthly Basic Licence Fee and the Percentage Licence Fee.
- 9.2 The Monthly Licence Fee shall not include rates, Government rent and taxes payable in respect of the Premises and its operation. Tenderers should note that the first payment of the Monthly Licence Fee shall be effected by the Contractor after the Contract commences or at such time as shall be directed by the Government Representative.

9.3 The Tenderer must provide in **Contract Schedule 2** parking charges to be applied to designated car parking spaces in the manner as specified in Contract Schedule 2.

9.4 All quotes shall be in Hong Kong Dollars.

## **10. Essential Requirements**

10.1 It is an essential requirement that Tenderers must have continuous experience in operating fee-paying public car parks in the three (3) years immediately prior to the Tender Closing Date. Failure to comply with this essential requirement will render a Tender invalid.

10.2 Proposal to assign, underlet or parting with the whole or any part of the Premises a Tender shall render the Tender invalid.

### **Notes:**

i) Tenderer's experience must be gained as an owner of the business of the fee-paying public car park(s) or as a service provider for such owner(s).

ii) Experience gained outside Hong Kong will not be counted.

iii) If the Tenderer is a partnership or incorporated joint venture, only the years of partnership or joint venture experience gained by that partnership or incorporated joint venture, but not the individual experience of the participants to the partnership or parties of incorporated joint venture, will be counted.

iv) Experience gained over overlapping period will be counted once only.

v) Experience obtained in different contracts/venues during overlapping periods will be counted once only.

## **11. Tender Assessment**

11.1 Tenderers should note that their offers will be considered on a complete overall basis. Tenders with only partial offers will not be considered.

11.2 The Government Representative will evaluate the Monthly Basic Licence Fee and Percentage of Gross Monthly Receipts offered by the Tenderers according to the following. A Tenderer will have a total score based on the following formula:-

$$\text{Total score} = \frac{\text{Tenderer's MBPF}}{\text{Highest MBPF}} \times 50 + \frac{\text{Tenderer's PGMR}}{\text{Highest PGMR}} \times 50$$

11.3 The maximum total score a Tenderer can obtain based on the formula in sub-clause 2 above shall be 100. The Tenderer with the highest total scores will normally be selected for acceptance.

- 11.4 If two or more Tenderers obtain the same total score based on the formula in sub-clause 2 above that is the highest score amongst other Tenderers, the Tenderer who has offered the highest Monthly Basic Licence Fee will be selected. If the said total score and the Monthly Basic Licence Fee are the same for two or more Tenderers, the Tenderer with the longest experience in operating fee-paying public car park(s) based on sub-clause 1 will be selected.
- 11.5 Without prejudice to the generality of the foregoing, in case the Monthly Basic Licence Fee is unreasonably low with reference to the advice of the Commissioner of Rating and Valuation, the Government may refrain from awarding the Contract to the relevant Tenderer.
- 11.6 Without prejudice to and in addition to the above, the award of the Contract shall be subject to the following:-
- (a) the Government is of the opinion that the Tenderer is fully capable of performing the Contract; and
  - (b) the Government considers that, in terms of the evaluation criteria specified in the Tender Documents, the tender is or appears to be the most advantageous one to the Government.

## **12. Negotiation**

The Government reserves the right to negotiate with any or all Tenderer(s) the terms of the tenders including but not limited to the Monthly Basic Licence Fee offered by the Tenderer.

## **13. Award of Contract**

- 13.1 Unless and until the Articles of Agreement has been signed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government Representative and any Tenderer. References to award of the Contract mean the signing of the Articles of Agreement.
- 13.2 The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “conditional acceptance of tender”). Upon receipt of the conditional acceptance of tender, the successful Tenderer shall be obliged to fulfill all of the following conditions to the satisfaction of the Government Representative within thirty (30) days from the date of the notification (or such later date as the Government Representative may allow):-
- (a) the provision of the Security Deposit as required under Clause 15 below;
  - (b) the payment of the Monthly Basic Licence Fee in respect of the first month of the Contract Period; and
  - (c) such other conditions as the Government Representative may stipulate in the conditional acceptance of tender.

- 13.3 Unless and to the extent waived by the Government Representative in writing, upon fulfilment of the conditions by the Tenderer specified in Clause 13.2 above to the satisfaction of the Government Representative, the Government Representative will, subject to his other rights and powers, enter into the Contract with the successful Tenderer by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government Representative, the tender submitted by the successful Tenderer (subject to such other changes as the Government Representative may stipulate in exercise of its powers under the Tender Documents and such changes as the parties may agree (if any)). If a Tenderer fails to fulfill all or any of the conditions mentioned in Clause 13.2 above (unless and save to the extent they are waived by the Government Representative in writing, if any), or fails to sign the Articles of Agreement upon notification by the Government Representative (“defaulting Tenderer”), the conditional acceptance of tender will become void and be of no further force.
- 13.4 The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and remedies of the Government, the defaulting Tenderer shall be responsible for the difference in the total Licence Fee submitted by that defaulting Tenderer and the eventual Contractor who will be granted the Contract in replacement of the defaulting Tenderer whether appointed pursuant to this invitation to tender exercise or another subsequent invitation exercise as well as all administrative costs incurred by the Government in finding a replacement contractor and implementing any stop-gap measures during the time when no replacement contractor can be appointed. On the other hand, notwithstanding anything in the Tender Documents or in the conditional acceptance of tender to the contrary, in the event that the Government exercises any of its discretion under Clauses 22 or 29 below, the Government Representative shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a conditional notification of acceptance and fulfilled all the conditions specified in Clause 13.2.
- 13.5 Tenderers who do not receive any notification of acceptance within the Tender Validity Period shall assume that their tenders have not been accepted.

**14. Submission of Document for Financial Vetting**

- 14.1 In the event that the contract value of a tender exceeds HK\$2,500,000 (Hong Kong Dollars Two Million and Five Hundred Thousand), a financial vetting will be conducted by the Government Representative in the manner set out hereunder. For the purpose of financial vetting under this clause, the contract value means the total amount of the Monthly Basic Licence Fee as quoted by a Tenderer in its Contract Schedule 1. If financial vetting is required, the Tenderer shall upon request of the Government Representative provide the documents and financial information that the Government Representative considers necessary and relevant, including but not limited to the following:–

- (a) In **Contract Schedule 7**, audited accounts of the Tenderer for the three (3) years immediately prior to the Tender Closing Date. The accounts shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622). Where the Tenderers are unincorporated entities such as sole-proprietors, partnerships etc. and if audited accounts are not prepared, they can submit management accounts for the three (3) years immediately prior to the Tender Closing Date supplemented with past tax assessment records instead and the management accounts or unaudited accounts must be certified by the sole proprietor, partners, directors or certified public accountant; and
- (b) Projected profit and loss accounts and cash flow statements for the Contract Period, showing the revenue, operating expenses, capital expenditure and the source of finance such as upfront investment and/or debt financing.
- 14.2 Tenderer failing to submit the information required in Clause 14.1 above will be considered as having failed in the financial vetting. The Tenderer is required, in such event, in addition to the Security Deposit, to deposit an additional amount equivalent to: –
- (a) five percent (5%) of the total Contract value (i.e. total amount of the monthly basic licence fee to be paid by the Contractor during the Contract Period); or
- (b) Two (2) months' Monthly Basic Licence Fee, **whichever is lower**.
- 15. Security Deposit**
- 15.1 The successful Tenderer shall, within 7 days after the conditional acceptance of tender or such other time as specified by the Government deposit with the Government in cash or in the form of a bank guarantee for an amount equal to four (4) times the Monthly Basic Licence Fee. In addition, where the successful Tenderer fails the financial vetting as mentioned in Clause 14 above, the aforesaid amount shall be further topped up in accordance with Clause 14.2 above. The aforesaid amount (whether with or without top-up, as applicable) shall serve as security for the due punctual and proper performance of the Contract.
- 15.2 If the successful Tenderer elects to provide a bank guarantee, the bank guarantee must be in the form in Appendix to the Form of Tender and be issued by a bank which holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and which bank is to be further approved by the Government.
- 15.3 If a Tenderer fails to deliver to the Government the Security Deposit within such time as specified, the Government shall be at liberty to award the Contract to any other Tenderer, to conduct a fresh tender exercise or to take such appropriate action as the Government deems fit.

**16. Offers to be Binding**

Tenders, any subsequent clarification, and permitted submissions from Tenderers must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government Representative, be incorporated into and made part of the Contract in such manner as the Government Representative considers appropriate and become binding on the Tenderer. On the other hand, the Government reserves the discretion to refuse acceptance of any part of the tender which is inconsistent with any requirements of the Tender Documents whether as counter-proposals or otherwise.

**17. Request of Information**

In the event that the Government determines that:-

- (a) clarification in relation to any Tender is necessary; and/or
- (b) a document or a piece of information, other than the document or information set out in Clause 3.3 above, is missing from the Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A tender may not be considered further if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the tender further or may proceed to evaluate the tender on an "as is" basis.

**18. Tender to Remain Open**

18.1 A Tender shall remain open for acceptance by the Government for not less than one hundred and twenty (120) days after the Tender Closing Date.

18.2 If before expiry of the Tender Validity Period a Tenderer withdraws its offer, due notice will be taken and this may well prejudice the Tenderer's future standing as a Government contractor.

**19. Probity**

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



**20. Personal Data Provided**

- 20.1 All personal data provided in a Tender will be used by the Government for the purposes of the invitation to tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, award of the Contract and resolution of any dispute arising from this invitation to tender). In the case of the successful Tenderer, the purposes shall be extended to include enforcement and management of the Contract, and resolution of disputes arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- 20.2 By submitting a tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the tender, 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 20.1 above.
- 20.3 An individual to whom personal data belongs or a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the tender.
- 20.4 Enquiries concerning the personal data collected by means of the tender, including the making of access and correction, should be addressed to the Departmental Personal Data Controlling Officer of the Leisure and Cultural Services Department.

**21. Consent to Disclosure**

- 21.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, particulars of business to be operated by the successful Tenderer, the location of the Premises, the date of the award of the Contract, the name and address of the successful Tenderer, the total Monthly Basic Licence Fee and the estimated total Percentage of Gross Monthly Receipts for the continuance of the Contract.
- 21.2 Nothing in Clause 21.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 21.1 above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information) –

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction; or
- (e) without prejudice to the power of the Government under Clause 21.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

## **22. Cancellation of Tender and Cost of Tender**

22.1 Without prejudice to the Government's right to cancel the invitation tender under any other provision in the Tender Documents, where there are changes of requirements after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel the invitation to tender.

22.2 All tenders are submitted on the understanding that the Government will not in any event be liable to pay any cost arising out of their preparation and submission or in explaining or clarifying any tender.

## **23. Contractor's Performance Monitoring**

If a Tenderer 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.

## **24. Tender Addenda**

Should the Government require any amendments, clarifications or adjustments to be made to the Tender Documents for the purpose of tendering, the Government may issue to every prospective Tenderer numbered addenda giving full details of such amendments, in which case the Tenderer shall acknowledge receipt of those addenda should such addenda comprise any amendment, clarification or adjustment to any provisions of the Contract, such shall form a part of the Contract and shall take priority over the documents previously issued.

## **25. Tender Briefing Session cum Site Visit**

25.1 Tenderers are strongly advised to visit the Premises before submitting Tenders and the successful Tenderer shall accept the Premises which are provided in the state and condition in which it is at the date on which possession is given. Tenderers are strongly advised to attend a tender briefing session cum site visit to be held by the Government Representative on **13 June 2018 (Wednesday) at**

**3pm** at the Sha Tin Town Hall before submitting their tenders in order to acquaint themselves with the requirements in the Tender Documents. For detailed arrangement, please contact Assistant Manager (New Territories East) Building Management, at 2694 2508 (tel) or 2697 2073 (fax).

25.2 Each Tenderer may send no more than two (2) representatives to attend the tender briefing session cum site visit.

**26. Tenderer's Enquiries**

Any enquiries concerning the Tender Documents up to the date of lodging a Tender with the Government shall be in writing and submitted to Assistant Manager (New Territories East) Building Management, Sha Tin Town Hall, 1 Yuen Wo Road, Sha Tin, New Territories or by facsimile at 2697 2073.

**27. Licence to Use the Documents Submitted**

The Government shall have the right to do any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) in respect of all the materials submitted by the Tenderer through the tendering exercise for purposes including but not limited to tender evaluation, contract management, the disclosure made pursuant to Clause 21 above and all other purposes incidental thereto.

**28. Government Discretion**

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

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Date or an order is made or a resolution is passed for the winding up of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) a claim is made alleging or the Government has grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
- (d) the Tenderer has made significant or persistent breaches or deficiencies in the performance of any substantive requirement or obligation under any Government or other contracts;
- (e) the Tenderer has been convicted of a serious crime or offence;
- (f) the Tenderer has failed to pay taxes to the Government;

- (g) the Tenderer has submitted a tender that directly or indirectly attempts to preclude or limit the effect of any provisions of the Tender Documents; or
- (h) the Tenderer has attempted to limit or avoid its responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer / Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.

## **29. Anti-collusion**

29.1 By submitting a tender, the Tenderer represents and warrants that in relation to the tender –

- (a) it has not communicated and will not communicate to any person other than the Government the amount of the Monthly Licence Fee;
- (b) it has not fixed and will not fix the amount of the Monthly Licence Fee by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether he or that other person will or will not submit a tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

29.2 In the event that the Tenderer is in breach of any of the representations and/or warranties in Clause 29.1 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government –

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

29.3 The Tenderer shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 29.1 above.

29.4 Any breach of any of the representations and/or warranties in Clause 29.1 above by the Tenderer may prejudice the Tenderer's future standing as a Government contractor.

