

**QUOTATION FORM****THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
LEISURE AND CULTURAL SERVICES DEPARTMENT****QUOTATION FOR  
THE GRANT OF A PERMIT TO CONDUCT  
THE PROVISION OF WATER VENDING MACHINES FOR SALE OF  
DRINKING WATER  
AT VICTORIA PARK AND VICTORIA PARK SWIMMING POOL**

(Quotation Ref. : LC/LS/Q/VM/WCH/VP/2022/02 )

**LODGING OF QUOTATION**

To be acceptable as a quotation, this form, properly completed in triplicate and enclosed together with other documents of this quotation as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope marked **“Quotation for the Grant of a Permit to conduct the Provision of Water Vending Machines for Sale of Drinking Water at Victoria Park and Victoria Park Swimming Pool”** and addressed to the Chairman, Leisure and Cultural Services Department Quotation Opening Team, must be deposited in or mailed to the Leisure and Cultural Services Department Quotation Box situated at 9/F., Lockhart Road Municipal Services Building, 225 Hennessy Road, Wan Chai, Hong Kong before **12:00 noon** (time) on 17 May 2022 (date). **Late quotations will not be accepted.**

Dated this 25 April 2022

LEE Pao-wan, DLM(Wch)  
Government Representative

**Part I — Quotation Documents**

These documents under the quotation reference consist of:

LC/LS/Q/VM/WCH/VP/2022/02

- (a) This Quotation Form (Sheets 1 to 2);
- (b) Interpretation (Sheets 3 to 6);
- (c) Terms of Quotation (Sheets 7 to 31);
- (d) Conditions of Contract (Sheets 32 to 69);
- (e) Schedules (Sheets 70 to 88);

First Schedule	Monthly Permit Fee
Second Schedule	Information on Water Vending Machines
Third Schedule	Information of the Service Provider
Fourth Schedule	Form of Security Deposit Election
Fifth Schedule	The Non-collusive Quotation Certificate
Sixth Schedule	Form of Bank Guarantee

(f) Annexes (Sheets 89 to 90); and

Annex A                      Location Plan of the Venue at Victoria Park and Victoria Park Swimming Pool

Annex B                      Location Plan Showing the Water Vending Machine at Victoria Park and Victoria Park Swimming Pool

(g) Articles of Agreement (Sheets 91 to 94).

**Part II — Offer to be Bound**

1. Having read the Quotation Documents, I/we for and on behalf of the Service Provider named below, agree to be bound by the terms and conditions as stipulated therein.
2. I/We do agree to carry out the Business of the provision of Water Vending Machines for Sale of Drinking Water mentioned in the Quotation Documents, and pay the Monthly Permit Fee as quoted by me/us in the First Schedule, subject to and in accordance with the terms and conditions stipulated in the Quotation Documents.

Name of Service Provider/Name and Title of Authorised Representative of the Service Provider\*

-----  
(Name in block letters)

Signature of Service Provider/Authorised Representative \*

-----  
(Signature)

-----  
(with Service Provider's chop, if applicable)

Address(es) of person(s) signing :

Date : -----

*NOTES* : All the particulars required above must be provided.

\* Delete as appropriate.

**INTERPRETATION**

1. The interpretation of the following terms applies to the Quotation Documents and the Contract unless the context provides otherwise –

“Business”	has the meaning given to the term in Clause 3 of the Conditions of Contract.
“Cap.”	means a Chapter of the Laws of Hong Kong.
“Commencement Date”	means the date on which the Term commences.
“Conditional Acceptance of Quotation”	has the meaning given to the term in Clause 14(b) of the Terms of Quotation.
“Contract”	means the contract made between the Government and the Permit Holder for the use of the Permit Area and subject to the terms and conditions set out in the Quotation Documents and the quotation submitted by the Permit Holder (to the extent accepted by the Government).
“Drinking Water”	means any distilled or mineral water that is safe and suitable for human consumption .
“General Holiday” (upper or lower case)	means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
“Government”	means the Government of Hong Kong.
“Government Representative”	means the Director of Leisure and Cultural Services or any duly authorised officer for the purpose of this Contract.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design right, copyrights, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights (of whatever nature and wherever arising, whether now known or hereafter created) in each case whether registered or unregistered, and include applications for the grant of any such rights.

“Invitation to Quotation”	means the invitation issued by the Government to invite quotation for the Contract on the terms set out in the Quotation Documents.
“Monthly Permit Fee”	has the meaning given to the term in Clause 6 of the Conditions of Contract.
“Permit”	means the permission to provide the Vending Machine for sale of Drinking Water.
“Permit Area”	means the area of about 1.2 square metres each as delineated and shown coloured red in Annex B.
“Permit Holder”	means the Service Provider whose Quotation is accepted by the Government.
“Permit Holder Personnel”	means employees of the Permit Holder (and where applicable its permitted sub-contractor).
“Quotation”(upper or lower case)	means a quotation submitted in response to this Invitation to Quotation.
“Quotation Closing Date”	means the date and time specified in the Quotation Form as the latest date and time before which Quotations must be deposited in or mailed to the Government, as the same may be extended by the Government pursuant to any applicable provision in the Quotation Documents.
“Quotation Documents”	means the documents as specified in Clause 1 of the Terms of Quotation.
“Quotation Validity Period”	means the period during which the Quotation is to remain open and as specified in Clause 15 of the Terms of Quotation.
“Security Deposit”	means the deposit referred to in Clause 11 of the Terms of Quotation and Clause 8 of the Conditions of Contract.
“Service Provider”	means the person submitting a quotation.
“Term”	means the period as specified in Clause 2 of the Conditions of Contract commencing from the date as specified in the Articles of Agreement, as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.

- “Water Vending Machine” means a vending machine, for sale of Drinking Water through dispensing to drinking utensil provided by customer, of any of the model provided and installed by the Permit Holder at the Permit Area.
- “Venue” means the premises as delineated and shown edged red in Annex A.
- “working day” means Monday to Friday, other than a General Holiday or a day which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any time during the normal business hours.

2. In the Quotation Documents and the Contract, unless the context otherwise requires, the following rules of interpretation shall apply –
- (a) “month” and “monthly” refer to a calendar month;
  - (b) a time of day shall be construed as a reference to Hong Kong time;
  - (c) the masculine gender includes the feminine and neuter genders and vice versa;
  - (d) the singular includes the plural and vice versa;
  - (e) the “Person” includes any individual, company, corporation, partnership and firm;
  - (f) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument. Reference to a statute or enactment shall include all subsidiary legislation made thereunder;
  - (g) the heading to individual clauses of the Contract and individual terms of the Terms of Quotation are for ease of reference only and shall not affect the interpretation or construction of the Terms of Quotation or the Contract; and
  - (h) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Annex, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document.

3. If there are any discrepancies between the English version and the Chinese version of the Quotation Documents, the English version shall prevail. The Chinese version of the Quotation Documents is for reference only.

**TERMS OF QUOTATION**

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

**TERMS OF QUOTATION**

1. Quotation Documents

These Quotation Documents identified as LC/LS/Q/VM/WCH/VP/2022/02 consist of THREE (3) complete sets of –

- (a) Quotation Form (Sheets 1 to 2);
- (b) Interpretation (Sheets 3 to 6);
- (c) Terms of Quotation (Sheets 7 to 31);
- (d) Conditions of Contract (Sheets 32 to 69);
- (e) Schedules (Sheets 70 to 88);

First Schedule            Monthly Permit Fee

Second Schedule        Information on Water Vending Machines

Third Schedule         Information of the Service Provider

Fourth Schedule        Form of Security Deposit Election

Fifth Schedule         The Non-collusive Quotation Certificate

Sixth Schedule         Form of Bank Guarantee

- (f) Annexes (Sheets 89 to 90); and

Annex A                 Location Plan of the Venue at Victoria Park and Victoria Park Swimming Pool

Annex B                 Location Plan Showing the Water Vending Machines at Victoria Park and Victoria Park Swimming Pool

- (g) Articles of Agreement (Sheets 91 to 94).

## 2. Invitation to Quotation

- (a) The Director of Leisure and Cultural Services invites quotations for a permit to sell Drinking Water via Water Vending Machines at the Venue for the Term on such terms and conditions as set out in the Quotation Documents.
- (b) Each Service Provider may only submit ONE (1) quotation. The Government may, at its absolute discretion, disqualify all quotations from a Service Provider who has submitted more than one quotations.
- (c) Service Providers should read the Quotation Documents carefully prior to submitting a quotation. A Service Provider should ensure that it understands all requirements of the Quotation Documents. A Service Provider should obtain such independent advice from its own advisers as it considers appropriate.
- (d) By submitting a quotation, a Service Provider will be regarded to have agreed to all terms and conditions set out in the Quotation Documents.

## 3. Quotation Preparation and Submission

- (a) Service Providers must complete, stamp with the Service Provider's chop if applicable and submit the following documents together with all necessary information including documentary evidence in **TRIPLICATE** (i.e., one original and two photocopies):

- (i) Quotation Form – The Quotation Form with Part II “Offer to be Bound” duly signed.

Note: Service Providers should print a softcopy of the Quotation Form obtained from the Government or photocopy the Quotation Form, but not reproduce a copy by other means (e.g. by retyping).

- (ii) First Schedule – Monthly Permit Fee
- (iii) Second Schedule – Information on Water Vending Machines
- (iv) Third Schedule – Information of the Service Provider
- (v) Fourth Schedule – Form of Security Deposit Election
- (vi) Fifth Schedule – The Non-collusive Quotation Certificate

- (v) Sixth Schedule – Form of Bank Guarantee
  - (vi) the documents required in Clause 3(d) below; and
  - (vii) the information and documents referred to in Clause 31(b) below.
- (b) Any failure to complete or submit the documents and/or information required under Clause 3(a) above may, at the absolute discretion of Government, render a quotation non-conforming and not to be considered further.
- (c) However, a Service Provider should note that **its quotation will not be considered further if, by Quotation Closing Date, the Service Provider fails to submit any of the following documents -**
- (i) a duly signed “Offer to be Bound” in the Quotation Form; and
  - (ii) the First Schedule with the proposed Monthly Permit Fee filled in.
- (d) The Service Provider shall include the following in its Quotation:
- (i) if the Service Provider is a partnership, and there is a written partnership agreement, a copy of the partnership agreement.
  - (ii) if the Service Provider is a company incorporated under the Companies Ordinance (Cap. 622) or its predecessor ordinance, a copy each of its certificate of incorporation, certificate of change of name (if applicable), articles of association and latest annual return filed with the Companies Registry.
  - (iii) Regardless of whether the Service Provider is a sole proprietor, a firm or company, a copy of the valid Business Registration Certificate which shall bear a machine-printed line to show the full registration fee had been paid or documentary evidence showing the Service Provider is exempted from Business Registration Certificate under Business Registration Ordinance (Cap. 310). For the avoidance of doubt, this is not required if the Service Provider is an individual and has yet to register the sole proprietorship with the Business Registration Office. However, the Service Provider must proceed with the registration if it is the winning Service Provider as soon as it has received the Conditional Acceptance of Quotation under Clause 14(b) of these Terms of Quotation.
- (e) When completing the Quotation Documents, any alteration in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the original ones. All such amendments shall be initialed by

the Service Provider in ink. Any unauthorised alteration or erasure to the text of the Quotation Documents may cause the quotation to be rejected.

- (f) A Quotation must be completed in ink or typescript and submitted in **TRIPLICATE** in accordance with the “Lodging of Quotation” section of the Quotation Form.
- (g) Each Service Provider shall submit **ONE** quotation only. The Government may, at its absolute discretion, disqualify all the quotation(s) from a Service Provider who has submitted two or more quotations.
- (h) **Quotations MUST be deposited in or mailed to quotation box as specified in the Quotation Form (“Specified Quotation Box”) before the Quotation Closing Date. Late quotations and quotations not deposited in the Specified Quotation Box will not be considered.**
- (i) In case tropical cyclone warning signal No. 8 or above is hoisted, or black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any duration between 9:00 am and 12:00 n.n. on the Quotation Closing Date, the latest date and time before which Quotations are to be deposited at the quotation box will be extended to 12:00 n.n. on the next working day after the tropical cyclone warning signal No. 8 or above or black rainstorm warning signal or “extreme conditions after super typhoons” is cancelled.
- (j) In case of blockage of the public access to the location of the Specified Quotation Box at any time between 9:00 a.m. and 12:00 n.n. on the Quotation Closing Date, the Government will announce extension of the Quotation Closing Date until further notice. Following removal of the blockage, the Government will announce the extended quotation closing time as soon as practicable.
- (k) The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the quotation submitted and/or deposited by Service Providers in the Specified Quotation Box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning Quotation submission as soon as practicable.
- (l) The Government Representative shall not be responsible for any mislaid quotation or any quotation submitted by methods other than as indicated under this Clause.

#### 4. Service Provider's Status

- (a) If the Service Provider is a sole proprietor or to be registered with the Business Registration Office as a sole proprietorship if the Contract is awarded to it, the Service Provider shall sign the Quotation Documents personally and shall not authorise any other person to do so. If the Service Provider is a firm, the Service Provider must authorise a partner(s) of the firm to sign the Quotation Documents. Any Service Provider failing to comply with the aforesaid requirement will lead to its quotation not being considered further.
- (b) If the Service Provider is a company or other body corporate, it shall provide a copy of relevant document (e.g. board resolutions of the Service Provider if it is a company) showing that the authorised person(s) who sign(s) the Office to be Bound has / have the authority to sign it for and on behalf of the Service Provider.

#### 5. Checklist for Potential Service Provider before Submission of Quotation

To ensure completeness and consistency of the information provided, potential Service Provider is recommended to complete the "Checklist for Potential Service Provider for Revenue Contracts before Submission of Quotation".

#### 6. Anti-collusion

- (a) The Service Provider must ensure that the Quotation is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Quotation Certificate referred to in Clause 6(b) below), regarding, amongst other things, price, quotation submission procedure or any terms of the Quotation. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Service Providers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- (b) The Service Provider shall complete and submit to the Government a Non-collusive Quotation Certificate (in the form set out in the Fifth Schedule) as part of its Quotation.
- (c) In the event that a Service Provider is in breach of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 6(b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (i) reject the Service Provider's Quotation;
  - (ii) if the Government has accepted the Quotation, withdraw its acceptance of the Service Provider's Quotation; and
  - (iii) if the Government has entered into the Contract with the Service Provider, terminate the contract under Clause 34(a) of the Conditions of Contract.
- (d) By submitting a quotation, a Service Provider is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 6(b) above.
- (e) A breach of a Service Provider of any of the representations, warranties and/or undertakings in Clause 6(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 6(b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government Representative under Clauses 6(a) to (e) above are in addition to and without prejudice to any other rights or remedies available to it against the Service Provider.

7. Quotation Documents of the Unsuccessful Service Provider

The Government may destroy all Quotation Documents submitted by unsuccessful Services Providers three (3) months after the date the successful Service Provider and the Government have executed the Articles of Agreement as mentioned in Clause 14 hereof.

8. Undisclosed Agency

The person who signs a quotation as Service Provider shall be deemed to be acting as a principal unless it discloses therein that it is acting as an agent only, in which case it shall also disclose therein the name and address of its principal.

9. Request for information

- (a) In the event that the Government determines that:
- (i) clarification in relation to any quotation is necessary; or

- (ii) a document or a piece of information, other than those specified in Clause 3(c), is missing from any quotation,

it may, but is not obliged to, request the Service Provider concerned to make the necessary clarification, or submit the required document or information. Each Service Provider shall thereafter within seven (7) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. If the clarification or information or document is not provided by the aforementioned deadline, the Quotation may not be considered further (or will not be considered further where the missing information or document is of the type specified in Clause 3(c) of the Terms of Quotation). As an alternative to seeking clarification or further information or document, the Government may not consider the Quotation further or may proceed to evaluate the Quotation on an “as is” basis.

- (b) Any excess proposal or information supplied by Service Provider which goes beyond what has been requested by the Government pursuant to Clause 9(a) above will be ignored for the purposes of quotation evaluation or will entitle (but not oblige) the Government not to consider the quotation further.
- (c) Service Providers should also note that the Government will not consider any clarification or information submitted by a Service Provider after the Quotation Closing Date irrespective of whether or not the clarification or information is submitted at the invitation of the Government if the Government considers that such clarification or information would alter the Service Provider’s quotation in substance or give the Service Provider an advantage over the other Service Providers.

#### 10. Monthly Permit Fee

- (a) In return for the right to operate the Water Vending Machines for the sale of Drinking Water at the Venue, the Permit Holder is required to pay to the Government Representative a Monthly Permit Fee quoted by the Permit Holder in the First Schedule.
- (b) The Monthly Permit Fee quoted by Service Providers shall remain valid and binding throughout the duration of the Term. No request for price variation will be considered. A Service Provider who proposes any price variation mechanism shall be disqualified and its quotation will not be considered further.
- (c) The Monthly Permit Fee does not include rates, Government rent and taxes payable in respect of the designated location (viz the spaces within or nearby the Venue at which the Vending Machine shall be located) and the Business. All these shall be

the responsibilities of the Permit Holder. All assets required, and all liabilities to be incurred from carrying out the Business at the Venue, shall be the responsibility of the Permit Holder with no recourse against the Government or the Government Representative.

- (d) Service Providers should make certain that the quoted Monthly Permit Fee is accurate before submitting their quotations. Without prejudice to the powers of the Government Representative to seek clarification or to negotiate with a Service Provider, the Government Representative is not obliged to accept any request for price adjustment on whatsoever grounds including that a mistake has been made.
- (e) Should it be found on examination by the Government after the Quotation Closing Date that a Tenderer has made unintentional errors in the figures stated in its quotation, the Government, may, but is not obliged to, seek clarification from the Tenderer or request the Tenderer to confirm in writing whether it is prepared to abide by what the Government considers should be the correct figures.