- 29.5 Clause 29.1 shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Rent, or with its professional advisers or consultants to solicit their assistance in preparation of tender submission.
- 29.6 The rights of the Government under Clauses 29.2 to 29.4 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

**PART 2**

**GENERAL CONDITIONS OF CONTRACT**

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## GENERAL CONDITIONS OF CONTRACT

### 1. Assignment

- 1.1 The Contractor shall not, without the prior written consent of the Government Representative, assign or otherwise dispose of or transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to it.
- 1.2 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever tier), and employees, officers and agents of any such sub-contractors as if they were its own.

### 2. Recovery of Sums Due

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

### 3. Liability for Damages or Compensation

- 3.1 The Government and its employees or agents shall not be under any liability whatsoever for or in respect of:
  - (a) Any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
  - (b) Any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- 3.2 Notwithstanding sub-clause 3.1 above, the Contractor shall notify the Government Representative in writing of any injury to or death of any of the Contractor's employees or agents arising from any work done in pursuance of the Contract and any loss of or damage to any property of the Government or of any of the Contractor's employees or agents or any third party 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. The requirement of notifying the Government Representative under this sub-clause shall not exempt or excuse the Contractor from compliance with any law.

- 3.3 The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against any claim or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:
- (a) Any loss, damage, injury or death referred to in sub-clause 3.1 above (save and except injury or death caused by the Negligence of the Government or any of its employees or agents); or
  - (b) Any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- 3.4 The Contractor shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees or agents.
- 3.5 For the purposes of this clause, 'Negligence' shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

#### **4. Corrupt Gifts**

- 4.1 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 forthwith terminate the Contract, without entitling the Contractor to any compensation therefor.
- 4.2 Without prejudice to the Government's other rights and remedies, the Contractor shall be liable for all costs and expenses incurred by the Government as the result of the termination of the Contract.

#### **5. Contracts (Rights of Third Parties) Ordinance (Cap. 623)**

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).



**6. Relationship of the Parties**

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

**7. Severability**

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

**8. Waiver**

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

8.2 Without prejudice to the generality of sub-clause 1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract will 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, will 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 will constitute a waiver by the Government of any other right, power or remedy.

**9. Compliance with the Laws and Government Requirements**

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

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**1. Nature of Contract**

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

**2. The Business**

2.1 Subject to the terms and conditions of the Contract, the Government grants to the Contractor during the Contract Period the right to operate and conduct the business of the fee-paying public car park at the Premises.

2.2 The Contractor shall not operate or allow any person or its agent to operate any businesses other than the Business, including but not limited to car-washing and garage business and any related business at the Premises.

**3. Non-exclusive Rights of the Contractor**

3.1 The Contractor shall have, during the Contract Period, but subject always to all rights and powers of the Government Representative under the Contract, the non-exclusive, non-transferable, non-assignable right to access and to occupy the Premises for the operation of the Business within the Premises and performance of all other obligations under the Contract which are required to be performed at the Premises.

3.2 The Government as the owner of the Premises, whether acting through the Government Representative or otherwise, reserves all rights and powers to enter into the Premises for any purpose whatsoever without any notice or reference or consent from the Contractor.

3.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Premises.

3.4 Nothing in this Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorize any person to park any vehicle at the Premises. The Contractor is not entitled to claim for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorizations.

3.5 That in case any of the sums payable by the Contractor under the Contract or any part thereof shall be unpaid after the same become due (whether formally demanded or not), or if there is any breach, non-performance or non-observance of any of the terms and conditions to be observed by and on the part of the Contractor herein contained or if the Contractor becomes bankrupt or, being a company, enters into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation), or enters into any composition with his creditors or suffer any distress or execution to be levied upon his goods, then, and in any of the said cases, it shall be lawful for

the Government Representative at any time thereafter to re-enter upon the Premises or any part thereof in the name of the whole, and thereupon this Contract shall be deemed terminated under Clause 39 below. In the event of such re-entry, the Monthly Licence Fee already paid or any part thereof shall not be refunded and no compensation whatsoever shall be payable to the Contractor by the Government Representative arising from such re-entry.

#### 4. Contract Period

4.1 The Contract Period shall be a term of three (3) years from the Commencement Date subject to the provisions for termination or extension hereinafter appearing.

4.2 The Government may, by serving on the Contractor not less than 1 month's advance notice in writing extend the Contract for a period up to an aggregate maximum of 6 months on the same terms and conditions contained in the Contract. The extended Contract Period commences immediately upon the expiry of the current Contract Period.

4.3 The Contractor must agree to the extension of the Contract made under Clause 4.2 above when the Government exercises its right to extend the Contract.

4.4 No further extension of the Contract will be given by the Government Representative after the expiry of the extended Contract Period under Clause 4.2 above.

#### 5. Monthly Licence Fee

5.1 In respect of each month of the Contract Period, the Contractor shall pay to the Government Representative in advance a Monthly Basic Licence Fee and in arrears a Percentage Licence Fee (exclusive of rates, Government rent, taxes and all other outgoings payable in respect of the Premises, and all costs of utilities incurred in the operation of the Business including water and electricity). The Monthly Basic Licence Fee shall be payable on or before the first day of each and every month of the Contract Period without any deduction or set-off whatsoever except that the Monthly Basic Licence Fee in respect of the first month shall be payable as one of the conditions to be fulfilled before signing of the Articles of Agreement under Clause 13.2 of the Terms of Tender. The Percentage Licence Fee in respect of each month of the Contract Period shall be payable no later than 14 days after the end of that month (including the last month of the Contract Period or the remaining period after the last complete month of the Contract Period).

5.2 The Percentage Licence Fee of each month during the Contract Period shall be calculated as follows:-

Percentage Licence Fee	<u>Equals</u> to	Gross Monthly Receipts of the Premises	<u>Multiplied</u> by	Percentage of the Gross Monthly Receipts	<u>Less</u>	Monthly Basic Licence Fee of the Premises
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In the event that the Percentage Licence Fee is a negative figure, no sum shall be payable by either party to the other.

- 5.3 If the Contractor fails to pay a Monthly Basic Licence Fee or Percentage Licence Fee by the due date or any other amount payable by the Contractor under the Contract (“default amount”), the Contractor shall pay a surcharge on the default amount calculated at a rate equivalent to the average of the best lending rates from time to time of all of the note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made.
- 5.4 The Contractor shall pay and discharge all existing and future rates, taxes, fees, Government rent, charges, assessments, impositions, duties and outgoings whatsoever now or hereinafter payable in respect of the Premises and its Business throughout the Contract Period or the period(s) of suspension of Business due to whatsoever reasons.

## **6. Security Deposit**

- 6.1 If the Contractor fails to comply with any provision of the Contract or any amount is due or payable by the Contractor to the Government, the Government may deduct from the Security Deposit or call on the banker’s guarantee (as the case may be) to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government relating to such failure, or to recover the amount due or payable, in each case irrespective of whether or not a demand for payment has been made against the Contractor. The Security Deposit (whether paid in cheque or cashier’s order or in the form of the banker’s guarantee) may be deducted or called on by the Government 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, and may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owed by the Contractor to the Government.
- 6.2 If any deduction is made by the Government from the Security Deposit or a call is made on the banker’s guarantee any time prior to the expiry or termination of the Contract, the Contractor must, within 21 days after the date of the written demand 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 will be added to the residue and form part of the Security Deposit. If the Contractor is required to provide a further banker’s guarantee under this clause, the further banker’s guarantee must comply with the requirements in Clause 15 of the Terms of Tender and will come into operation on the date of its execution.
- 6.3 If the Contractor fails to comply with Clause 6.2 above, the Government may terminate the Contract immediately.

6.4 Upon the expiry or termination of the Contract:

- (a) if the Security Deposit is paid by cheque or cashier's order, the Government will, after deducting the sums due from the Contractor to the Government, return the balance of the Security Deposit in cheque and without interest to the Contractor 3 months after completion of all the obligations under the Contract by the Contractor to the Government's satisfaction, or the expiry or termination of the Contract, whichever is the later; or
- (b) if the Security Deposit is paid by way of a banker's guarantee, the banker's guarantee will be discharged and released in accordance with its terms.

**7. Parking Charges**

7.1 The Contractor shall levy parking charges in accordance with the scale of charges specified in **Contract Schedules 2-4**. The amount of the parking charge for each half hour after the first two hours of parking must be equal to 150% of the amount of the parking charge for each half hour of parking in the first two hours of parking. If the amount of parking charge for each half hour after the first two hours of parking turns out to be more than one (1) digit after the decimal point (i.e. a fraction of ten cents), the amount of parking charge shall be rounded up to the nearest ten (10) cents. The Contractor may with the prior written consent of the Government Representative adjust the parking charges that it may levy under **Contract Schedule 2**. Unless otherwise provided for in this Contract, the Contractor shall not levy any other charges or fees against any person in connection with its management of the Premises or its operation of the Business at the Premises without the prior approval from the Government in writing.

7.2 Without prejudice to Clause 7.1, the Contractor shall **not** let out any car parking spaces at the Premises on a monthly basis without the prior written consent of the Government.

**8. Grace Period for Loading/Unloading or Pick Up / Drop Off of Passenger**

8.1 The Contractor shall allow taxi(s) and vehicles approved by the Government Representative free access to the Premises for loading/unloading or pick up/drop off of passenger(s) pursuant to **Contract Schedule 4**. For the avoidance of doubt, no parking or other charge shall be levied against the drivers or the owners of those vehicles before the expiry of the allowed time limit.

8.2 The Contractor shall ensure that the vehicles occupying the Premises for loading/unloading or pick up/drop off of passenger(s) do not stay beyond the allowed time limit referred to in **Contract Schedule 4**.



**9. Penalty Charges**

- 9.1 The Contractor shall levy penalty charges on owners of vehicles for impounding or removal of vehicles which stayed beyond the allowed time limit as mentioned in Clauses 8.1 and 8.2 above or otherwise caused obstruction at the Premises to the car parking spaces or remain at the car parking spaces and failed to pay the necessary parking charges after seventy-two (72) hours.
- 9.2 The rates of penalty charges are specified in **Contract Schedule 2**. Any alteration of the penalty charge rates must be agreed and approved in writing by the Government Representative in advance.

**10. Reserved Car Parking Spaces**

- 10.1 Unless otherwise provided for in this Contract, the Contractor shall not reserve or cause or permit any car parking spaces at the Premises to be reserved for use by any person or vehicle:-
- (a) The Contractor shall reserve one (1) car parking space at the Premises for use by vehicles displaying on the windscreen valid "Disabled Person's Parking Permit" issued by the Transport Department of the Government ("Permit").
  - (b) The car parking space reserved for use by vehicles displaying the Permit shall be used on a first-come-first-served basis. If the car parking space is occupied, other vehicles displaying the Permit can use other vacant car parking spaces at the Premises.
  - (c) The Contractor shall only charge drivers of vehicles displaying the Permit fees at a rate equivalent to half of the relevant parking charges stipulated in **Contract Schedule 2**. If the amount of parking charge turns out to be more than one (1) digit after the decimal point (i.e. a fraction of ten (10) cents), the amount of the parking charge shall be rounded up to the nearest ten (10) cents.
  - (d) The Government Representative may designate such number(s) of car parking space(s) at the Premises as detailed in **Contract Schedules 3-4** ("Reserved Car Parking Spaces") for use by the Government Representative's approved users free of any parking charges or at specified rates. The Government shall provide the Contractor a list of vehicles allowed to use the Reserved Car Parking Spaces, which may be updated from time to time. The Contractor shall ensure that the Reserved Car Parking Spaces shall not be occupied by any vehicles not permitted by the Government Representative for such purposes.
  - (e) The Contractor shall reserve the Reserved Car Parking Spaces as marked in blue in **Annex A3(a)** hereof for the exclusive use by the Government Representative's approved users daily from 8:00 a.m. to 12

midnight when all other fee-paying car parking spaces of the Premises are fully occupied. The Reserved Car Parking Spaces shall be released for use by the public as fee-paying car parking spaces between 12 midnight and 8:00 a.m. of the following day. The Reserved Car Parking Spaces shall be charged in accordance with the rates as specified in **Contract Schedule 2**.

- (f) Advance booking shall be permitted for the Reserved Car Parking Spaces. The Contractor shall erect notice(s) at the prominent location(s) at the Premises to indicate that the Reserved Car Parking Space(s) have been booked for use.
  - (g) The Contractor shall keep and maintain a proper record on the use of the Reserved Car Parking Spaces including but not limited to receipt number and the number of vehicles parked for inspection by the Government Representative at all reasonable times and, if required, to make available copies of the same to the Government Representative for record and/or data analysis.
- 10.2 No change shall be made by the Contractor to the designation of car parking spaces at the Premises as shown on the plans attached to **Annexes A3 (a)-(b)** unless with the prior written consent of the Government Representative and other applicable authorities including the Lands Department and the Transport Department (if required). The Contractor shall make the required applications to each of them to effect the change in the designation of parking spaces and shall be liable for the cost of making such applications and if the application is approved by all of them, for altering the designation of parking spaces in the License Area in accordance with the approval.
- 10.3 The Contractor shall seek the prior written approval of the Government on the terms and conditions to be erected or displayed at such place and in such manner as may be approved by the Government Representative at the Premises under which the Contractor offers the Premises to the public for use (the "Parking Terms").
- 10.4 The Contractor shall not impose any unfair clause in its Parking Terms which is or may be unenforceable or unfair or unreasonable under the laws of Hong Kong or in contradiction to the terms and conditions of this Contract.

## **11. Opening Hours of the Premises**

Unless otherwise directed or approved by the Government Representative, or in the event that the same shall be prevented by any major repairs or maintenance of the Premises carried out by the Government or the Contractor, the Contractor shall operate and keep the Premises open for use by the public on a 24-hour basis every day during the continuance of this Contract.