#### 11. Security Deposit

- (a) The successful Service Provider shall, within fourteen (14) days from the date of the Conditional Acceptance of Quotation, deposit with the Government Representative a sum equivalent to two (2) times the Monthly Permit Fee as quoted in its First Schedule (“**Security Deposit**”) as security for the due and faithful performance of the Contract either in cash, cheque or cashier’s order or in the form of a bank guarantee. Service Providers are required to state the method of providing the Security Deposit in the Fourth Schedule.
- (b) In the event that a Service Provider fails to elect the method of paying a Security Deposit in the Fourth Schedule, it will be deemed that the Service Provider will pay the Security Deposit by way of cash, cheque or cashier order in accordance with Clause 8 of the Conditions of Contract.
- (c) If the successful Service Provider elects to pay the Security Deposit by way of a bank guarantee, the proposed guarantor and the form and substance of the bank guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the bank guarantee must comply with the following:
  - (i) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government;
  - (ii) unless otherwise agreed by the Government, it must be on the terms set out in the Sixth Schedule; and



- (iii) the bank guarantee shall come into effect on the date of commencement of the Term unless another date is specified in the Conditional Acceptance of Quotation as the date on which the bank guarantee is to take effect. In the event that another date is so specified, the bank guarantee shall take effect no later than such date.
- (d) Subject to Clause 8(d) of the Conditions of Contract and other rights and remedies available to the Government, the Security Deposit, whether paid by way of cash (if any is remaining), cheque or cashier's order or bank guarantee shall be returned to the Contractor or released in accordance with Clause 8 of the Conditions of Contract.
- (e) If the Service Provider fails to deliver to the Government the Contract Deposit within such time as specified in Clause 11(a), the Government shall be at liberty to terminate the Contract, to conduct a fresh quotation exercise or to take such appropriate action as the Government deems fit.

## 12. Assessment of Quotations

- (a) Quotations that are submitted in accordance with the Terms of Quotation will be assessed in the manner set as below -
  - (i) Stage 1: Completeness Check –

Completeness check of the quotation will be conducted by checking whether the quotation is submitted in accordance with the requirements of the Quotation Documents. **If a Service Provider fails to submit any of the items specified in Clause 3(c) (i.e. a duly signed “Offer to be Bound” in the Quotation Form, and the First Schedule with the proposed Monthly Permit Fee filled in) by the Quotation Closing Date, its quotation will not be considered further.**
  - (ii) Stage 2: Price evaluation –

Only quotations which have passed the completeness check and meet all essential requirements above will be evaluated according to the Monthly Permit Fee quoted provided in the First Schedule.
- (b) Subject to any provisions hereof, the Service Provider who offers the highest Monthly Permit Fee will normally be granted the permit to sell Drinking Water via the Water Vending Machines located at the Venue.

13. Basis of Acceptance

- (a) The Government is not bound to accept the quotation(s) with the highest Monthly Permit Fee or any quotation or to give any reasons for doing so, and reserves the right to accept all or any part of a quotation at any time within the Quotation Validity Period.
- (b) Service Provider(s) shall note that their offers will be considered on a complete overall basis. Quotations with only partial offers shall be rejected.

14. Award of the Contract

- (a) Unless and until the Articles of Agreement has been signed by both the successful Service Provider and the Government, there shall be no Contract between the Government and any Service Provider. References to “award of the Contract” mean the signing of the Articles of Agreement.
- (b) The successful Service Provider will be notified within the Quotation Validity Period (such notification is referred to as “**Conditional Acceptance of Quotation**”). Upon receipt of the Conditional Acceptance of Quotation, the successful Service Provider shall be obliged to fulfill all of the following conditions precedent to the satisfaction of the Government Representative within fourteen (14) days from the date of the notification (or such later date as the Government Representative may allow) –
  - (i) the provision of the Security Deposit as required under Clause 11;
  - (ii) the payment of the Monthly Permit Fee in respect of the first month of the Term; and
  - (iii) such other conditions as the Government Representative may stipulate in the Conditional Acceptance of Quotation.
- (c) Unless and to the extent waived by the Government Representative in writing, upon fulfilment of the conditions by the Service Provider specified in Clause 14(b) above to the satisfaction of the Government Representative, the Government will, subject to its other rights and powers, enter into the Contract with the successful Service Provider by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government Representative, the quotation submitted by the successful Service Provider (subject to such other changes as the Government Representative may stipulate in exercise of its powers under the Quotation Documents and such changes as the parties may agree (if any)). If a Service Provider fails to fulfill all or any of the conditions mentioned in Clause 14(b) 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 Service Provider**”), the Conditional Acceptance of Quotation will become void and be of no further force.

- (d) The Government Representative will disqualify the defaulting Service Provider, and it may, but is not obliged to, award the Contract to another Service Provider. Without prejudice to other rights and remedies of the Government, the defaulting Service Provider shall be responsible for the difference in the total Monthly Permit Fee submitted by that defaulting Service Provider and the eventual Permit Holder who will be granted the Contract in replacement of the defaulting Service Provider whether appointed pursuant to this Invitation to Quotation exercise or another subsequent invitation exercise as well as all administrative costs incurred by the Government in finding a replacement permit holder and implementing any stop-gap measures during the time when no replacement permit holder can be appointed. On the other hand, notwithstanding anything in the Quotation Documents or in the Conditional Acceptance of Quotation to the contrary, in the event that the Government exercises any of its discretion under Clause 31 of Terms of Quotation, the Government shall be entitled not to enter into the Contract with a Service Provider even if the Service Provider has received a Conditional Acceptance of Quotation and fulfilled all the conditions specified in Clause 14(b).
- (e) A Service Provider who does not receive any notification of acceptance within the Quotation Validity Period shall assume that its quotation has not been accepted.

#### 15. Quotations to Remain Open

- (a) A quotation submitted shall remain valid and open for acceptance on these terms for not less than one hundred and fifty (150) days from the Quotation Closing Date.
- (b) If a Service Provider does not state in its quotation the period for which the quotation is to remain valid and open for acceptance, the Quotation Validity Period of that quotation will be deemed to be one hundred and fifty (150) days after the Quotation Closing Date.
- (c) If a Service Provider offers in its quotation a period that is shorter than one hundred and fifty (150) days, the Government will clarify with the Service Provider concerned, in which case the Service Provider must confirm compliance with Clause 15(a) within five (5) working days or such other period as specified by the Government without any other change to the quotation (except any change made in response to any clarification by the Government pursuant to Clause 9). If the Service Provider fails to confirm compliance with Clause 15(a) within the specified deadline or, despite confirming compliance therewith, introduces any change to the

quotation not in response to any clarification by the Government pursuant to Clause 9, its quotation will not be considered further.

- (d) If before expiry of the Quotation Validity Period, a Service Provider withdraws its offer, the Government will take due notice of the Service Provider's action and this may prejudice its future standing as a Government contractor.

#### 16. Offer to be Binding

All parts of the quotation submitted by the Service Provider will be binding on the Service Provider after the award of the Contract. A Service Provider is deemed to have satisfied itself as to the correctness of its quotation. In the event that a Service Provider discovers an error in its quotation after the quotation has been deposited, the Service Provider may correct the same in a separate letter before the Quotation Closing Date. Without prejudice to the Government to seek clarification or negotiate with any Service Provider, no request from the Service Provider for adjustment or variation whatsoever will be allowed or entertained after the Quotation Closing Date.

#### 17. Counter-proposals

- (a) Counter-proposals by a Service Provider may, at the absolute discretion of the Government, render a quotation to be disqualified and not to be considered.
- (b) Notwithstanding and without prejudice to Clause 17(a), any Service Provider who submits a quotation that directly or indirectly attempts to preclude or limit the effect of any provisions of these Terms of Quotation may also be disqualified.

#### 18. Use of Personal Data

- (a) All personal data provided in a quotation will be used by the Government for the purposes of the Invitation to Quotation and all other purposes arising from or incidental to it (including for the purposes of quotation evaluation, award of the Contract and resolution of any dispute arising from this Invitation to Quotation). In the case of the successful Service Provider, 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.
- (b) By submitting a quotation, a Service Provider is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the

quotation, its consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in Clause 18(a).

- (c) An individual to whom personal data belongs or a person authorised by it 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 quotation.
- (d) Enquiries concerning the personal data collected by means of the quotation, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Leisure and Cultural Services Department.

19. Site Visit and Quotation Briefing

A quotation briefing and site visit session will be held at 3:30 p.m. on 11 May 2022 (Wednesday) the Function Room 1B of Victoria Park Management Office at 1 Hing Fat Street, Causeway Bay, Hong Kong. Service Providers are invited to attend the quotation briefing and site visit session before submitting their quotations in order to acquaint themselves with the terms and conditions of the Invitation to Quotation. For registration, please contact Assistant Manager (Victoria Park) 3, Leisure and Cultural Services Department at 2564 2723 for reservation of seat for the quotation briefing and visit by 5:00 p.m. on 6 May 2022 (Friday).

20. Provision of Services within the Venue

Services Providers shall note the Government Representative reserves the right to provide or allow any Person or permit holder to provide drinking fountain and/or vending machine services within any other areas of the Venue during the Term. The Permit Holder is therefore not entitled to claim for abatement of Monthly Permit Fee or any part thereof on the ground that the Business is affected by such arrangement.

21. Successful Service Provider's Performance Monitoring

A service provider is advised that should it be awarded the Contract, its performance under the Contract will be monitored and shall be taken into account in the evaluation by the Government of quotations/tenders submitted by it for any goods or services procured by the Government in the future. An offer or quotation submitted by a Service Provider which has been in breach of any of its statutory obligations or contractual obligations under any sale of Drinking Water through vending machines contracts with the Government

(whether current or past) may not be considered having regard, including but not limited to, the seriousness and the number of breaches and its or their relevancy to the offer or quotation submitted. The decision of the Government whether or not to consider the quotation submitted by a Service Provider under the circumstances described in this provision shall be final.

## 22. Offering Gratuities

The Service Provider shall not and shall ensure that its agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Service Provider shall, without affecting the Service Provider's liability for such breach or non-compliance, invalidate its quotation, and if the Contract has been awarded to the Service Provider without knowing the breach, the Government shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred from the Service Provider.

## 23. Consent to Disclosure

- (a) 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 Service Provider) (written or otherwise) without any further reference to or consent from the successful Service Provider or any other Service Provider, the Quotation Documents, particulars (including the nature and quantity) of the Business to be operated by the successful Service Provider, the location of the Venue and Water Vending Machines, the date of the award of the Contract, the name and address of the successful Service Provider and the Monthly Permit Fee for the entire Term.
- (b) Nothing in Clause 23(a) above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 23(a) 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):
  - (i) 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, Permit Holders and consultants);
  - (ii) the disclosure of any information already known to the recipient;
  - (iii) the disclosure of any information which is public knowledge;

- (iv) 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
- (v) without prejudice to the power of the Government under Clause 23(a) above, to the extent the information relates to a Service Provider, with the prior written consent of that Service Provider.

#### 24. Cancellation of the Invitation to Quotation

Without prejudice to the Government's right to cancel the Invitation to Quotation, where there are changes of requirement after the Quotation Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming quotation and reserves the right to cancel the Invitation to Quotation.

#### 25. Application for Appropriate Licences

- (a) A Service Provider shall note that it is the Permit Holder's sole responsibility to approach the relevant authorities for obtaining all licences, permits and/or certificates required by law for operation of its Business at the Venue. The Permit Holder shall note that it will be unlawful for it to sell any commodity in respect of which any licence, permit and/or certificate is so required without first obtaining such licence, permit and/or certificate.
- (b) The Service Provider shall note that the responsibility for applying the relevant licences, permits and/or certificates and fulfilment of the requirements stated therein lies with the Permit Holder, and that it will take time for the relevant authorities to consider and decide on an application for a licence, permit and/or certificate. The Permit Holder is not entitled to claim for abatement of the Monthly Permit Fee on the grounds that it cannot conduct the Business pending the issue of the relevant licences, permits and/or certificates. Neither the Government nor the Government Representative shall be held responsible in the event of the Permit Holder's failure or inability for any reason to obtain or renew any such licences, permits and certificates. Nothing contained in the Quotation Documents or in the Contract shall be construed to fetter the discretion of any public officer or authority as the licensing authority.

#### 26. Cost of Quotation

A Service Provider shall submit its quotation proposal at its own cost and expense. Neither the Government nor the Government Representative shall be liable for any costs and

expenses whatsoever incurred by the Service Provider in connection with the preparation or submission of its quotation, including all costs and expenses relating to:

- (a) communication or negotiations with the Government Representative; or
- (b) attending briefings, document inspections, site visits or surveys made by the Service Provider,

whether before, on or after the Quotation Closing Date.

27. Service Provider's Commitment

The entire quotation, any subsequent clarification, and permitted submissions from a Service Provider must be submitted in writing. Each of them is the offer, commitment and representation of the Service Provider 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 Service Provider.

28. Complaints about Quotation Process or Contract Award

The quotation process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Service Provider who feels that its offer has not been fairly evaluated may write to the Director of Leisure and Cultural Services who will personally examine the complaint and refer it to the relevant quotation boards for consideration if it relates to the quotation system or procedures followed. The Service Provider shall lodge the complaint before disposal of documents of unsuccessful Service Providers, which shall be within three (3) months after the award of the Contract.

29. Negotiation

The Government reserves the right to negotiate with any Service Provider on the terms of the Service Provider's quotation and conditions of the Contract.

30. Quotation Addendum

The Government may issue addendum to the terms and conditions of the Quotation Documents. Service Provider may be asked to confirm compliance with the terms and conditions issued under the Quotation Documents or those issued under any addendum thereto.



31. Government Discretion

- (a) Notwithstanding anything to the contrary in the Quotation Documents, the Government reserves the right to disqualify a Service Provider on grounds including any one of the following:
- (i) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Quotation Closing Date or an order is made or a resolution is passed for the winding up or bankruptcy of the Service Provider;
  - (ii) the Service Provider has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the quotation or in any subsequent submission by the Service Provider or communication between the Government and the Service Provider since submission of that Quotation;
  - (iii) in the event of a claim alleging or the Government having grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Service Provider in its quotation infringe or will infringe any Intellectual Property Rights of any person;
  - (iv) the Service Provider has made significant or persistent breaches or deficiencies in performance of any substantive requirement or obligation under any Government or other contracts;
  - (v) the Service Provider has been convicted by the final judgement in respect of serious crimes or other serious offences;
  - (vi) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Service Provider;
  - (vii) any failure of the Service Provider to pay taxes to the Government; or
  - (viii) the Service Provider has made any restrictions or limitations which seek to limit or avoid the responsibility of the Service Provider in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Service Provider/Permit Holder under the Contract in the quotation or in any subsequent submission by the Service Provider or communication between the Government and the Service Provider since submission of the quotation.

The grounds specified in Clauses 31(a)(i) to 31(a)(viii) are separate and independent, and shall not be limited by reference to or inference from the other of

them.

- (b) For the purposes of Clause 31(a), each Service Provider shall provide at the time of submission of its quotation (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:
- (i) details of any petition or proceeding mentioned in Clause 31(a)(i);
  - (ii) details of conviction of the Service Provider in Hong Kong or any overseas jurisdictions in respect of (a) serious offences; and (b) other offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of award;
  - (iii) details of all infringement claims as mentioned in Clause 31(a)(iii); and
  - (iv) details of all breaches or performance deficiencies of the Service Provider or a related person as mentioned in Clause 31(a)(iv).

If none of the events as mentioned in Clauses 31(b)(i) to 31(b)(iv) above has ever occurred within the applicable period as mentioned above, the Service Provider shall provide a statement to that effect by completing the relevant part of the Third Schedule at the time of submission of its quotation. If found missing, the Government reserves the right to seek clarification pursuant to Clause 31(c) below.

- (c) In addition to the information mentioned in Clause 31(b), the Government reserves the right to request from a Service Provider and take into account all information about:
- (i) the Service Provider itself;
  - (ii) any of the directors or management staff of the Service Provider who conduct similar business as the Service Provider or whose businesses any of which is similar to the business of the Service Provider; and
  - (iii) any of the related persons of the Service Provider and of any directors and management staff of the related persons who conduct similar business as the Service Provider or whose businesses any of which is similar to the business of the Service Provider,

and such information is reasonably relevant to facilitate the Government's

determination as to whether to exercise its right of disqualification under Clause 31(a).

Such information relating to any of the aforesaid persons may include, without limitation, details of any conviction in respect of offences referred to in Clause 31(b)(ii) or details of any breaches or performance deficiencies referred to in Clause 31(a)(iv), details of any serious crimes or serious offences referred to in Clause 31(a)(v), of any professional misconduct, acts or omissions referred to in Clause 31(a)(vi) and of any failure to pay taxes to the Government referred to in Clause 31(a)(vii) above.

- (d) If the Service Provider fails to comply with the request made by the Government pursuant to Clause 31(c) above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Service Provider pursuant to Clause 31(a)(ii) above.
- (e) In providing the information required under Clauses 31(b) and 31(c) above, the Service Provider may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct, as the case may be, does not cast doubt on the fitness, propriety or capability of the Service Provider to perform the Contract to be awarded in this Invitation to Quotation.
- (f) If the Service Provider is a company, the expression “**related person**” of the Service Provider includes any one of the following:
  - (i) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Service Provider (“**majority shareholder**”);
  - (ii) a holding company or a subsidiary of the Service Provider;
  - (iii) a holding company or a subsidiary of a majority shareholder of the Service Provider;
  - (iv) a company in which a majority shareholder (being an individual) of the Service Provider directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

- (g) If the Service Provider is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
- (i) any partner of the Service Provider (if it is a partnership);
  - (ii) the spouse, parent, child, brother or sister of the Service Provider, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent;
  - (iii) a company in which the Service Provider or any partner of the Service Provider beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- (h) References to related persons, directors and management staff of the Service Provider or of a related person include persons who were in such capacity at such time of the incident referred to in Clauses 31(a)(iv), 31(a)(v), 31(a)(vi), 31(a)(vii) or Clause 31(b)(ii).

### 32. New Information

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

### 33. Disclaimer

- (a) Service Providers should study all attachments to the Quotation Documents (including the Contract Schedules) carefully before submitting their quotations. Service Providers should note that all information and statistics provided by the Government in connection with this Invitation to Quotation are for reference only.
- (b) Forecasts or estimations and all other information, statistics and forecast set out in the Quotation Documents or any information or clarification provided from time to time or given at the briefing session (collectively “**briefings**”), are provided purely for the Service Provider's information on an “as is” basis without warranty of any kind. Neither the Government nor the Government Representative gives any warranty, representation or undertaking that any information, statistics and forecast provided in the Quotation Documents or any information or clarification provided

from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.

- (c) To the maximum extent permitted by law, neither the Government nor the Government Representative accepts any liability or responsibility for (i) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), (ii) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (iii) any cost or expense, suffered or incurred by any Service Provider arising from the use of, or reliance on, any information, statistics or forecast provided in the Quotation Documents, or any information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Business do not meet the expectation or projection of the successful Service Provider or do not recoup the investment cost incurred or by any margin.