**12. Staffing**

- 12.1 The Contractor shall employ at least two (2) staff for the efficient operation of the Premises at all times. The Contractor shall use its best endeavors to ensure that all staff and personnel deployed to operate the Premises have the requisite skills and experiences to discharge their duties in an efficient, courteous and safe manner, and all such arrangements shall be made in compliance with the provisions of the Employment Ordinance (Cap. 57) and be subject to such requirements as the Government Representative may from time to time require the Contractor to observe.
- 12.2 The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 39 below if the Contractor is convicted of any offence under the Employees' Compensation Ordinance.
- 12.3 The Contractor shall comply with the Immigration Ordinance (Cap. 115). If the Contractor is convicted of an offence under the Immigration Ordinance for employing a person who is not lawfully employable to perform the Contract, or is convicted of an offence for aiding and abetting another person to breach its condition of stay, without prejudice to any other rights or remedies which the Government Representative has or may have, the Government Representative may terminate the Contract under Clause 39 below.
- 12.4 The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 39 below if the Contractor is convicted of any offence under the Minimum Wage Ordinance.
- 12.5 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 39 below if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes.
- 12.6 The Contractor shall comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509), and any other legislation pertaining to the health and safety of its own staff, the employees or agents of the Government and/or the Government Representative and any other parties who may be affected by the Contractor's performance of its obligations under the Contract. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under Clause 39 if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance.

- 12.7 The Government Representative may require on reasonable grounds, including but not limited to medical, security and disciplinary reasons, the immediate removal or replacement of any of the Contractor's employees or agents deployed or engaged for the purpose of this Contract.
- 12.8 The Government shall in no circumstances be liable either to the Contractor, its employees or agents in respect of any liability, loss or damage occasioned by such removal or replacement and the Contractor shall fully indemnify the Government against any claim made by such employees or agents.
- 12.9 Any removal demanded or refusal made under sub-clause 12.2 above shall not be construed as a breach of the Contract by the Government Representative and the Contractor shall continue to carry out its obligations under the Contract.
- 12.10 The Contractor shall maintain a proper current and accurate record of all its employees and/or agents employed for the purposes of this Contract. Such record shall include the name, Hong Kong Identity Card number and photograph of an employee or agent and to produce such record for inspection by the Government Representative upon request. All personal data submitted by the Contractor will be used by the Government Representative for the purpose of this Contract only.
- 12.11 The Contractor shall not employ any persons who are forbidden under the laws of Hong Kong or not entitled for whatever reasons to undertake any employment in Hong Kong. Without prejudice to any other rights or remedies which the Government has or may have against the Contractor, if there is any breach of this Clause 12.11 by the Contractor, the Government Representative may terminate the Contract forthwith and the Contractor shall not be entitled to claim any expenses or loss arising from the breach of this clause.
- 13. Uniform for Staff**  
The Contractor shall provide its employees employed for the purposes of this Contract with uniform of a design approved by the Government Representative, and ensure that they shall wear such uniform while on duty at the Premises.
- 14. Use of Access Control Equipment and Devices**  
The Contractor shall provide and install any computerized access control equipment and all the necessary equipment and devices at its own expense for the proper and efficient performance of its obligations under this Contract and these equipment and devices shall include, but not limited to, impounding stands or devices. The Contractor shall not infringe any Intellectual Property Rights of any person in connection with and /or arising from the manufacture or use of any part of the access control equipment and devices or such other

apparatus or equipment used by the Contractor for the purposes of this Contract. The Contractor shall indemnify and keep the Government, its authorized users, assigns and successors-in-title fully and effectively indemnified against all losses, actions, claims, proceedings, demands, liabilities, costs and expenses in respect of any infringement or alleged infringement of Intellectual Property Rights of conducting the Business at the Premises. The indemnity provisions of this Clause 14 shall survive the termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

**15. Security Arrangements**

15.1 The Contractor shall also provide a minimum of one (1) Security Guard at the Premises at all times for provision of security services to the Premises. For this purpose, the Contractor shall only deploy Security Guard(s) who hold valid permit(s) issued under the Security and Guarding Services Ordinance (Cap. 460) and submit to the Government Representative for record purpose the name(s), Hong Kong Identity Card number(s) and copies of valid permits obtained of such Security Guard(s).

15.2 The Security Guard(s) shall carry out regular patrols at the Premises on such routes and at such frequencies as shall be approved by the Government Representative for security and management purposes. The Contractor shall provide the Government with details of the patrol routes and records of patrol upon request.

15.3 The Contractor shall be solely responsible for the security of the Premises, all motor vehicles parked and all goods stored at the Premises or any part thereof.

**16. Dangerous Goods**

The Contractor shall not keep, store or cause, permit or suffer to be stored at or upon the Premises or any part thereof any dangerous or prohibited goods as defined in the Dangerous Goods Ordinance (Cap. 295) without the prior written approval of the Government Representative.

**17. Unauthorized Parking**

The Contractor shall ensure no vehicles that are not authorized by the Government shall use the Premises or remain at the Premises, and shall keep the entry and exit points of the Premises free from obstruction at all times. Where necessary, the Contractor shall remove, impound and detain any unattended vehicle which causes obstruction or otherwise is parked unlawfully, in accordance with the Road Traffic (Parking On Private Roads) Regulations, (Cap. 374O). In exercising these powers the Contractor shall: -

- (a) be entitled to levy impounding and/or removal charges in accordance with Schedule 2 of the Road Traffic (Parking on Private Roads) Regulations;

- (b) record the car registration number and location of every motor vehicle so impounded, removed or detained, the charges recovered and shall provide all such information to the Government Representative on request;
- (c) issue official receipts for the prescribed charges to the driver / registered owner of the detained vehicle if they can be located or identified;
- (d) at its own cost provide vehicle detention pounds where it is necessary to tow away vehicles; and
- (e) where it is necessary to impound vehicles, the Contractor shall use immobilization devices which must be a type approved by Commissioner for Transport.

## **18 Permitted Vehicles**

- 18.1 With the exception of fire engines, ambulances, police cars, government vehicles on official duties, and vehicles as approved by the Government Representative, the Contractor shall not, in respect of the Premises, permit any vehicle other than those specified in **Contract Schedules 2-4** (“Permitted Vehicles”) to be parked at the Premises unless prior approval in writing from the Government Representative is obtained.
- 18.2 The Contractor shall not prevent or refuse the use of the Premises for parking of the Permitted Vehicles.
- 18.3 Unless otherwise provided for in this Contract, the Contractor shall not reserve or cause or permit any car parking spaces at the Premises to be reserved for use by any person or vehicle.
- 18.4 Save with the prior written consent of the Government Representative, the Contractor shall ensure that at all times during the Contract Period (including any extension thereto the Premises) the Permitted Vehicles are parked at the car parking spaces shown on the plans attached to **Annex A3 (a)-(b)**, which may be varied in accordance with Clause 10.2, and that no more than 37 vehicles (including private car, van-type light goods vehicle and taxi that are granted parking at the Premises as specified in **Contract Schedules 2-4**) are parked at the car parking spaces so designated.

## **19. Repair and Maintenance**

- 19.1 The Contractor shall keep in good, clean, substantial and proper repair condition of the structures, appliances, furniture, fixtures and fittings provided by the Government to the Contractor for operation of the Premises as mentioned in **Contract Schedule 8** and including but not limited to any doors, windows, internal and non-load bearing walls, wall finishes, floors, ceilings

and all Government's fixtures and fittings (if any) and the electrical apparatus and fire services installations therein and the painting, papering and decoration thereof and from time to time to replace all Government's fixtures and fittings (if any) and electrical apparatus including electric bulbs and fluorescent tubes which may be or become worn out or for whatever cause beyond repair at any time during the continuance of this Contract. Provided nothing in this clause or elsewhere in this Contract shall require the Contractor to restore or to repair any part of the Premises to a condition better than that pertaining at the commencement of the Contract Period covered by this Contract.

- 19.2 The Contractor shall execute all repairs and works required to be done pursuant to this Contract upon written notice given by the Government Representative as soon as practicable. If the Contractor does not complete such repairs or works within one (1) week after service of such notice, the Government Representative may grant further extension of time to the Contractor to complete such repairs and works, or enter upon the Premises or any part thereof to execute such repairs and works. The cost incurred plus all administrative costs incurred by the Government in executing and completing the repairs and other works shall be paid by the Contractor to the Government on demand.

**20. Use of Government Premises, Facilities & Equipment**

- 20.1 The Government Representative may provide office space, structure, property, facilities, working area, equipment and storage space free of charge at the Premises for the use of the Contractor and for storage of plant, equipment and materials if such space is available.
- 20.2 The office space, property, structure, facilities, machinery, working area, equipment or storage space is provided to the Contractor and its employees solely for the purpose of performance of this Contract during the Contract Period. The Contractor shall accept such in such state and condition as existing at the time when possession of the Premises is delivered to the Contractor. The Government makes no representation and gives no warranty or assurance as to the condition, safety or suitability for any purpose whatsoever of the Premises or any part thereof or any installations therein. The Government's permission shall cease at the end or sooner termination of the Contract or at such earlier time as may be specified by the Government Representative by notice in writing to the Contractor.
- 20.3 If the Government's office space, property, structure, facilities, machinery, working area, equipment or storage space shall be issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such space, property, structure, facilities, machinery or equipment. All such office space, property, structure, facilities, machinery, working area, equipment or storage space should be returned in good repair and serviceable condition upon the termination of this Contract or at any time when required by the Government. The Government's office space, property, structure, facilities,

machinery, working area, equipment or storage space at the Premises are stated in **Contract Schedule 8** and **Annexes A2-3**.

- 20.4 The Contractor shall not make any alteration or addition to the Premises, or any office space, property, structure, machinery, working area, equipment or storage space provided by the Government to the Contractor under this Contract without the prior approval in writing by the Government Representative. If such approval is obtained, the alteration or repair works shall only be carried out by qualified persons approved by the Government Representative and to a standard acceptable to the Government Representative.
- 20.5 The Contractor shall be liable to the Government for any damage or loss or from any cause whatsoever to such office space, property, structure, facilities, machinery, working area, equipment or storage space provided by the Government. If the Premises, the office space, property, structure, facilities, machinery, equipment or storage space is found damaged or lost, as the case may be, in whatever scale and for any reasons whatsoever while in the possession or control of the Contractor or its employees or agents, the Contractor shall pay the cost for all repair or replacement of the same plus all administrative costs incurred by the Government for the repair or replacement of such damages or losses.
- 20.6 The Premises, office space, property, structure, facilities, machinery, working area, equipment or storage space so provided by the Government for the use of Contractor 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 render full assistance to the Government for this purpose.

## **21. Erection of Signs**

The Contractor shall erect or display at the Premises the Parking Terms, and such signs (including traffic signs) and paint such road markings including car parking spaces for the efficient management and operation of the Premises. All signs, erected or displayed at the Premises by the Contractor must comply with the Road Traffic Ordinance (Cap. 374). Such signs and road markings shall be erected or displayed at such place and in such manner as may be approved by the Government Representative. All notices (including the Parking Terms) displayed and erected by the Contractor at the Premises shall be written in both English and Chinese.

## **22. Precautions against Accidents**

- 22.1 The Contractor shall take all precautions to protect the Premises against damage by fire, storm, typhoon or vandalism.
- 22.2 The Contractor shall observe and comply with any requirement which may be imposed by the Director of Fire Services of the Government in connection with the occupation and use of the Premises by the Contractor. The Contractor shall keep sufficient stocks of fire fighting equipment at the Premises as may



be directed by the Government Representative.

### **23 Provision of Management and Work Plan**

23.1 The Contractor shall submit at its own cost within ten (10) days before the commencement of the Contract a management and work plan showing the Contractor's work procedures, Parking Terms, registered name and logo to be displayed, patrol record format, route and schedule, guidelines to staff (including but not limited to such cases as handling of car accidents at the Premises, customer handling skills, etc.), staff uniform, deployment and training, the equipment and devices to be used and other ancillary services in connection with this Contract to the Government Representative for approval.

23.2 Where the Government Representative considers on reasonable grounds that the existing plan or operation of the Business at the Premises according to the plan is inadequate for provision of safe car parking or good services, the Contractor shall, upon request by the Government Representative, provide a revised plan with such modifications and improvement actions at its own cost to the satisfaction of Government Representative.

### **24. Environmental Nuisances**

24.1 The Contractor shall not do or permit or suffer to be done anything in or upon the Premises which may be or become a nuisance, annoyance or cause damages to the Government or the owners or occupiers of the premises in the neighbourhood of the Premises. The Contractor shall in particular ensure that the changing of engine oils and car repair (except emergency repairs) by patrons of the Premises are strictly prohibited.

24.2 The Contractor shall take or cause to be taken such precautions in all respects to the satisfaction of the Government Representative as are necessary to prevent oil or oil derived substances from entering sewers or drains within or serving the Premises.

### **25. Advertising Material**

25.1 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 Premises or any part thereof except with the prior written consent of the Government Representative.

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

25.3 Without prejudice to the generality of sub-clause 25.2 above, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Premises any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Premises or any part thereof) of any advertising nature relating to any tobacco or tobacco related products.

**26. Erection of Contractor's Name and Logo**

The Contractor shall not erect or display at the Premises the Contractor's registered name or logo unless they, and the form of display, have been agreed and approved by the Government Representative in writing.

**27. Notice to be Displayed at the Premises**

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

**28. Inspection & Rejection**

28.1 The Contractor's performance of its obligations under the Contract shall be subject to inspection by the Government Representative at any time.

28.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government Representative may reject any action undertaken by the Contractor or result of such action which does not strictly conform to the terms and conditions of the Contract.

28.3 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, the Contractor shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government Representative.

28.4 If the Contractor shall fail to rectify such rejected action or result of action, the Government Representative may without prejudice to any other rights and remedies available to the Government Representative carry out and complete such rectification by its own staff or by its agents. All costs and expenses whatsoever which may be incurred by the Government Representative thereof shall be recoverable in full from the Contractor forthwith on demand. The normal working hours for the staff of the Government Representative are, with the exception of public holidays, from 9 am to 5:30 pm from Mondays to Fridays. If such rectification is carried out by the staff of the Government

Representative outside these normal working hours, the Contractor shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

**29. Contractor's Act, Default, etc**

Any act, default, neglect or omission of any officer, employee, agent or sub-contractor (of whatever tier) of the Contractor, and those officers, employees or agents of the sub-contractors, shall be deemed to be the act, default, neglect or omission of the Contractor and the Contractor shall be responsible for them as if it is its own.