#### 34. Authentication of Documents

By submitting a quotation in response to the Invitation to Quotation, each Service Provider authorises the Government to obtain from:

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

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

#### 35. Licence to Use the Quotation Documents

A Quotation once submitted will become the property of the Government. 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) in respect of all written materials submitted by the Service Provider through the Invitation to Quotation for purposes including but not limited to Quotation evaluation, contract management, the disclosure made pursuant to Clause 23 of the Terms of Quotation and all other purposes incidental thereto.

36. Communications with the Government

- (a) All communications given or made by the Government Representative or a Service Provider in relation to the Invitation to Quotation shall be in writing and sent or delivered to the other party in the manner provided in Clause 41 of the Conditions of Contract, save that the Government Representative may, by prior notice to a Service Provider, require the Service Provider to send or deliver a written communication by post or facsimile only. The Service Provider should note that the Government Representative will not accept the use of a postal box as the Service Provider's correspondence address for any purpose whether before or after the award of the Contract.
- (b) All communications in relation to the Invitation to Quotation shall be conducted directly between the Government Representative and the Service Provider.
- (c) Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Service Provider shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Service Provider or prospective Service Provider to rely on such statement. No such statement shall form part of the Quotation Documents or alter, negate or constitute a waiver of any provision of the Quotation Documents.

37. Service Provider's Enquiries

- (a) Any enquiries concerning the Quotation Documents up to the date of lodging of its Quotation with the Government Representative shall be in writing and submitted to the below address or by facsimile to Assistant Manager (Victoria Park) 3.

**Assistant Manager (Victoria Park) 3**  
**Victoria Park Management Office**  
**1 Hing Fat Street, Causeway Bay, Hong Kong**  
**Facsimile: 2882 4151**

- (b) After lodging the quotation with the Government Representative, the Service Provider shall not attempt to initiate any contact, whether direct or indirect, with the Government Representative on its quotation or the Quotation Documents. The Government Representative shall have the sole right to initiate any such further contact and all such contacts and any replies of the Service Provider thereto shall be in writing or formally documented in writing.

38. Survival

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

**CONDITIONS OF CONTRACT**

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## CONDITIONS OF CONTRACT

### 1. Nature of the Contract

- (a) It is expressly agreed between the parties that the Contract does not create any tenancy or lease or any form of legal rights on land whatsoever between the parties except the permission to use the Permit Area in accordance with the provisions of the Contract.
- (b) This Contract is granted by the Government Representative to entitle the Permit Holder to operate the Business at the Venue in exercise of her power pursuant to section 105B (stadia) and/or 105H (museum) and 105N (civic centre) of the Public Health and Municipal Services Ordinance (Cap. 132) and/or the delegated power by the Chief Executive by Gazette Notice 2008/2003 (as the case may be).

### 2. The Term

- (a) Subject to all rights and powers of the Government and the Government Representative under the Contract, the Permit Holder must conduct the Business for a period of thirty-six (36) months commencing from 1<sup>st</sup> August 2022 or a date specified in the Articles of Agreement, whichever is later, subject to prior termination and extension as are hereinafter provided (“**Term**”).
- (b) The Government Representative shall be entitled to extend the Term for a maximum period of six (6) months upon its expiration by giving the Permit Holder one (1) month’s advance notice in writing before the due expiration of the Term.
- (c) If a notice is given by the Government Representative under Clause 2(b) above, the Permit Holder shall continue to conduct the Business for the whole period specified in the notice on the same terms and conditions as herein contained (save and except this Clause on extension).
- (d) Even if there is any suspension or closure of the Business under Clause 10 below, regardless of the duration of suspension or closure, the Term will not correspondingly be extended.

### 3. The Business

- (a) Subject to the terms and conditions of the Contract, the Government Representative grants to the Permit Holder during the Term the permission to provide and operate

two(2) Water Vending Machines A and B for sale of Drinking Water at the Permit Area of the Venue in compliance with all terms and conditions set out in the Contract (“**Business**”).

- (b) The Business shall be operated by the Permit Holder as the principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Permit Holder with no recourse against the Government or the Government Representative.

#### 4. Hours of Business

- (a) Subject to the terms and conditions of the Contract, the Permit Holder shall carry out the Business 24 hours daily.
- (b) The Government Representative is entitled, in its sole discretion, to revise the business hours as specified in Clause 4(a) above at any time and from time to time and the Permit Holder shall operate the business within such revised hours.
- (c) The Permit Holder shall not vary the business hours unless prior written consent of the Government Representative has been obtained.
- (d) The Permit Holder shall not be entitled to any adjustment or abatement of the Monthly Permit Fee for any change of the business hours referred to in this Clause and shall pay the Monthly Permit Fee in full pursuant to Clause 6 below under all circumstances.

#### 5. Conduct of Business

- (a) The Permit Holder shall maintain the Permit Area in a clean, tidy and serviceable condition to the satisfaction of the Government Representative.
- (b) The Permit Holder shall use the Permit Area only for the Business and shall not use, cause, suffer or permit to be used the Permit Area or any part thereof for any other purpose.

The Permit Holder shall, and shall ensure that all the Permit Holder Personnel shall, comply with all reasonable instructions and directions relating to the Business operated by the Permit Holder in the Permit Area.

6. Monthly Permit Fee

- (a) In consideration for the entitlement to operate the Business at the Permit Area on and subject to the terms and conditions set out in the Contract, in respect of each month of the Term, the Permit Holder shall pay to the Government in advance a Monthly Permit Fee in the amount as specified in the First Schedule (exclusive of rates, Government rent, taxes, fees, charges and all other outgoings payable in respect of the Permit Area, but inclusive of electricity charge incurred in the operation of the Business) on the first day of each and every month without reduction throughout the Term. (“**Monthly Permit Fee**”)
- (b) The Permit Holder shall pay to the Government the Monthly Permit Fee in the following manner –
- (i) Notwithstanding Clause 6(a) above, the first payment of the Monthly Permit Fee shall be made by the Permit Holder within fourteen (14) days from the date of the Conditional Acceptance of Quotation (or such later date as the Government Representative may allow) as specified in Clause 14(b) of the Terms of Quotation.
- (ii) For each and every subsequent month and until the expiry or sooner termination of this Contract, the Permit Holder shall pay the Monthly Permit Fee in advance on or before the 1<sup>st</sup> day of each month.
- (c) The Permit Holder shall be responsible for the payment of rates, taxes, fees, charges, assessments, impositions and outgoings payable in respect of the Permit Area.
- (d) If the Permit Holder fails to pay the Monthly Permit Fee by the due date or any other amount payable by the Permit Holder under this Contract (“**default amount**”), the Permit Holder shall pay a surcharge on default amount calculated at an interest rate equivalent to the average of the best lending rates of the three note-issuing banks in Hong Kong plus 2% per annum to accrue for the day on which such payment falls due until actual payment in full is made.
- (e) No money shall be payable by the Government or the Government Representative to the Permit Holder or any other person under the Contract. The Permit Holder shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in the individual provisions of the Contract.

7. Abatement

Notwithstanding any other provisions of the Contract, if the Government Representative shall require a closure of the Permit Area or a suspension of the Business under Clause 23(b) for a continuous period of more than seven (7) days, the Monthly Permit Fee will be abated, notwithstanding Clause 6 hereof, for the total period of such closure or suspension on a pro rata basis.

8. Security Deposit

(a) The Permit Holder shall, within fourteen (14) days from the date of the Conditional Acceptance of Quotation, deposit with the Government the Security Deposit in cash, cheque or cashier's order or in the form of bank guarantee to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155), a sum equivalent to two (2) times the quoted Monthly Permit Fee as specified in the First Schedule as security for the due and proper performance of and observance by the Permit Holder of the terms and conditions of the Contract.

(b) The Security Deposit, if in the form of cash, cheque or cashier's order shall be retained by the Government Representative, or if in the form of a bank guarantee, shall remain in force, in any case, from the date of Commencement Date until the date specified in (i) or (ii) below, whichever is applicable.

(i) the date falling three (3) months after the expiry or early termination of the Term; or

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

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

(c) Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash, cheque or cashier's order and if any is remaining) be refunded to the

Permit Holder without interest; or, if in the form of a bank guarantee, be discharged or released.

- (d) The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash, cheque or cashier's order or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Permit Holder) any amount due or payable by the Permit Holder to the Government Representative under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government Representative in its absolute discretion deems fit. The Security Deposit (whether in cash, cheque or cashier's order or in the form of the bank guarantee) may be deducted or called on, without the Government Representative first having recourse to any other security or rights or taking any other steps or proceedings against the Permit Holder or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Permit Holder to the Government Representative.
- (e) If any deduction is made by the Government Representative from the Security Deposit in cash, cheque or cashier's order or a call is made on the bank guarantee during the Guarantee Period, the Permit Holder shall, within fourteen (14) days on a demand in writing by the Government Representative, deposit a further sum or reinstate the level or extent of the bank guarantee or procure the issuance of a fresh bank guarantee in a sum equal to the amount so deducted or so called, which shall be added to the residue of and form part of the Security Deposit and, where applicable, the additional security amount required under Clause 8(a).
- (f) In the event that this Contract is terminated early under Clause 34(a) of Conditions of Contract, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government upon such termination without prejudice to the Government Representative's claims and demands under the Contract which cannot be satisfied by the Security Deposit.
- (g) If the Permit Holder fails to replenish the Contract Deposit in accordance with Clause 8(e) above, without prejudice to any other rights or remedies which the Government has or may have against the Permit Holder, the Government may terminate the Contract forthwith by notice in writing to the Permit Holder.