**30. Public Liability Insurance**

- 30.1 The Contractor shall effect and keep in force during the Contract Period (including any extension thereto in respect of the Premises) and at its own expense a third party/public liability policy of insurance (the "Insurance") exclusively for this Contract in the joint names of the Government and the Contractor in the sum of not less than Ten Million Hong Kong Dollars (HK\$10,000,000) for each accident with unlimited claims for each year with a reputable insurance company authorized under the Insurance Companies Ordinance (Cap. 41) and approved by the Government and on such terms and conditions as shall be approved by the Government. The Insurance shall cover liability to pay damages and compensation for injury to or death of any persons and for loss or damage to any properties whatsoever where such injury, death, loss or damage (as the case may be) is caused by or arises out of any act, negligence or default of the Contractor or the Government or their respective employee(s) or agent(s).
- 30.2 The Contractor shall with all due diligence conform to all conditions of the insurance policies effected under the Contract and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and the Contractor shall bear the consequences of any failure to do so. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.
- 30.3 If the policy of the Insurance (the "Policy") provides that the payment of certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment and shall reimburse the Government forthwith if the Government shall be required to make such payment. The Policy shall also indemnify all sums which the Contractor, its employees or agents or the Government or its respective employees or agents shall become legally liable to pay as compensation for bodily injury occurring at the Premises.

- 30.4 The Contractor shall submit to the Government Representative upon award of the Contract one (1) copy of the said policy of insurance together with the receipt for payment of the current premium. Thereafter, the Contractor shall provide the Government with copies of the premium receipts of the policy of insurance within thirty (30) days after the due date for payment of premium.
- 30.5 If the terms of the policy of insurance taken out by the Contractor require the insured parties to bear excesses or deductibles in the event of claims, the Contractor shall be personally and solely responsible for the payment of such excesses and deductibles and shall indemnify the Government fully for such payments upon each claim by third parties that fall within the excess amount.
- 30.6 The Policy shall include a cross liability clause so it shall be treated that a separate policy has been issued to each of the Contractor and Government Representative.
- 30.7 The Contractor is responsible to lodge all claims with the said insurance company and shall deal with the said company within seven (7) days upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage provided that the Government shall have the right to liaise with the insurance company on any matter of such claims.
- 30.8 If the Contractor fails to effect or to keep in force the Policy or any other insurance which it may be required to effect under the terms and conditions of this Contract, the Government may effect and keep in force any such insurance and pay such premium(s) as may be necessary for that purpose. Without prejudice to any rights and remedies available to the Government, the Government may deduct the amount so paid from the Security Deposit in accordance with Clause 6.1 above or recover the same as a debt due from the Contractor.

### **31. Liability and Indemnity**

- 31.1 Without prejudice to any other provisions of this Contract, the Contractor shall indemnify the Government, its authorized users, assigns and successors-in-title and keep the Government, its authorized users, assigns and successors-in-title fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government, its authorized users, assigns and successors-in-title may sustain or incur or which may be brought or established against it by any person and which in any case arises out of or in relation to or by reason of, but not limited to, the following –
- (a) the negligence, recklessness or wilful misconduct of the Contractor, or its employees or agents;

- (b) the breach or the non-performance or non-observance of any of the provisions, warranties and undertakings, obligations or conditions of this Contract by the Contractor or its employees or agents;
  - (c) any default, unauthorized act or omission of the Contractor, or its employees or agents;
  - (d) the non-compliance with any applicable laws and any requirements or regulations of any local authority or agency in connection with the performance of the obligations under this Contract by the Contractor, or its employees or agents; or
  - (e) any loss or damage sustained by or any injury to or death of any third party in consequence of any negligence, omission, default of the Contractor or its employees or agents under statute and under common law as long as such loss or damage sustained by or any injury to or death of such third party is attributable to the Contractor or its employees or agents (if any) in the manner as described in (a) to (d) above.
- 31.2 The indemnities, payment and compensation given in pursuance of this Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government Representative in enforcing any of the terms and conditions of this Contract, any failure or omission of the Government Representative in investigating or dealing with any claims in consequence of its negligence or omission or default, 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 its employees or agents.
- 31.3 The Government, its authorized users, assigns and successors-in-title, its employees and agents shall not be under any liability whatsoever for or in respect of any injury to or death of any of the Contractor's employees or agents save and except such injury or death caused by the negligence of the Government, its authorized users, assigns and successors-in-title or its employees or agents. The Contractor shall indemnify the Government, its authorized users, assigns and successors-in-title and its employees or agents against all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions whatsoever in respect of any such injury or death for which the Government, its authorized users, assigns and successors-in-title and its employees and agents are liable under this clause.
- 31.4 This clause 31 shall survive the termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

**32. Report of Accident**

The Contractor shall give notice within twenty-four (24) hours to the Government Representative of any damage or accident that has occurred at the Premises or any damage to or defects at the Premises or any part thereof or water pipes, gas pipes, electrical wiring or fittings, fixtures or other facilities installed or provided by the Government at the Premises.

**33. Handling of Complaints**

33.1 The Contractor shall deal with, settle complaints or disputes in respect of the use of the Premises by the general public and the Government has no obligation to render any assistance to the Contractor in this respect. If the Government's assistance is required to deal with or settle the complaints or disputes, the Contractor shall keep the Government indemnified against any or all losses, damages and liabilities which the Government may incur arising out of or in relation to such involvement.

33.2 The Contractor shall operate a manned 24-hour hotline and to record complaints properly in a register. The telephone number of such hotline should be displayed at conspicuous place at the Premises.

**34. Report on Utilization Rate**

The Contractor shall provide the Government Representative with written information in a format approved by the Government Representative on details of utilization of the Premises no later than the fourteenth (14<sup>th</sup>) day of each month following the month to which such information relates, and other additional information as the Government Representative may require from time to time. The frequency of the provision of such information may be varied by the Government Representative at any time.

**35. Confidentiality**

35.1 The Contractor shall treat as confidential all information, drawings, specifications, documents, contracts, design materials and all other data (including without limitation any personal particulars, records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) and materials of any nature (in or on whatever media)) accessible by the Contractor under this Contract or which the Government has for the purposes of or in the course of performing this Contract disclosed, supplied, made available or communicated to the Contractor PROVIDED THAT this sub-clause 35.1 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiation leading to this 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).

- 35.2 The Contractor shall indemnify and keep the Government, its authorized users, assigns and successors-in-title, its employees and authorized persons fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486) which actions and/or claim would not have arisen but for the negligence or omission of the Contractor, any of its employees or agents (or any one acting on its/their behalf) in connection with any materials or any services provided under this Contract, as well as any liability or claim in respect of any act done or omission in the performance of this Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).
- 35.3 The Contractor hereby agrees that it will use the confidential information described in sub-clause 35.1 solely for the purposes of this Contract and that it will not, at any time whether during or after the completion, expiry or termination (howsoever occasioned) of this Contract use or allow to be used the same for any other purposes without the Government Representative's prior written consent.
- 35.4 The Contractor undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by this sub-clause 35.1 to keep secret and treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 35.5 The Contractor shall ensure that each of its employees, agents, associates, consultants and any other persons engaged in any work in connection with this Contract are aware of and comply with the provisions of this Clause 35 and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify and keep the Government, its authorized users, assigns and successors-in-title fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government may suffer incur or sustain as a result of any breach of confidence (whether under this Contract or general law) by any such persons.
- 35.6 The Contractor further agrees that it will not at any time whether itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any confidential information supplied to it by the Government or obtained by it while performing this Contract.

35.7 The Contractor shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons pursuant to any of the provisions in this Clause 35.

35.8 The provisions of this Clause 35 shall survive the termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

**36. Maintenance of Proper Accounting Records**

Within fourteen (14) days after the end of each calendar month or the expiry or sooner termination this Contract, the Contractor shall –

- (a) submit to the Government a statement of accounts in the form as the parties hereto may mutually agree, or in default of agreement, as the Government at its absolute discretion may prescribe showing the Gross Monthly Receipts and the difference between the Percentage Licence Fee and the Monthly Basic Licence Fee that should be payable to the Government, if any, for that month. The statement of accounts shall be certified as being accurate and complete by the Contractor or such other person as the Government may from time to time approve or prescribe; and
- (b) if the statement of accounts is not submitted within the fourteen (14) days as described above, the Contractor shall pay to the Government by way of a provisional Percentage Licence Fee for that month with an amount equivalent to the highest Percentage Licence Fee paid for any one (1) month during the twelve (12) months' period immediately preceding the month in question. Provided always that when the statement of accounts for the month in question is later submitted by the Contractor, the Contractor shall pay to the Government forthwith an amount equivalent to the Percentage Licence Fee as shown on the statement of accounts less the amount of the provisional Percentage Licence Fee held by the Government for the month in question within fourteen (14) days of demand. Where the amount of provisional Percentage Licence Fee held by the Government for the month in question is greater than the Percentage Licence Fee shown, the Government shall pay to the Contractor the difference within thirty (30) days;
- (c) the Contractor shall at the request of the Government's notice in writing submit within thirty (30) days of such notice a statement of accounts in the form as the parties hereto may mutually agree, or in default of agreement, as the Government at its absolute discretion may prescribe. The statement of accounts shall show the Gross Monthly Receipts and the amount of the Percentage Licence Fee that



should be payable to the Government for such month or months as stipulated in the notice. Such statement shall be audited and certified as being accurate and completed by a professional accountant holding practicing certificate or a corporate practice within the meaning of the Professional Accountant Ordinance (Cap.50) (“the Auditor”);

- (d) in the event that the amount of the Percentage Licence Fee as shown in the audited statement of accounts submitted by the Contractor under Clause 36 (c) for any month shall exceed or shall be less than the Percentage Licence Fee actually paid by the Contractor to the Government for that month, the amount of the shortfall, if any, shall be paid by the Contractor to the Government within fourteen (14) days of demand or the amount of overpayment, if any, shall be repaid by the Government to the Contractor within thirty (30) days of demand;
- (e) within three (3) months after the end of each Contract Year, or after the expiry or earlier termination of this Contract , the Contractor shall submit to the Government an audited statement of accounts certified as being accurate and complete by the Auditor in the form as the parties hereto may mutually agree, or in default of agreement, as the Government at its absolute discretion may showing inter alia the Gross Monthly Receipts and the amount of the Percentage Licence Fee for each month of that Contract Year or that part of the Contract Year since last such statement;
- (f) within one (1) month after the submission of the audited statement of accounts by the Contractor under Clause 36 (e) above, the Contractor shall pay to the Government or the Government shall pay to the Contractor, as the case may be, the differences between the Percentage Licence Fee which the Contractor has paid and the Percentage Licence Fee shown in the audited statement of accounts;
- (g) if the audited statement of accounts is not submitted within three (3) months after the end of each Contract Year as described in Clause 36 (e) above, or after the expiry or earlier termination of this Contract , the Contractor shall pay to the Government by way of a provisional Percentage Licence Fee for the Contract Year or that part of the Contract Year with an amount equivalent to the highest Percentage Licence Fee paid during the Contract Year, which is the twelve (12) months’ period immediately preceding the month in question or that part of the Contract year, if appropriate. Where the amount of the total Percentage Licence Fee paid during the Contract Year plus the provisional Percentage Licence Fee held by the Government is greater than the total amount of the Percentage Licence Fee shown in the accounting statement as submitted by the Contractor later on, the

Government shall pay to the Contractor the difference within thirty (30) days after receipt of the accounting statement;

- (h) for the avoidance of doubt, it is hereby expressly agreed and declared that the acceptance by the Government of any statement of accounts or audited statement of accounts submitted or any money paid by the Contractor in accordance with this clause shall not in any way whatsoever bar or otherwise preclude the Government from subsequently disputing the accuracy of any such statement of accounts or the correctness of any such sum and that in the event that any further sum whatsoever be found due from the Contractor to the Government, the same shall be paid by the Contractor to the Government within fourteen (14) days of demand;
- (i) the Contractor shall keep and maintain proper books of account including ledgers, supporting vouchers, receipts, etc. and other records or documents in respect of the operation of the Business under this Contract and to cause all such records or documents to make up on a monthly basis and retain the same for at least seven (7) years;
- (j) at all reasonable time upon prior notice from the Government Representative to produce to it for inspection of all books of account, ledgers, vouchers, receipts, etc. and other records or documents relating to the operation of the Business under this Contract and, if required, to make available copies of them.

**37. Release of Information**

Upon the earlier termination or within twelve (12) months prior to the expiry of this Contract, the Contractor shall allow the Government Representative to release any information relating to the utilization of the Premises, Gross Monthly Receipts as obtained from the Contractor by virtue of this Contract to prospective tenderers of future invitation to tender for grant of permit to operate the Business.

**38. Licence to Use the Materials Provided by the Contractor**

- 38.1 The Contractor hereby grants for the benefit of the Government, its authorized users, assigns and successors-in-title an irrevocable, non-exclusive, worldwide, perpetual, sub-licensable and royalty-free licence to use any materials to be submitted or provided by the Contractor under the Contract including but not limited to the right to reproduce in any format and as many copies of those materials as, in the opinion of the Government, are reasonably required of for processing, analyzing and/or recording purposes as well as disclosure (and in relation to any materials to which the Contractor is not empowered to grant sub-licence(s) the Contractor hereby undertakes to procure at its sole expense the grant of such rights for the benefits of the Government, its authorized users, assigns and successors-in-title by the relevant third parties in respect of such materials to be granted on or before such materials are submitted or provided

to the Government in accordance with the terms hereof).