#### 9. Non-exclusive Right of the Permit Holder

- (a) The Permit Holder shall have, during the continuance of the Term, but subject always to all rights and powers of the Government Representative under the Contract, the non-exclusive, non-transferable, non-assignable right to place the

Water Vending Machines in the Venue for the operation of the Business and performance of all other obligations under the Contract which are required to be performed at the Venue.

- (b) The Government as the owner of the Venue, whether acting through the Government Representative or otherwise, reserves all rights and powers to enter into the Venue including the Permit Areas for any purpose whatsoever without any notice or reference or consent from the Permit Holder.
- (c) Nothing in this Contract shall confer on the Permit Holder any exclusive right to carry on the Business at the Venue.
- (d) Nothing in this Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorise any person to sell any Drinking Water and/or food and/or beverages and/or any other refreshments at the Venue through Water Vending Machines or other vending machines or otherwise. The Permit Holder is not entitled to claim for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorisations.
- (e) That in case any of the sums payable by the Permit Holder 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 Permit Holder herein contained or if the Permit Holder becomes bankrupt or, being a company, enters into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation), or enters into any composition with its creditors or suffer any distress or execution to be levied upon its goods, then, and in any of the said cases, it shall be lawful for the Government Representative at any time thereafter to re-claim the Permit Area, and remove the Water Vending Machines for re-collection by the Permit Holder within fourteen (14) days failing which the Government shall be free to dispose of or deal with the Water Vending Machines as it pleases. Upon exercise of the aforesaid power, this Contract shall be deemed terminated under Clause 34(a)(vi). In the event of such re-claiming, the Monthly Permit Fee already paid or any part thereof shall not be refunded and no compensation whatsoever shall be payable to the Permit Holder by the Government Representative arising from such re-claiming.

#### 10. Suspension of Business

- (a) The Permit Holder may suspend its Business for a reasonable period of time when the weather conditions warrants such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained

as far as it is practicable in the circumstances and the Government Representative's decision on whether suspension is allowed and the duration of such period of suspension shall prevail.

- (b) In the event that the Permit Holder is in breach of any term and condition of the Contract, the Government Representative shall be entitled to suspend the Permit Holder's right to carry on the Business at all Permit Area or any one or more of them ("Suspension for Default") by notice in writing to the Permit Holder for a period as specified in such notice and the suspension may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice.
- (c) Upon a Suspension for Default, the Permit Holder shall have no right to operate the Business at the suspended Permit Area during the period of such Suspension for Default. The Permit Holder shall remain liable to pay the Monthly Permit Fee in respect of the period of Suspension for Default in respect of those Permit Area which have not been suspended (if any) and perform and observe all other obligations under the Contract.
- (d) In the event that any default leading to the Suspension for Default has been remedied to the satisfaction of the Government, the Government Representative may cancel the Suspension for Default by notice in writing to the Permit Holder ("notice of resumption"). Upon receipt of such notice, the Permit Holder shall resume the Business at the suspended Permit Area by such date as specified in the notice of resumption. The Term will not be extended due to any suspension under Clause 10(b).
- (e) Without prejudice to other rights and powers of the Government including the power to terminate the Contract under Clause 34(a)(vi), during the Suspension for Default the Government shall be entitled to engage another Permit Holder to provide Water Vending Machines services and the Permit Holder shall pay the Government on demand all costs incurred thereby, as well as the loss in revenue due to the deployment of a different Permit Holder paying a lower Monthly Permit Fee.
- (f) 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 Permit Holder arising out of or in relation to any Suspension for Default under Clause 10(b).



11. Resumption of Business

If the Business shall be suspended under the terms and conditions of the Contract, the Permit Holder shall resume the Business immediately within the period specified under the Contract or that specified by the Government Representative, as the case may be.

12. Licence, Permit and/or Certificate

- (a) The Contract does not confer exemption from any licensing requirements pertaining to the Permit Holder's Business.
- (b) The Permit Holder shall apply to the appropriate authorities to obtain or renew, as the case may be, all licences, permits and/or certificates required by the Laws of Hong Kong for the operation of its Business. The Permit Holder shall make no claim of any kind whatever against the Government in the event of the Permit Holder's failure or inability for any reason to obtain or renew any such licences, permits and/or certificates.
- (c) It will be unlawful for the Permit Holder to operate its Business without the licences, permits and/or certificates as required by the Laws of Hong Kong notwithstanding the granting of the Permit by the Government Representative. The Permit Holder shall not provide Drinking Water for which any licence, permit and /or certificate is so required by law without first obtaining such licences, permits and/or certificates. The Permit Holder shall ensure that those licences, permits and/or certificates shall remain in full force and effect as long as the Contract remains in force.
- (d) Since it will necessarily take time for the relevant authorities to consider and decide on an application for the requisite licences, permits and/or certificates, the Permit Holder agree and accepts that there will be no abatement or reduction of the Monthly Permit Fee on the grounds that the Permit Holder cannot conduct its Business pending the consideration of its applications and issuance or renewal of the relevant licences, permits and/or certificates. For avoidance of doubt, the non-issuance of a relevant licence, permit and/or certificate by a relevant authority shall not constitute any grounds for the abatement of the Monthly Permit Fee.
- (e) The Permit Holder shall observe and comply with the conditions of any licence, permit and/or certificate issued to it in relation to the performance of the Contract.

13. Permit Holder's Warranties and Undertakings

The Permit Holder warrants and undertakes to the Government Representative that -

- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business at the Permit Area in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;
- (b) this Contract constitutes the binding obligations of the Permit Holder in accordance with its terms;
- (c) the entry into this Contract, the performance by the Permit Holder of its obligations under it and the operation of the Business will not conflict with or result in the breach of:
  - (i) any provision of the constitutional documents governing the Permit Holder (including its memorandum (if any) and articles of association);
  - (ii) any contract or arrangement to which the Permit Holder is a party or by which it is bound;
  - (iii) any order, judgment or decree of any court or government agency to which the Permit Holder is a party or by which it is bound; or
  - (iv) any applicable laws and regulations.
- (d) it will comply with and observe all applicable laws and regulations in the operation of the Business at the Permit Area;
- (e) it shall on receipt of forty-eight (48) hours' notice from the Government Representative produce to it for inspection of the books, ledgers, vouchers, receipts and other documents relating to the Business, and make available copies of the same to the Government Representative, if required;
- (f) it shall not later than fourteen (14) working days after the expiry of each month during the continuance of this Contract howsoever caused, submit to the Government Representative a statement of account in the form as the Government may from time to time prescribe, showing the monthly gross turnover of the Business, for that month. For the purpose of these provisions "monthly gross turnover of the Business" shall mean the gross proceeds or receipts as received or receivable for any drinks sold or consumed or of all goods, merchandise and commodities and services of any kind and description provided or sold within or through or out of the Permit Area plus all other income deriving from or in respect of the Permit Area;

14. Water Vending Machines and Maintenance

- (a) The Permit Holder only has the permit to install and operate two(2) Water Vending Machines in the Venue. The Permit Holder may not erect any other structure of whatsoever nature at the Permit Area or any other part of the Venue.
- (b) The Permit Holder shall maintain and keep to the satisfaction of the Government Representative the Water Vending Machines and the Permit Area in good repair and full working condition. The Permit Holder shall hand over to the Government Representative the Permit Area in the same condition as they were first taken possession by the Permit Holder (fair wear and tear excepted) on early termination or expiry of the Contract.
- (c) On the early termination or expiry of the Term, the Permit Holder shall remove at the Permit Holder's own expense and to the satisfaction of the Government Representative the Water Vending Machines from the Permit Area.
- (d) If any of the Water Vending Machine becomes defective, the Permit Holder shall upon verbal or written notice given by the Government Representative immediately carry out any necessary repair or replace the defective Water Vending Machine with another Water Vending Machine of the same model which is in good repair and efficient working condition, within forty-eight (48) hours from the time of the notice being received.
- (e) In case the Permit Holder fails to repair or replace a defective Water Vending Machine in accordance with Clause 14(d) or discontinue to operate a Water Vending Machine for whatever reasons, without prejudice to other rights and powers of the Government including the power to terminate the Contract under Clause 34(a), the Government shall be entitled to engage another contractor to provide water vending machine services and the Permit Holder shall pay the Government on demand all costs incurred thereby, as well as the loss in revenue resulting from the difference in the Monthly Permit Fee.
- (f) The Permit Holder shall keep the exterior of the Water Vending Machine and its adjoining area in clean and tidy condition. In default of the Permit Holder's compliance with this condition, without prejudice to other rights and powers of the Government, the Government Representative may cause the Water Vending Machine and its adjoining area to be cleaned and serviced and the Permit Holder shall compensate the Government Representative for all costs incurred thereby on demand.
- (g) The Permit Holder shall provide the Water Vending Machines which shall be equipped with sterilization function and shall have electronic payment function (including Octopus). It is preferable for the Water Vending Machine to be an

energy saving model.