- 38.2 The Contractor shall keep the Government Representative informed in writing of any materials that are subject matters of the licences granted or to be granted to which the Contractor is not empowered to grant licences pursuant to sub-clause 38.1 above and any restrictions whatsoever affecting the use thereof.
- 38.3 The Contractor hereby undertakes to procure all proper licences, clearances and releases in writing obtained / procured pursuant to sub-clause 38.1 to be granted in favour of the Government, its authorized users, assigns and successors-in-title.
- 38.4 For the purpose of this clause, the licences granted or to be granted shall cover all Intellectual Property Rights of whatever nature.
- 38.5 The Contractor hereby waives and undertakes to procure its employees, sub-contractors and agents to waive all moral rights (whether past, present or future) in all materials submitted or to be submitted by the Contractor, such waiver shall operate in favour of the Government, its authorized users, assigns and successors-in-title and shall take effect upon submission of such materials.
- 38.6 The Contractor 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.

**39. Termination**

- 39.1 Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government Representative, the Government Representative may at any time by notice terminate the Contract without entitling the Contractor to compensation in any of the following events:-
- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract or in the case of a breach capable of being remedied, fails within fourteen (14) days or such longer period as the Government Representative may allow after the receipt of a notice in writing from the Government Representative to remedy the breach (such notice shall contain a warning of the Government Representative's intention to terminate the Contract);
  - (b) if the Contractor, is an individual, he shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of its estate made against him, or shall take any proceedings for

liquidation or composition under any Bankruptcy Ordinance (Cap. 6) for the time being in force, or make any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports so to do, or suffers any execution to be levied on its goods and assets whether or not at the Premises, or a petition is filed for the bankruptcy or winding up of its business;

- (c) if the Contractor, being a company, a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganisation, reconstruction, or dissolution of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing, or the Contractor makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets;
- (d) if the Contractor assigns or purports to assign all or any part of the burden or benefits of the Contract without the prior written consent of the Government Representative;
- (e) if the Contractor unilaterally ceases to operate the Business at the Premises and/or unilaterally terminate the Contract at any time prior to the expiry of the Contract Period;
- (f) if there is any claim or allegation that the Contractor has infringed or may infringe the Intellectual Property Rights of any person or persons in the course of performing the Contract; or
- (g) any event or circumstance occurs which enables the Government Representative to terminate the Contract under any provision of the Contract.

39.2 If the Government shall at any time be prevented from performing the Contract by force majeure or otherwise due to any event mentioned in Clause 41 below and that the Government Representative wishes to early terminate the Contract instead of requiring a temporary closure under Clause 41 below, the Government Representative may serve not less than two weeks' notice a notice on the Contractor to this effect.

39.3 For the purpose of sub-clause 39.2 above, "force majeure" means acts of God, strikes, lockouts, acts of war, civil disorders, governmental laws, orders or regulations or other similar or different events or contingencies beyond the reasonable control of the respective parties. For these purposes an event shall not be deemed to be within the control of the Government Representative on the ground that the Government Representative could have prevented that

event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person. Failure to obtain or renew any licence or permit for carrying the Business for whatever reason including because due to any change of applicable law and regulations may not be treated as force majeure but a default on the part of the Contractor.

39.4 Notwithstanding anything herein to the contrary, either party to the Contract may without cause terminate the Contract early by giving not less than 9 months' notice to the other party provided that any such notice may only be served no earlier than the expiry of the first 18 months of the Contract Period.

#### **40. Effect of Termination**

In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in Clause 39 or otherwise ("Termination"):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
  - (i) the Government Representative's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitles the Government Representative to terminate the Contract);
  - (ii) the rights and claims which have accrued to a party prior to the Termination; and
  - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (howsoever occasioned) (including without limitation Clauses 11, 14 and 35 hereof, all provisions entitling the Government Representative or the Government to seek indemnity from the Contractor);
- (b) neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government and the Government Representative including the right to seek indemnity under Clause 31 hereof, in the event that this Contract is terminated under Clause 39.1 hereof, the Contractor shall be liable for all losses,

damages, costs and expenses incurred by the Government and the Government Representative arising from the Termination including without limitation (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination; (ii) all administrative and legal costs incurred by the Government and the Government Representative for terminating the Contract; and (iii) all costs incurred by the Government Representative for arranging stop-gap measures due to the cessation of the Business;

- (d) the Contractor shall forthwith pay up all unpaid Monthly Licence Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in Clause 5.3 hereof;
- (e) the Contractor shall immediately deliver up vacant possession of the Premises and all Government property in good repair (fair wear and tear excepted) and in clean and hygienic condition, provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Premises with or without the Government Representative's consent, the Government Representative may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government Representative may require and to make good and repair in a proper and workmanlike manner any damage to the Premises and to the Government Representative's fixtures and installations thereof by such deadline date as specified by the Government Representative (whether to fall before or after the Termination) before delivering up the Premises to the Government Representative. Alternatively, the Government Representative may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Premises if the Government Representative so chooses without any compensation to the Contractor whatsoever;
- (f) the Contractor shall remove from the Premises all removable objects which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at its own expense make good any damage to the Premises arising from such removal;
- (g) all employees and agents of the Contractor shall vacate the Premises and deliver up all keys and access cards, if applicable, to the Premises;
- (h) if the Contractor fails to comply with any of sub-clauses (e) or (f) hereof, the Government Representative may forthwith enter the Premises 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 Premises in good repair and a clean and serviceable condition. The Government Representative reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor or any other party any fixtures and fittings so installed or erected and any property not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government Representative as a direct or indirect result of the breach of the Contract under this clause shall be recoverable as a debt due from the Contractor;

- (i) submit all outstanding statements and information as specified in Clause 36 hereof and account to the Government all unpaid Monthly Licence Fee plus any interest at the rate specified in Clause 5.3 hereof for any late payment; and
- (j) in the event of termination of the Contract Period by the Contractor issuing a termination notice under Clause 39.4 above, any tender offer from the same Contractor for a contract immediately replacing this Contract will be rejected.

#### **41. Temporary Closure or Reserved Use of Premises**

41.1 It is hereby mutually agreed as follows, in the event that -

- (a) any individual car parking space at the Premises is rendered unfit for use for a continuous period of seven (7) days or more for any reason whatsoever that is not attributable to any act, omission or default on the part of the Contractor or any of its employees or agents, and the Contractor is unable to carry on the Business of operating the car parking space;
- (b) the Premises or any part thereof is required by the Government Representative to be closed for maintenance purposes or for holding special events or functions, and the number of fee-paying car parking spaces is reduced as a result thereof;
- (c) the Government Representative wishes to reserve any part of any of the Premises for its own use free of any charges; or
- (d) the Government Representative reasonably considers it necessary or expedient to close the Premises or any part thereof temporarily for safety or other reasons,

the Contractor shall, on receipt of a notice issued by the Government, close the Premises or such part thereof as specified by the Government in the notice. In such event, the Contractor shall not raise any objection nor make any claim for compensation or relief of any nature whatsoever against the Government and the Licence Fee hereby agreed to be paid in respect of the Premises or a proportionate part thereof shall abate on a pro-rata basis until the Premises or part thereof has been again rendered fit for use or is able to be re-opened for use or is delivered to the Contractor after completion of the relevant works, as the case may be.

Formula for calculation of the abatement is as follows:

**Abated Monthly Basic Licence Fee =**

Monthly Basic Licence Fee minus (Average Licence Fee Per Parking Space Per Day <sup>Note</sup> Licence Fee

times

Number of Parking Space available for hiring out by the Contractor

times

Number of Days during which the parking spaces are hired out during the month)

Note: Monthly Basic Licence Fee offered by the Contractor ÷ Number of days in the relevant month ÷ Total Number of Parking Space

Notwithstanding the above, the Government shall have the sole right to determine whether any part of the Premises has become unfit for use under sub-clause 41.1 (a), and further the Government shall not in any circumstances whatsoever be required or otherwise obliged to repair or reinstate any part of the Premises rendered unfit for use for any reason whatsoever if the Government shall be of the opinion that it is not practicable or reasonable to do so. There shall not be any abatement of the Licence Fee or compensation of any kind granted to the Contractor other than conditions set out in this clause.

- 41.2 The Government does not in any way guarantee the continued use or operation of any adjoining Government facilities to the Premises or the level of utilization. Without prejudice to the generality of the foregoing, the Government may at its sole discretion close or restrict the access of the public to the whole or any part of the Premises or any adjoining or nearby Government facilities including but not limited to the Premises or any part thereof or forbid the entry of any person to the same for any period or periods as it may deem necessary without incurring any liability whatsoever to the Contractor in respect of any disturbance to or reduction in or loss of business consequent thereon, in which event the Contractor shall not be entitled to any



claim whatsoever for compensation and all fees, charges and other payments whatsoever payable by the Contractor to the Government hereunder shall remain payable in full in respect of such period or periods.

41.3 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 Contract on the Contractor's part to be observed and performed.

41.4 The Government may at any time assign the benefits and/or obligations set out in this Contract to any person and any public body as the Government may nominate.

#### **42. Damages Caused by Overflow of Water**

42.1 The Government shall not be under any liability whatsoever to the Contractor in respect of any damage sustained by the Contractor caused by or through or in any way due to the overflow of water or damage from any part of the building of which the Premises forms part except arising from any failure by the Government to keep and repair the Premises in accordance with the provisions herein, if any, which requires the Government to be responsible for making good any structural or inherent defects in the Premises.

42.2 Any damage or obstruction caused by the Contractor, its servants or agents to any nullah, sewer, storm-water drain or water main within or adjoining the Premises or any part thereof shall be made good by the Government at the cost of the Contractor, and the amount due in respect thereof shall be paid on demand to the Government by the Contractor.

42.3 Notwithstanding sub-clause 42.2, the Contractor shall, at the request of the Government, make good such damage or obstruction as specified by the Government at its own expense and in all respects to the satisfaction of the Government.

#### **43. Occupier under Occupier's Liability Ordinance**

For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Premises under Occupier's Liability Ordinance (Cap. 314) during the continuance of this Contract.

#### **44. Licence, Permit and/or Certificate**

44.1 The Contract does not confer any licence, permit, certificate, waiver or exemption which the Contractor is obliged to apply for under all applicable laws and regulations of Hong Kong in order to operate the Business at the Premises. Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.

- 44.2 Without affecting the generality of the foregoing, the Contractor shall make no claim of any kind whatsoever against the Government or the Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits and/or certificates.
- 44.3 Since it necessarily takes time for the relevant authorities to consider and decide on an application for the requisite licences, permits and/or certificates, without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business as soon as the Contract Period commences, the Contractor agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor cannot operate its Business pending the consideration of its applications and issuance or renewal of the relevant licences, permits and/or certificates. The non-issuance of any of the relevant licences, permits and/or certificates by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 44.4 The Contractor shall produce copies of all requisite licences, permits and/or certificates including but not limited to Business Registration Certificate, from time to time upon demand by the Government Representative.

**45. Electricity Supply**

- 45.1 The Contractor, if so permitted by the Government Representative, may consume electricity from supply points which may be available at the Premises for operating the Business and shall pay all fees and charges (including but not limited to the electricity charges for lightings and ventilation systems, if any, installed at the Premises) in connection therewith. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatus associated therewith at or serving the Premises in safe and proper condition and to comply in all respects with the Electricity Ordinance (Cap. 406) and its subsidiary legislations with respect to the utilities.
- 45.2 If electricity supply points are not available, the Contractor shall make such arrangements for the supply of electricity to the Premises as the Contractor shall require at its own expense and pay all charges in connection therewith including the cost of installation and maintenance thereof, and, on termination of this Contract, the cost of dismantling all pipes, wires, cables, meters, switches and any other apparatus ancillary thereto.
- 45.3 All installation, alteration and addition of wiring and lighting fittings to the existing Premises, and all other electrical work, be it permanent or temporary, to be carried out at the Premises shall be approved by the Government Representative in advance by writing and the work for obtaining and securing electricity supply 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 Representative. 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 Representative so direct. A copy of Work Completion Certificate (WR1) attached with schematics and test reports shall be submitted to the Government Representative for retention. The ownership of any such installations shall be vested in the Government if the Government Representative considers it to be necessary upon the termination of the Contract free of any costs or charges to the Government.

**46. Water Supply**

46.1 The Contractor, if so permitted by the Government Representative, may use water supply from supply points which may be available at the Premises to operate the Business and the Contractor shall be responsible to pay all required fees and charges in connection therewith.

46.2 All installation of water supply works, be it permanent or temporary, to be carried out at the Premises shall be approved by the Government Representative in advance by writing and the works shall be carried out by qualified personnel registered under Waterworks Ordinance (Cap. 102), approved in writing by and to the satisfaction of the Government Representative. The Contractor shall be responsible to maintain and repair such installation at its own expense as well as to remove the same should the Government Representative so direct. The ownership of such installations shall be vested in the Government if the Government Representative considers it to be necessary upon the termination of this Contract free of any costs or charges to the Government.

**47. Applicability of Public Health and Municipal Services Ordinance**

The Contract is subject to the provision of the Public Health and Municipal Services Ordinance (Cap. 132) and all regulations made thereunder, which may be applicable to the Sha Tin Town Hall, the Premises and the Business.

**48. Cleansing, Collection & Disposal of Refuse and Litter**

Without prejudice to any other provisions of this Contract, the Contractor undertakes at its own cost: -

- (a) to keep the Premises including but not limited to those Reserved Spaces as shall be directed by the Government Representative in a clean and tidy condition and to ensure that grease and other deposits are promptly removed;
- (b) to provide an adequate number of rubbish receptacles for operation of the Business in the Premises as shall be directed by the Government Representative and to maintain at all times such rubbish receptacles in a clean and sanitary condition to the satisfaction of the Government Representative;

- (c) to arrange for the effect the daily removal from the Premises of all refuse and rubbish; and
- (d) to use the fixtures and fittings of the Premises and the sewers and drains in a proper and careful manner, to clear all drains and sewers that are choked or stopped up, and to pay the Government on demand the cost incurred in repair or replacement of any of the said items arising otherwise than through fair wear and tear structural defects and inherent defects.