15. Government Premises

- (a) The Permit Holder shall accept the Permit Area in the state and condition in which occupancy is given. The Government Representative makes no warranty or representation of whatsoever nature concerning the Permit Area. The Venues shall be provided on an “as is” basis.
- (b) If so required by the electricity company, or the Government Representative, the Permit Holder shall repair or replace at the expense of the Permit Holder all the electrical wiring installations and fittings for supplying electricity to the Vending Machines.
- (c) Except for the work expressly required under the Contract, the Permit Holder shall not make any alteration or addition to the Permit Area without prior permission in writing by the Government Representative and shall not carry out the repairs to the same without first obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government Representative and of a standard acceptable to the Government Representative.
- (d) The Permit Holder shall be liable to the Government Representative for any damage or loss to the Venue (including the Permit Area) or any Government property caused by any act or omission or default on the part of the Permit Holder or any member of the Permit Holder Personnel. If any such Venues or Government property is found damaged or lost, as the case may be in whatsoever scale due to any such act or omission or default, the Government or the Government Representative shall be entitled to recover from the Permit Holder as a debt due to the Government or the Government Representative all losses, liabilities, costs and expenses that it has incurred in the execution of such repair or replacement together with all costs and expenses incurred by the Government and the Government Representative for procuring such repair or replacement service, monitoring such repair or replacement service and in taking all other necessary actions in the light of the Permit Holder’s breach of this Clause 15.
- (e) The Venue including the Permit Area shall remain the property of the Government and the Government Representative reserves the right to take stock checking of the same at any time and the Permit Holder shall provide every assistance to the Government Representative for this purpose.

16. Operation of the Business

- (a) The Permit Holder shall provide sufficient Drinking Water for the Water Vending Machines at all times and shall within twenty-four (24) hours being notified by the Government Representative arrange refill of Drinking Water for the Water Vending Machines.
- (b) The Permit Holder shall arrange the refill of Drinking Water as frequently as possible, in particular during weekend and General Holiday. For effective communication, the Permit Holder shall devise an emergency plan to address this refill issue for approval by the Government Representative before the commencement of the Contract.
- (c) The Permit Holder shall display at the Water Vending Machines the prices for the Drinking Water sold.

17. Other Covenants

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

- (a) Not to erect or allow to remain on the Venue including the Permit Area any structure without the consent in writing of the Government Representative first had and obtained.
- (b) Not to alter or demolish any structure already erected on the Venue including the Permit Area as at the first day of the Term without the prior consent in writing of the Government Representative.
- (c) Not to use water from any Government mains for any purpose without the prior written consent of the Government Representative.
- (d) Not to do or cause or permit to be done anything in or upon the Venue that may-
  - (i) be or become a / an obstruction, trespass, nuisance, interference with pedestrian, road, rail, air or waterborne traffic, or invasion of the right of privacy or interference with any right of air, light, water or way or otherwise any act or omission or default which constitutes as a tortious act under the law; or
  - (ii) cause damage to any property of the Government Representative or of the Government or of the owners or occupiers of premises in adjacent to or within the vicinity of the Venue.

- (e) Except with the prior written approval of the Government Representative, not to carry out or cause or permit to be carried out any business or activity, other than the Business at the Permit Area including but without limitation the Permit Holder shall refrain from the erection of short term exhibition stalls or promotional counters at the Permit Area or anywhere else within the Venue.
- (f) The Permit Holder shall observe and comply with any requirement which may be imposed by the Director of Fire Services in connection with the occupation and use of the Permit Area by the Permit Holder.
- (g) The Permit Holder shall not use any gramophone, loudspeaker, musical instrument or similar apparatus or equipment within the Venue regardless of whether the same shall be audible outside the Venue.
- (h) The Permit Holder shall not carry on Business in or from or otherwise howsoever use or cause, suffer or permit to be used for any purposes whatsoever any part of the Venue or outside the Venue without the prior written consent of the Government Representative.
- (i) The Permit Holder shall be responsible to make good any loss or damage to the Venue or any part thereof or any facilities or other fixture or fitting therein not being the property of the Permit Holder which may arise as a result of the Business or any other act, neglect or default of the Permit Holder or any of its employees or agents.

18. Premises Hygiene and Safety

- (a) The Permit Holder shall take all such steps and precautions to reasonable satisfaction of the Government Representative to prevent the Permit Area or any part thereof from becoming infested by any pests or vermin.
- (b) The Permit Holder shall not do or cause or suffer or permit to be done any act or thing whereby the policy or policies of insurance on the premises of which the Venue forms part against damage by fire or liability to third parties for the time being subsisting may become void or voidable or whereby the rate of premium or premiums thereon may be increased, and shall repay to the Government on demand all sums paid by the Government by way of increased premium or premiums thereon and all expenses incurred by the Government in and about any renewal of such policy or policies rendered necessary by a breach of this sub-clause.
- (c) The Permit Holder shall take all reasonable precautions to protect the Water Vending Machines from damage by fire, storm, typhoon or the like and shall at

its own expense install and provide suitable equipment and systems etc., and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government Representative in advance and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government Representative. Such installation shall thereupon become the property of the Government Representative free of any cost or charges. The Permit Holder shall be responsible for maintaining and repairing such installation in safe and proper condition at its own expense and to remove the same should the Government Representative so direct.

- (d) The Permit Holder shall assume full responsibility for the safety and security of the Water Vending Machines and it shall indemnify each of the Government and the Government Representative against everything stated in Clause 29 arising from such Water Vending Machines.
- (e) The Permit Holder shall be responsible for the safety of any vehicle which it uses or brings alongside or onto the Venue and it shall indemnify each of the Government and the Government Representative against everything stated in Clause 29 as a result of the use of such vehicles.

19. Notices to be Displayed or Circulated in the Venue

If the Permit Holder proposes to display or circulate 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 its Business under the Contract, it shall 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 or circulated by the Permit Holder in the Venue shall be written in both English and Chinese.

20. Outgoings

- (a) Apart from electricity, the Permit Holder shall pay all the costs and deposits of utilities supplied to the Water Vending Machines or the Permit Area, and shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or herein after payable in respect of the Water Vending Machines or the Permit Area and its Business throughout the Term or the period or periods of suspension of Business due to whatsoever reasons.
- (b) The Permit Holder shall pay and discharge all outgoings and expenditure whatsoever which may be incurred by the Permit Holder arising from or in respect of or otherwise howsoever in connection with the Business.

21. Electricity Charge

The Government Representative will arrange for the supply of electricity and be responsible for the payment of the electricity charges in connection with the operation of the Water Vending Machines, provided however that there shall be no liability by the Government Representative for any loss or damage caused by an interruption or variation in the supply of electricity however caused.

22. Staffing

- (a) No staff shall be permitted for the operation of the Water Vending Machines as the Water Vending Machines are required to operate on a self-service mode.
- (b) The Permit Holder shall deploy sufficient staff for carrying out re-filling and maintenance. They shall wear uniforms while on duty at the Venue.
- (c) The Permit Holder shall be responsible for the good conduct of all members of the Permit Holder Personnel while they are in the Venue, and shall ensure that they will behave accordingly.
- (d) The Government Representative shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any member of the Permit Holder Personnel.
- (e) The Government Representative shall be entitled to refuse to admit to the Venue or any part thereof for the purposes of the Contract any member of the Permit Holder Personnel, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- (f) The Government and Government Representative shall in no circumstances be liable either to the Permit Holder or any member of the Permit Holder Personnel in respect of any liabilities, losses or damages occasioned by any removal or replacement or non-admission as stipulated in Clauses 22(d) or 22(e) and the Permit Holder shall fully indemnify each of the Government and the Government Representative from and against everything stated in Clause 29 arising from such removal or replacement or non-admission.
- (g) The Permit Holder shall ensure that all members of the Permit Holder Personnel shall keep to such parts of the Venue as are necessary for the due discharge of the Permit Holder's obligations under the Contract.
- (h) The Permit Holder shall deal with or settle complaints or disputes in respect of the use of the Water Vending Machine by the visitors of the Venue and the



Government has no obligation to render any assistance to the Permit Holder in this respect. If the Government Representative's assistance is required to deal with or settle the complaints or disputes and to the extent the Government Representative is willing to provide such assistance, the Permit Holder shall keep each of the Government and the Government Representative indemnified against everything stated in Clause 29(a) in rendering any such assistance.

- (i) The Permit Holder shall not employ any person who is forbidden under the Laws of Hong Kong or not entitled for whatever reasons to undertake any employment in Hong Kong in the execution of this Contract or any other Government contract. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Permit Holder, if there is any breach of this Clause 22(i) by the Permit Holder, Government Representative may terminate this Contract in accordance with Clause 34(a)(vi).
- (j) The Permit Holder shall comply with the Employment Ordinance (Cap. 57). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Permit Holder, the Government Representative may terminate the Contract under Clause 34(a)(vi) if the Permit Holder is convicted of any offence under the Employment Ordinance.
- (k) The Permit Holder 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 Permit Holder, the Government Representative may terminate the Contract under Clause 34(a)(vi) if the Permit Holder is convicted of any offence under the Minimum Wage Ordinance.
- (l) The Permit Holder 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 Permit Holder, the Government Representative may terminate the Contract under Clause 34(a)(vi) if the Permit Holder is convicted of any offence under the Employees' Compensation Ordinance.
- (m) The Permit Holder shall comply with the Immigration Ordinance (Cap. 115). If the Permit Holder is convicted of an offence under the Immigration Ordinance for employing a person who is not lawfully employable to perform the Contract, or is convicted of an offence for aiding and abetting another person to breach its condition of stay, without prejudice to any other rights or remedies which the Government Representative has or may have, the Government Representative may terminate the Contract under Clause 34(a)(vi).
- (n) The Permit Holder 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 Permit Holder's operation of its Business. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Permit Holder, the Government Representative may terminate the Contract under Clause 34(a)(vi) if the Permit Holder is convicted of any offence under the Occupational Safety and Health Ordinance.