**49. Jurisdiction**

The Contract shall be governed by and construed according to the law of the Hong Kong Special Administrative Region and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

**50. Service of Notice**

50.1 Any notice to be given herein shall be in writing and shall be sufficiently served on the Contractor if sent to its address as set out in the Contract or to such other address as either party shall notify the other in writing or to his last known address; and in the case of a corporation, forwarded to its registered office. Notice may be delivered personally or by post, by courier, by facsimile or by email.

50.2 Any notice shall be deemed given –

- (a) When left at the address of the recipient if delivered by hand during normal business hours; or
- (b) One (1) working day after despatch by post; or
- (c) When successfully dispatched by email or facsimile.

**51. Order of Precedence**

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

The Special Conditions of Contract;  
The General Conditions of Contract;  
The Articles of Agreement;  
The Contract Schedules;  
The Terms of Tender;  
The Form of Tender with Appendix; and  
Annexes A1 – A3.

**52. Mediation Clause**

The parties hereto agree that any dispute or claim arising out of or in connection with this Contract (“the Dispute”) shall be referred to mediation prior to commencement of litigation. The Dispute shall be referred to mediation at the Hong Kong International Arbitration Centre (“HKIAC”) in accordance with its Mediation Rules. In case the Dispute cannot be resolved by mediation, the Dispute shall be referred to, and be settled by, arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609).

**53. Arrangement during Epidemic Illness**

In the event of illness of any epidemic nature breaking out, 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.

**PART 4****CONTRACT SCHEDULES**

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**CONTRACT SCHEDULE 1**

**Monthly Licence Fee**

I/we propose to have HK\$ \_\_\_\_\_ as the Monthly Basic Licence Fee and \_\_\_\_\_ as the Percentage Licence Fee.

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or  
Authorized Representative\* : \_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 2****Scale of Charges****(A) Scale of Charges referred to Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract for parking at the designated Car Parking Spaces****Table (A)**

<b>Period of parking</b>	<b>Type of Vehicle</b>	<b>(Notes (b)-(d) refer) Parking charge for each half hour of the first two hours (\$)</b>
From 8 a.m. to 12 midnight	Private Car, Van-type Light Goods Vehicle and Taxi	(A) (1)
From 12 midnight to 8 a.m.	Private Car, Van-type Light Goods Vehicle and Taxi	<b>Parking charge for each half hour during the period (\$)</b>
		(A) (2)

- Note :**
- (a) Tenderers must provide the rates of parking and penalty charges that they intend to levy at Table (A) and (B) of **this Schedule** for approval by the Government Representative.
  - (b) Audience of Sha Tin Town Hall events, on a first-come-first-served basis, (identifiable by showing event tickets of the date of parking) shall pay the charge as specified at (A) (1) of **this Schedule** only for the first four (4) hours of parking. Thereafter, they shall pay the progressive rate as specified in Note (d) at below.
  - (c) Hirers of the Sha Tin Town Hall, on a first-come-first-served basis and upon presenting parking coupons issued by the Sha Tin Town Hall, shall pay the charge only at a flat rate as specified at (A) (1) of **this Schedule** from 8 a.m. to 12 midnight.
  - (d) Parking charge for each half hour after the first two hours during the specified parking period should be equal to 150% of the parking charge for each half hour of the first two hours of the parking period, except charges quoted in (b)-(c) above and those mentioned in **Contract Schedules 3-4**.
  - (e) If the amount of parking charge turns out to be more than one (1) digit after the decimal point, the amount of parking charge shall be rounded up to the nearest ten (10) cents. e.g.  $\$1.5 \times 150\% = \$2.25$ , then the amount of parking charge shall be \$2.30.

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

Name of Authorized Representative : \_\_\_\_\_  
Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate



**CONTRACT SCHEDULE 2****Scale of Charges****(B) Penalty Charges referred to in Clause 9.2 of the Special Conditions of Contract****Table (B)**

<b><u>Operation Action</u></b>	<b><u>Rate per vehicle per occasion (\$)</u></b>
Impound	
Removal	

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or  
Authorized Representative\* : \_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 3**  
**Distribution of Car Parking Spaces**

**Part A**

<b>Distribution of Car Parking Spaces</b>	<b>From Monday to Friday (except General Holiday)</b>			<b>On Saturday, Sunday and General Holiday</b>	
	From 8 a.m. to 6 p.m.	From 6 p.m. to 12 midnight	From 12 midnight to 8 a.m.	From 8 a.m. to 12 midnight	From 12 midnight to 8 a.m.
(a) Number of Reserved Car Parking Spaces for use by the Government Representative and persons notified to the Contractor by the Government Representative from time to time <b>free of charge</b>	9	6	0	7	0
(b) Number of Reserved Car Parking Spaces to be <b>charged with at a flat rate</b> for use by the users / hirers	5	8	0	7	0
(c) Number of <b>fee-paying</b> Car Parking Spaces for use by the public	<b>23</b>	<b>23</b>	<b>37</b>	<b>23</b>	<b>37</b>
<b>Total number of Car Parking Spaces at the Sha Tin Town Hall</b>	37				

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 3**  
**Distribution of Car Parking Spaces**

**Part B**

- (1) The Reserved Car Parking Spaces shall be released from 12 midnight to 8 a.m. to the Contractor for overnight parking by the public subject to the parking charge scale as specified in **Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract and Contract Schedule 2.**
- (2) The Reserved Car Parking Spaces are reserved for the following purposes:-
- (a) The Car Parking Spaces mentioned at Part A (a) of **this Schedule** are reserved for use by the Government Representative and persons notified to the Contractor by the Government Representative from time to time free of charge during the period specified. These Reserved Car Parking Spaces shall be released to the Contractor for parking by the public from 12 midnight to 8 a.m. subject to the parking charge scale as specified in **Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract and Contract Schedule 2.**
- (b) The Car Parking Spaces mentioned at Part A (b) of **this Schedule** are reserved for users / hirers of the Sha Tin Town Hall as approved by the Government Representative. The users / hirers are required to pay the parking fee in advance at a flat rate (i.e. payment of parking fee at each half hour of the first two (2) hours in **Contract Schedule 2** throughout the intended period of parking, progressive rate is not applicable) during the time-slots as specified at Part A. If these Reserved Car Parking Spaces have not been so reserved for use by the users / hirers, they will be released to the Contractor for parking by the public subject to the parking charge scale as specified in **Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract and Contract Schedule 2.**

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* :

\_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 4****Parking Conditions and Usage Types****(A) Free Access to the Premises**

- (1) Free access to the Premises should be allowed for fire engines, ambulances, police cars, refuse collection vehicles, government vehicles on official duties and vehicles notified to the Contractor by the Government Representative from time to time.
- (2) The Contractor should provide free access to the vehicles notified to the Contractor by the Government Representative from time to time for use of Emergency Vehicular Access or the restricted roads within the boundaries of the Sha Tin Town Hall.

**(B) Grace Period**

- (1) The Contractor shall allow the following vehicles **free access** to the Premises and temporarily parked at the loading bay for loading / unloading or pick up / drop off of passengers within Grace Periods as specified below:
  - (a) Taxi(s) and vehicles for pick up/ drop off of passengers;
  - (b) Vehicles for delivery of goods to / from minor venues (i.e. 1 Dance Studio, 1 Music Studio, 1 Conference Room, 2 Lecture Rooms, and 3 Practice Rooms) of the Sha Tin Town Hall, Marriage Registry and Law Court (Grace Period : Maximum 15 minutes);
  - (c) School Buses / Coaches transporting disabled persons / elderly persons / students / audience to / from the Sha Tin Town Hall Complex (Grace Period : Maximum 30 minutes);
  - (d) Vehicles for delivery of goods to / from the major venues (i.e. Auditorium, Cultural Activities Hall and Exhibition Gallery) of the Sha Tin Town Hall and Library (Grace Period : Maximum 30 minutes);
  - (e) Vehicles for delivery of goods to / from the Restaurant of the Sha Tin Town Hall (around 20 times per day) (Grace Period : Maximum 45 minutes);
  - (f) Vehicles for delivery of goods to / from the Plaza of the Sha Tin Town Hall (Grace Period : Maximum 1 hour);

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized  
Representative\* :

\_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 4****Parking Conditions and Usage Types**

- (g) Vehicles for delivery of scenery to / from major venues (i.e. Auditorium, Cultural Activities Hall and Exhibition Gallery) of the Sha Tin Town Hall during moving in / out (Grace Period : Maximum 4 hours); and
- (h) Other vehicles as approved by the Government Representative from time to time on a need basis (Grace Period: as directed by the Government Representative).

(2) The Contractor shall ensure that the vehicles mentioned in **Clause (B) (1)** above would not stay beyond the maximum grace period.

**(3) No parking charges shall be levied for vehicles mentioned in Clause (B) (1) above.**

**(C) Reserved Car Parking Spaces**

(1) The Car Parking Spaces as detailed at Part A (a) of **Contract Schedule 3** are reserved for use by the Government Representative and persons notified to the Contractor by the Government Representative from time to time free of charge during 8 a.m.-12 midnight. The Reserved Car Parking Spaces shall be released to the Contractor for parking by the public from 12 midnight to 8 a.m. subject to the parking charge scale as specified in Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract and Contract Schedule 2.

(2) The Car Parking Spaces as detailed at Part A (b) of **Contract Schedule 3** are reserved for users / hirers of the Sha Tin Town Hall as approved by the Government Representative. The users / hirers are required to pay the parking fee in advance at a flat rate\* throughout the intended period of parking. If the Reserved Car Parking Spaces have not been reserved for use by the users / hirers or during the period of 12 midnight to 8a.m., they will be released to the Contractor for parking by the public subject to the parking charge scale as specified in Clauses 7.1 and 10.1 (c) of the Special Conditions of Contract and Contract Schedule 2.

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* :

\_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 4**  
**Parking Conditions and Usage Types**

- (3) The Contractor shall reserve one (1) car parking space at the Premises for use by vehicles displaying valid “Disabled Person’s Parking Permit” issued by the Transport Department of the Government at the windscreen. The car parking space shall be used on a first-come-first-served basis. If the car parking space is occupied, other vehicles displaying valid “Disabled Person’s Parking Permit” issued by the Transport Department of the Government at the windscreen, can make use of other vacant car parking spaces at the Premises.
- (4) The Contractor shall only charge drivers of vehicles displaying valid “Disabled Person’s Parking Permit” issued by the Transport Department of the Government at the windscreen of their respective vehicles, at a rate equivalent to half of the parking charges stipulated in Contract Schedule 2.

**(D) Parking Coupons Issued to Hirers of the Sha Tin Town Hall**

- (1) Hirers of the Sha Tin Town Hall, on a first-come-first-served basis and upon presenting parking coupons issued by the Sha Tin Town Hall, shall pay parking charge at a flat rate\* only.

- (2) Numbers of parking coupons issued are as follows :

Auditorium	: 7 coupons for each booking on each hiring day
Cultural Activities Hall	: 3 coupons for each booking on each hiring day
Exhibition Gallery	: 3 coupons for each booking on each hiring day
Minor Facilities (i.e. 1 Dance Studio, 1 Music Studio, 1 Conference Room, 2 Lecture Rooms and 3 Practice Rooms)	: Upon request, 2 coupons will be issued for each booking. The coupons are valid within the booking hours only.

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

\* Delete as appropriate

(with firm/company chop)

**CONTRACT SCHEDULE 4**  
**Parking Conditions and Usage Types**

- (3) Audience of Sha Tin Town Hall events, on a first-come-first-served basis, (identifiable by showing event tickets of the current date of parking) shall pay parking charge at a flat rate<sup>@</sup> only for the first four (4) hours of parking. Thereafter, they shall pay the progressive rate.

**(E) Illegal / Unauthorized Parking**

- (1) The Contractor shall not permit any vehicle other than those specified in **Contract Schedules 2, 3 and 4** to park at the Premises unless prior approval in writing from the Government Representative is obtained.
- (2) The Contractor should ensure no illegal / unauthorized parking at the Premises and the entry & exit points are free from obstruction at all times. Where necessary, the Contractor should take actions against any vehicles parked illegally in the Premises, and shall remove or impound unattended vehicles which are causing obstruction or otherwise parked unlawfully.
- (3) The Contractor shall be entitled to levy impounding or removal charges as specified in **Contract Schedule 2**, official receipts should be issued to the drivers / registered owners of the vehicles for the prescribed charges collected.
- (4) The Contractor should submit information on impounding and removing vehicles to the Department on a monthly basis in a format as specified by the Department.
- (5) The Contractor shall indemnify the Department against any claims or liabilities arising out of or in connection with any actions taken by the Contractor or any of its servants or employees to impound or remove the vehicles.

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* :

\_\_\_\_\_  
(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 4**  
**Parking Conditions and Usage Types**

**(F) Overparking**

**Overparking is strictly prohibited. All fee-paying vehicles are only allowed to park at the car parking spaces designated by the Government Representative at the Premises.**

@ Parking charge for each half hour of the whole parking period will be same as the parking charge specified in (A) (1) of **Contract Schedule 2**, progressive rate is not applicable.

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate



**CONTRACT SCHEDULE 5****Working Background and Status of Tenderer**

In accordance with **Clauses 3.2 and 3.4 of Terms of Tender**, Tenderers are required to provide the following information. For joint venture offer, all partners are required to provide the information. (Please make photocopy of this sheet if necessary)

1. (a) Name of Tenderer : \_\_\_\_\_ (in English)  
 \_\_\_\_\_ (in Chinese)  
 Registered address : \_\_\_\_\_  
 Tel. No.: \_\_\_\_\_
- (b) Length of car park business experience: \_\_\_\_\_
- (c) Proprietor, shareholders/partners of the company/business organization : \_\_\_\_\_
- (d) Names and residential addresses of the following, where appropriate  
 - major directors or partners : \_\_\_\_\_  
 \_\_\_\_\_  
 - sole proprietor : \_\_\_\_\_
- (e) A copy of the Memorandum and Articles of Association, Certificate of Incorporation, partnership agreement, or other documents evidencing business status: *(Please specify document copy attached)*  
 \_\_\_\_\_  
 \_\_\_\_\_
- (f) A photocopy of the current Business Registration Certificate. The Certificate should bear a machine printed line to show that full registration fee has been effected: *(Please specify document copy attached)*  
 \_\_\_\_\_  
 \_\_\_\_\_

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 5****Working Background and Status of Tenderer**

2. Present business : \_\_\_\_\_  
\_\_\_\_\_

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

- (a) Year of establishment : \_\_\_\_\_  
 (i) Ownership : \_\_\_\_\_  
 (ii) If a subsidiary, name of parent company : \_\_\_\_\_
- (b) No. of staff : \_\_\_\_\_
- (c) Liability : \_\_\_\_\_ (as at \_\_\_\_\_)
- (d) Capital -  
 (i) Authorized Capital : \_\_\_\_\_ (as at \_\_\_\_\_)  
 (ii) Issued Capital : \_\_\_\_\_ (as at \_\_\_\_\_)  
 (iii) Paid-up Capital : \_\_\_\_\_ (as at \_\_\_\_\_)
- (e) Net worth (i.e. Total Assets – Liabilities) : \_\_\_\_\_  
 HK\$ \_\_\_\_\_ (as at \_\_\_\_\_)

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

Name:

\_\_\_\_\_

Post:

\_\_\_\_\_

Address:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate.

**CONTRACT SCHEDULE 6****Information of Tenderer****Tenderers' Previous Experience in Relevant Business**

Tenderers must provide documentary proof including but not limited to Business Registration Certificates, trading and profit and loss account of the car park business to substantiate claim of relevant experience.

Please provide details of **Tenderer's** experience in operating fee-paying public car parks in the 3 years immediately prior to the Tender Closing Date, including details of the contracts that it has performed (with client's name, contract period, contract value). Please provide documentary proof of the experience claimed (e.g. copy of contract, invoice etc.)

Name of the Business	Location	Period for Running Fee-paying Public Car Park Business	Contract Value

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate.

**CONTRACT SCHEDULE 7****Information Required for Financial Vetting**

In accordance with **Clause 14** of **Terms of Tender**, Tenderers are required to provide the following information:

Audited accounts of the fee-paying public car park business for the past three (3) years. The account shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in the Hong Kong Special Administrative Region and the disclosure requirements of the Companies Ordinance (Cap. 32). Whereas the Tenderers are unincorporated entities such as sole-proprietors, partnerships, etc. and if audited accounts are not prepared, they can submit management accounts supplemented with past tax assessment records for the past three (3) years instead and the management accounts or unaudited accounts must be certified by the sole proprietor, partners, directors or certified public accountants:

(Please specify the documents attached)


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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**CONTRACT SCHEDULE 8****Government's Provisions Made Available to the Contractor**

<b>Item</b>	<b>Description</b>	<b>Quantity</b>
1.	Carbon Dioxide Fire Extinguisher (Weight 5 Kg.)	1
2.	a. Fire Hose Reel b. Fire Hydrant	4 3
3.	a. Drop bar for Exit (Length : 2.9m) b. Drop bars for Entrance (right and left sides) (Length: 3.79 m and 4.25 m respectively)	1 2
4.	a. One (1) Entry Control and Toll Collection Kiosk: ➤ fluorescent tubes (0.6 m. waterproof type) ➤ Air-conditioner ➤ Power sockets ➤ Metal bollards for Exit and Entrance (painted yellow and black)	2 1 8 11
	b. One (1) Kiosk that may serve as a small office: ➤ fluorescent tubes (1.52 m.) ➤ Power sockets	2 3

**FORM OF TENDER**

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

To : The Chairman  
Tender Opening Committee, Government Logistics Department

If my/our Tender is accepted, I/we shall elect to pay the Security Deposit for the due and faithful performance of the Contract –

# (a) In cash, or

# (b) By way of a Banker’s Guarantee in the form attached at the **Appendix** to this **Form of Tender** approved by Government Representative and issued by a bank licensed under Section 16 of the Banking Ordinance (Cap. 155).

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

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

Name of Authorized Representative : \_\_\_\_\_

Signature of Tenderer or Authorized Representative\* : \_\_\_\_\_

(with firm/company chop)

\* Delete as appropriate

**Appendix to Form of Tender**  
**FORM OF BANKER GUARANTEE**  
**FOR THE PERFORMANCE OF A CONTRACT**

THIS GUARANTEE is made the.....day of..... 20.....  
 BETWEEN..... of ....., a  
 bank within a meaning of the Banking Ordinance Cap. 155 (hereinafter called the  
 “Guarantor”) of the one part and The Government of the Hong Kong Special  
 Administrative Region (hereinafter called the “Government”) of the other part.

**WHEREAS**

(A) By a contract (hereinafter called the “Contract”) dated the ..... day  
 of.....20..... made between .....  
 of.....  
 (hereinafter called the “Contractor”) of the one part and the Government of the other  
 part (designated as Leisure and Cultural Services Department Contract  
 No. ....), the Contractor agreed and undertook to provide  
 provision of .....

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

Now the Guarantor HEREBY AGREES with the Government as follow :-

- (1) Where applicable, words and expressions used in this Guarantee shall have  
 the meaning assigned to them under the Contract.
- (2) In consideration of the Government entering into the Contract with the  
 Contractor -
  - (a) The Guarantor hereby irrevocably and unconditionally guarantees the  
 due and punctual performance and discharge by the Contractor of all of  
 his, her and their obligations and liabilities under the Contract and the  
 Guarantor shall pay to the Government on demand and without cavil or  
 argument all monies and liabilities which are now or at any time  
 hereafter shall become due or owing by the Contractor to or in favour of  
 the Government under or in connection with the Contract together with  
 all costs, charges and expenses on a full indemnity basis which may be  
 incurred by the Government by reason or in consequence of any default  
 on the part of the Contractor in performing or observing any of the  
 obligations terms conditions stipulations or provisions of the Contract.
  - (b) The Guarantor, as a principal obligor and as a separate and independent  
 obligation and liability from its obligations and liabilities under  
 sub-clause (a) above, irrevocably and unconditionally agrees to  
 indemnify and keep indemnified the Government against and shall pay to  
 the Government on demand and without cavil or argument all losses,  
 damages, costs, charges and expenses on a full indemnity basis suffered  
 or incurred by the Government arising from or in connection with the  
 failure of the Contractor to perform fully or promptly any of his, her or

their obligations terms 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 his, her or their estate or estates, whether in liquidation, bankruptcy or otherwise, in respect of such all losses damages costs charges 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 HK\$.....  
(Hong Kong Dollars.....Only).

(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 forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

(5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of or assent to :

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with, exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;



- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorizes the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until-

- (a) the date falling three months after the expiry of the Contract; or
- (b) the date on which all the obligations and liabilities of the Contractor under the Contract have been duly carried out, completed and discharged in accordance with the Contract,

whichever is 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.

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

(a) upon the Government, at the Leisure and Cultural Services Department, 1-3 Pai Tau Street, Shatin, New Territories, marked for the attention of [the Director of Leisure and Cultural Services], facsimile number 2684 9634;

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

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

(14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed HK\$..... (Hong Kong Dollars.....Only). (Amount of Contract Deposit).

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

The Common Seal of the said Guarantor )  
was hereunto affixed in the presence )  
of ..... )  
..... )

@ 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 ..... )  
and in the presence of ..... )  
..... )

@ See Powers of Attorney Ordinance Cap. 31

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

**ARTICLES OF AGREEMENT**

THIS ARTICLES OF AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2018 BETWEEN The ASSISTANT DIRECTOR OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1 – 3 Pai Tau Street, Sha Tin acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (hereinafter referred to as “Government”) of the one part,

AND \_\_\_\_\_

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

**WHEREAS:**

- (A) By an Invitation to Tender (Tender Ref.: STTH/R01/2018), the Government has invited tenders to operate the car park at the Sha Tin Town Hall.
- (B) The Contractor’s tender for the Contract was accepted in principle by the Government by a notification of conditional acceptance of tender to the Contractor pursuant to Clause 13.2 of Terms of Tender.
- (C) The Contractor has apparently fulfilled all conditions specified in the notification of conditional acceptance of tender.
- (D) Pursuant to Clause 13.3 of the Terms of Tender, the parties hereto enter into these Articles of Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

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

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

- (vii) Annexes A1 to A3

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

4. For the purposes of Clause 50 of the Special Conditions of Contract, the address and facsimile number of the Contractor are as follows:

Name of the Contractor: \_\_\_\_\_

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

Facsimile number: \_\_\_\_\_

Email address: \_\_\_\_\_

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

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

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

Name of the Authorized Representative:  
 Title of the Authorized Representative:

in the presence of:  
 Name of witness:  
 Title of witness:  
 Signature of witness:

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

in the presence of:  
 Name of witness:  
 Title of witness:  
 Signature of witness:

**ANNEXES****Annex A1(a)****General Information on the Sha Tin Town Hall****1. Introduction**

1.1 The Sha Tin Town Hall is situated at 1 Yuen Wo Road, Sha Tin, New Territories next to the MTR Sha Tin Station and adjacent to the New Town Plaza in Sha Tin. The Sha Tin Town Hall comprises of a 1376-seat Auditorium, a Cultural Activities Hall, an Exhibition Gallery, a Dance Studio, a Music Studio, a Conference Room, 2 Lecture Rooms, 3 Practice Rooms, an open air Plaza, a Restaurant Block, a Foyer Bar and a public car park. The Restaurant Block comprises a Chinese Restaurant on the ground level and an Alfresco Dining Area on the top of the Block. The Sha Tin Town Hall also accommodates the Marriage Registry, Sha Tin Law Court and Sha Tin Public Library.

A location map of the Sha Tin Town Hall is at Annex A1(b).

1.2 Programmes presented in the Sha Tin Town Hall include dramas, operas, dances, concerts, ceremonies, community functions, exhibitions and fairs. In 2017/18, the usage of the Auditorium, Cultural Activities Hall and Exhibition Gallery was 99%, 97% and 77% respectively, total number of booking for the 3 venues was 374 and about 757 functions were staged attracting patronage of 362,817. The figures for visitors of other venue facilities such as dance studio, music studio, conference room, lecture rooms, practices rooms, restaurant etc. and the general public were not included.

**2. Opening Hours of the Sha Tin Town Hall and the Car Park**

2.1 The Sha Tin Town Hall opens 7 days a week daily from 9 a.m. to 11 p.m. and closes at 6 p.m. on Chinese Lunar New Year Eve. The Car Park opens 24 hours a day throughout the year.

2.2 The Sha Tin Town Hall will be closed when typhoon signal no. 8 or above is hoisted until the signal is lowered to no. 3 or below. The Sha Tin Town Hall will remain closed if typhoon signal no. 8 is lowered / cancelled less than two (2) hours before the normal closing hour.

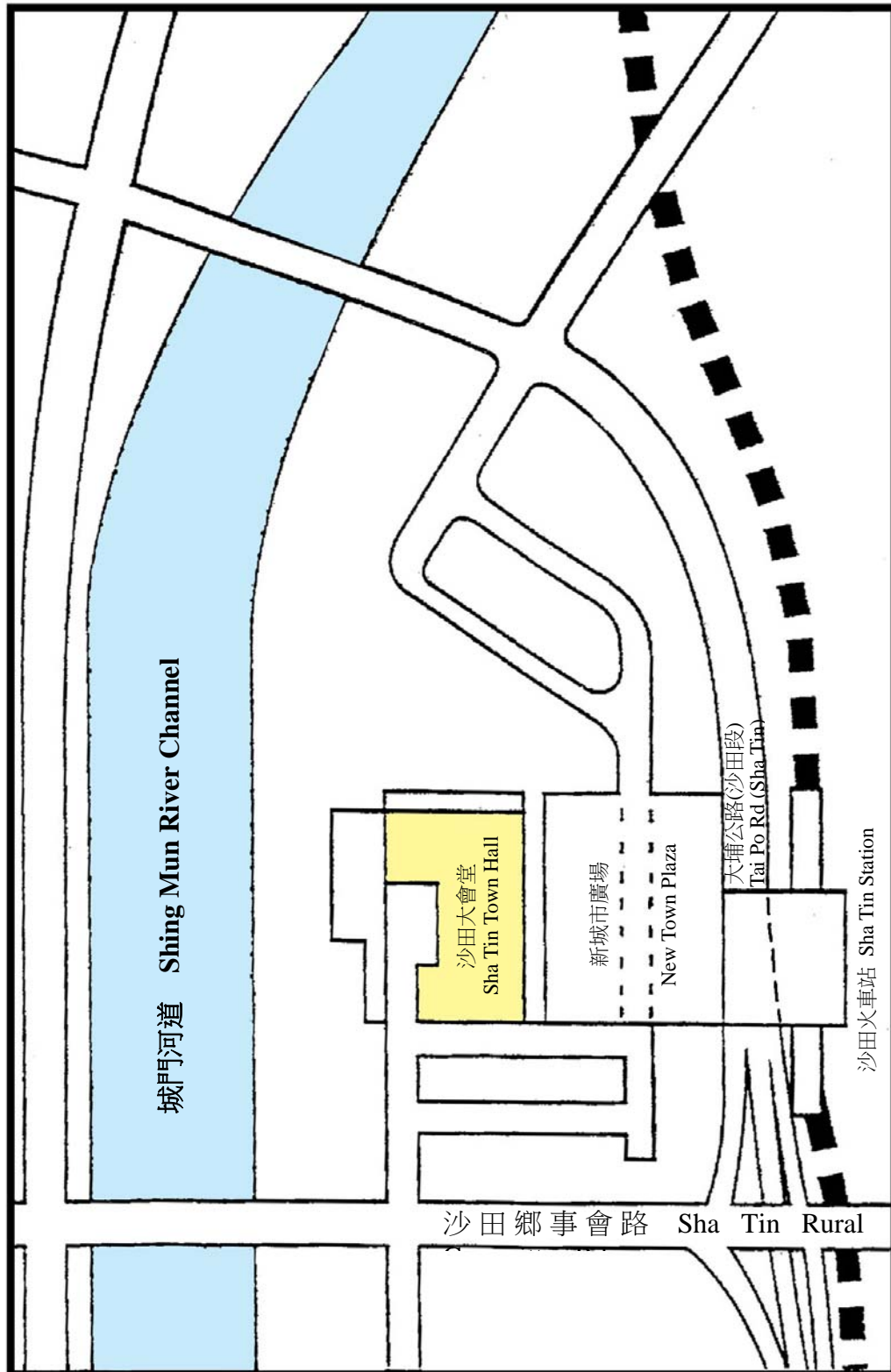
2.3 The Sha Tin Town Hall will open as usual when Amber Rainstorm Warning or Red Rainstorm Warning is issued. The Sha Tin Town Hall will remain open to provide shelter to visitors and staff if the Black Rainstorm Warning is issued during the Sha Tin Town Hall's opening hours. The Sha Tin Town Hall will be closed when Black Rainstorm Warning is issued before the opening hour of the Sha Tin Town Hall and will remain closed if the warning is lowered / cancelled less than two (2) hours before the normal closing hour.

Note: For the avoidance of doubts, the information provided herein is for Tenderers' reference only and the Government shall bear no responsibility for the validity of the information so provided.

ANNEXES

Annex A1(b)

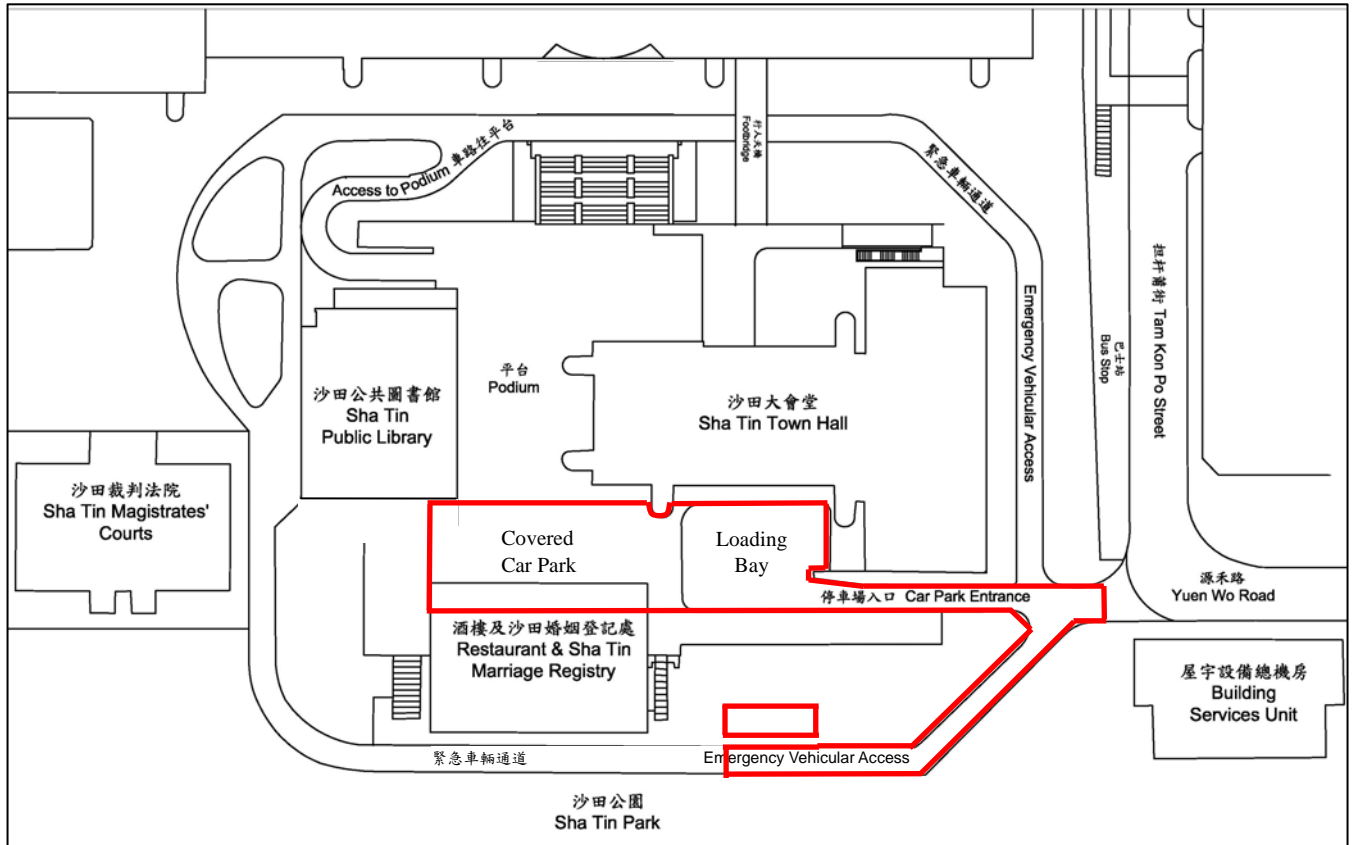
**Location Plan of the Sha Tin Town Hall**



**ANNEXES**

**Annex A2**

**Location Plan Showing the Covered Car Park and Outdoor Car Parking Spaces  
at Sha Tin Town Hall Complex  
(Premises as delineated and shown edged red)**

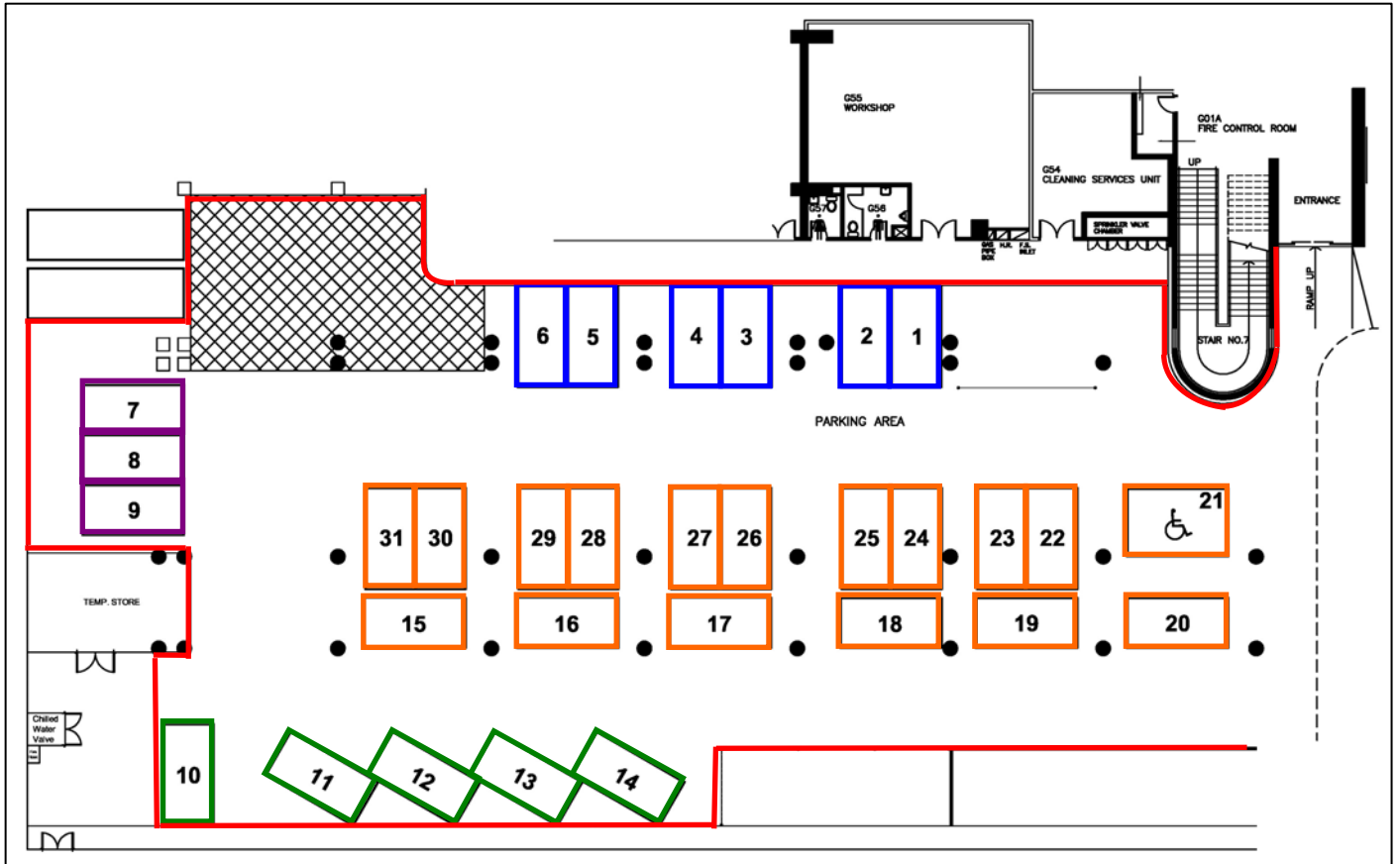







(Not to Scale)

**ANNEXES**

**Annex A3(a)**

**Layout Plan Showing the Covered Car Parking Spaces and Area at  
the Sha Tin Town Hall  
(Premises as delineated and shown edged red)**



<u>Legend</u>	
(All parking spaces are for Taxi / Private Car / Van-type Light Goods Vehicle only)	
	Fee-paying car parking spaces for the public: No.15-31 (17 nos.)
	Car parking spaces reserved for users/hirers of the Sha Tin Town Hall from 8 a.m. – 12 midnight as detailed in Contract Schedules 3-4: No. 10-14 (5 nos.)
	Car parking spaces reserved either for Government use or for users / hirers of the Sha Tin Town Hall from 8 a.m. – 12 midnight as detailed in Contract Schedules 3-4: No. 7-9 (3 nos.)
	Car parking spaces reserved for free use by Government from 8 a.m.-12 midnight: No. 1-6 (6 nos.)
	Parking space for people with valid “Disabled Person’s Parking Permit” issued by the Transport Department



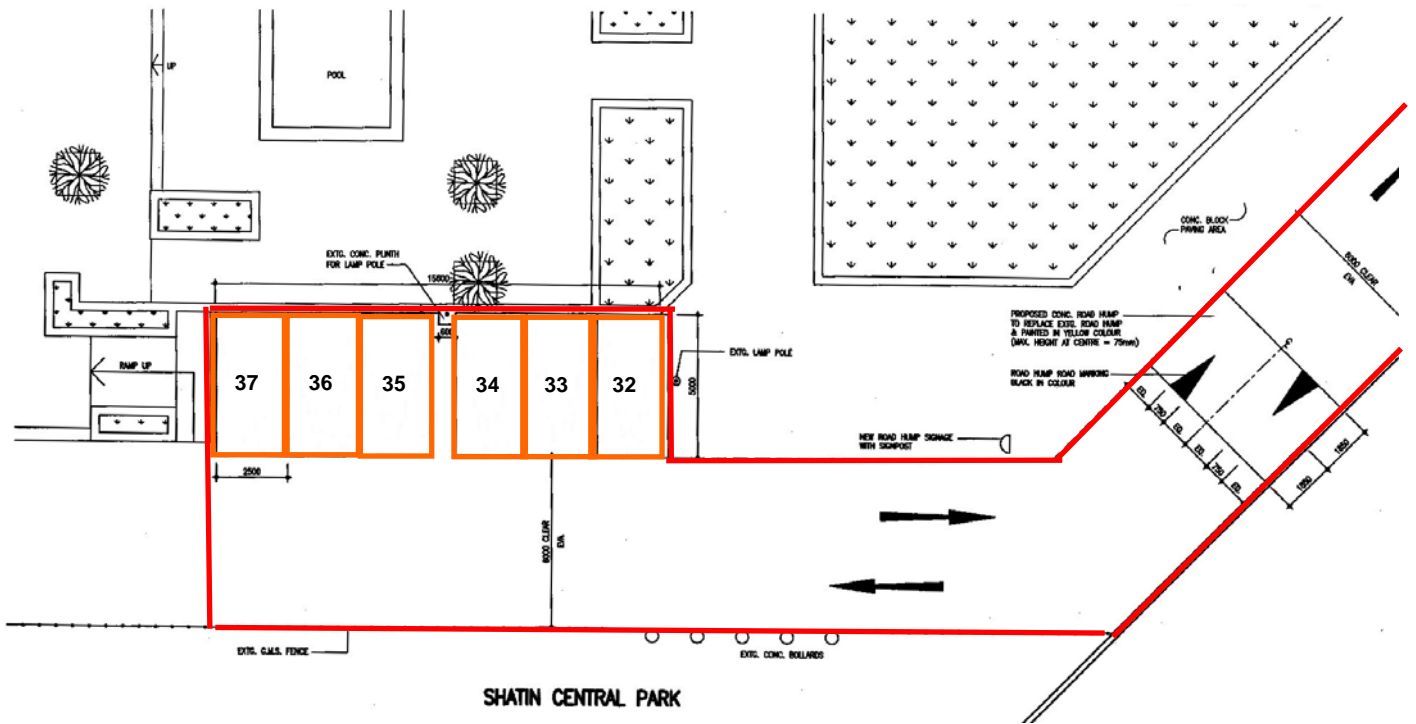
**ANNEXES**


**Annex A3(b)**

**Layout Plan Showing the Outdoor Car Parking Spaces and Part of the  
Emergency Vehicular Access under the management of the Contractor**

**at the Sha Tin Town Hall**

**(Premises as delineated and shown edged red)**



<u>Legend</u>	
(All parking spaces are for Taxi / Private Car / Van-type Light Goods Vehicle only)	
	Fee-paying car parking spaces for the public : No.32-37 (6 nos.)