- (o) The Permit Holder 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 Permit Holder, the Government Representative may terminate the Contract under Clause 34(a)(vi) if the Permit Holder is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance.
- (p) In the performance of the Contract, the Permit Holder shall not employ any person who may not lawfully undertake employment in Hong Kong. Any employment by the Permit Holder in breach of this Clause shall entitle the Government to terminate the Contract pursuant to Clause 34(a)(vi) hereof.
- (q) The Permit Holder shall not employ any person who has not been inoculated against typhoid and paratyphoid and inoculated and vaccinated against such other diseases as the Government Representative may direct for carrying out any work at the Permit Area.

23. Temporary Closure of the Venue

- (a) Without prejudice to the rights and powers of the Government Representative (including under Clause 10 to effect a Suspension for Default), the Government Representative may require a temporary closure of any of the Venue or any part thereof including the Permit Area within such Venue for any operational (e.g., maintenance, repair, renovation, modification) or other reason (including any of the reasons as specified in Clause 23(b)) which is otherwise than due to any default of the Permit Holder by giving not less than seven (7) days' notice to the Permit Holder specifying the period of the temporary closure. Where the temporary closure covers the Permit Area (including a temporary closure due to any grounds specified in Clause 23(b)), the Monthly Permit Fee in respect of such Permit Area shall not be payable for so long as such closure continues. The Term will not be extended due to such temporary closure. Where the temporary closure of the Venue does not cover any of the Permit Area within such Venue, the Permit Holder shall be required to continue to operate the Water Vending Machines at such Permit Area within such Venue and the Monthly Permit Fee shall continue to be payable notwithstanding any such temporary closure.

- (b) Without prejudice to the generality of Clause 23(a), the Government Representative reserves the right to require a temporary closure of the whole or any part of the Venue, by reason of fire or storm or damage or spread of epidemic (not being the result of willful default or misconduct or negligence of the Permit Holder, or any member of the Permit Holder Personnel, or any force majeure (as defined in Clause 34(c)) at any time and for whatever period or periods during the Term.
- (c) Upon any temporary closure pursuant to this Clause 23, the Permit Holder may be required to at its cost remove and collect the Water Vending Machines from the Permit Area to another Permit Area within the same Venue for continued operation for so long as the temporary closure continues.
- (d) 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 Permit Holder arising out of or in relation to any temporary closure of a Venue or any part thereof whether or not affecting the Permit Area or any removal of the Water Vending Machine under this Clause 23.

24. Access by Government for Repair

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

25. Arrangement during Epidemic Illness

In the event of illness of any epidemic nature breaking out or situations related to suspected or confirmed communicable disease cases, the Permit Holder 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 Permit Holder shall comply with any instructions issued by the Government regarding measures to be adopted to prevent or control disease of any kind.

26. Inconvenience or Annoyance Caused at the Venue

- (a) The Permit Holder shall ensure that its employees or agents shall perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- (b) The Permit Holder shall use its best endeavors to avoid causing nuisance or annoyance to the users of the Venue or to the Government's staff or agents working there while carrying out the Business. The Government Representative shall be, without prejudice to any rights it has under the Contract and without releasing or discharging the Permit Holder of its obligations hereunder and without compensation whatsoever to the Permit Holder, entitled to suspend the Business or by whatever means the Government Representative may consider suitable so as to stop the Permit Holder from causing further nuisance to the users of the Venue and the Government's staff or agents working there.
- (c) The Permit Holder shall not place or leave, or cause, or suffer, or permit to be placed or left any of its trade equipment, stores, provisions, furniture, fixtures, fittings, chattels or other things whatsoever at any places within the Venue other than the Permit Area or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government Representative if the Government Representative in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this Clause and without prejudice to any other rights and remedies which the Government Representative has or may have under the Contract, the Government Representative shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Permit Holder to seize and dispose of any such property in such manner as the Government Representative may see fit without any liability whether towards the Permit Holder or any other person and the Permit Holder shall pay the Government on demand all the costs in relation to such removal and/or disposal which are incurred by the Government.

27. Inspection and Rejection

- (a) The Business carried on by the Permit Holder shall be subject to inspection by the Government Representative at any time.
- (b) Without prejudice to any other rights provided under the Contract, the Government Representative may reject any action undertaken by the Permit Holder which is purported to be for the compliance or observance of any term or condition of the Contract or result of such action which does not strictly conform to the terms and conditions of the Contract.

- (c) Within twenty-four (24) hours (or such longer time as may be allowed by the Government in writing) of being notified in writing of the rejection of any action undertaken by the Permit Holder or result of such action, the Permit Holder shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government Representative.
- (d) If the Permit Holder fails 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 carry out and complete such rectification by its own staff or agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Permit Holder forthwith on demand. The normal working hours for the staff of the Government are with the exception of General Holiday, from 9:30 a.m. to 4:30 p.m. from Monday to Friday. If such rectification is carried out by the staff of the Government outside these normal working hours, the Permit Holder shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

28. Permit Holder's Act and Default

- (a) Any act, default, negligence or omission of any employee, agent or sub-contractor (of whatever tier), or any employee or agent of such sub-contractor, or visitor, patron or invitee of the Permit Holder shall be deemed to be the act, default, negligence or omission of the Permit Holder.
- (b) It shall be regarded as a default of the Permit Holder, if the Permit Holder –
  - (i) shall abandon the Contract; or
  - (ii) shall persistently or wilfully neglect to carry out its obligations under the Contract; or
  - (iii) shall fail to carry out all or any of the rectification as stipulated in Clause 27(c) above within the time specified.
- (c) The Government Representative may terminate the Contract under Clause 34(a)(vi) if in the event of the Permit Holder's default as set out in Clause 28(b) above.

29. Liability and Indemnity

- (a) Neither the Government, the Government Representative nor any of the public

officers, employees or agents of the Government shall be under any liability whatsoever for or in respect of:

- (i) any loss of the or damage to any of the Permit Holder's property or that of any member of the Permit Holder Personnel, howsoever caused; or
  - (ii) any injury to or death of the Permit Holder (in the case where the Permit Holder is a natural person) or any member of the Permit Holder Personnel, save and except any such injury or death caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).
- (b) Without prejudice to any other provisions of the Contract, the Permit Holder shall indemnify each of the Government, the Government Representative, their respective assigns, successors-in-title and the public officers, employees and agents of the Government (each an "Indemnified Person") from and against:
- (i) all and any liabilities and indebtedness, all and any losses and damage, and
  - (ii) all and any costs and expenses (including liabilities to pay damages or compensation, and all legal and expert fees on a full indemnity basis); and
  - (iii) all and any claims, actions, investigations, demands, proceedings or arbitration, threatened, brought or instituted by any person against an Indemnified Person (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part and whether alone or jointly with another) ("Third Party Claims") and everything stated in sub-clause (a) above arising from all or any such Third Party Claims;

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

- (1) the performance or breach of any provisions of the Contract by the Permit Holder or any member of the Permit Holder Personnel;
- (2) the negligence, recklessness, tortious acts or wilful omission of the Permit Holder or any member of the Permit Holder Personnel;
- (3) any warranty or representation made by the Permit Holder in the Contract or in the quotation submitted for the Contract or from time to time in the course of the Contract which is incorrect, inaccurate, incomplete or misleading;

- (4) the non-compliance by the Permit Holder, or any member of the Permit Holder Personnel with any applicable law or regulation, or order or requirement of any government agency or authority; or
  - (5) any death or injury or loss or damage of property as mentioned in Clause 29(a) except any death or injury caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).
- (c) 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).
- (d) The indemnities, payment and compensation given in pursuance of the Contract by the Permit Holder shall not be affected or reduced by reason of any failure or omission of the Government Representative in enforcing any of the terms and conditions of the Contract, or in supervising or controlling the Permit Holder’s operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Permit Holder or any member of the Permit Holder Personnel.

30. Accident to Permit Holder’s Employees

- (a) The Government, and 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 Permit Holder’s employees or agents save and except such injury or death caused by the negligence of the Government or its employees or agents. The Permit Holder shall indemnify the Government 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 and its employees and agents are not liable under this Clause.
- (b) In the event of any staff or other persons employed by the Permit Holder on any work done in pursuance of the Contract suffering any personal injury or death, the Permit Holder shall within forty-eight (48) hours notify the Government Representative in writing and whether there be a claim for a compensation or not, the Permit Holder shall, as soon as it is practicable thereafter, give notice in writing of such personal injury or death to the Commissioner for Labour and the insurer.

31. Public Liability Insurance

- (a) The Permit Holder shall at its own expenses effect, take out, maintain and renew upon expiry a policy of insurance (including public liability) (“Policy”) in the joint names of the Permit Holder and the Government in the sum of not less than Ten Million Hong Kong Dollars (HK\$10,000,000) for any one (1) incident and for an unlimited number of claims arising during the Term of the Contract with an insurance company authorised by the Insurance Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative. There shall be no limit to the number of claims during the period of insurance.
- (b) The Policy shall cover liability to pay damages or compensation as a result of the damage to properties, death of or injury to or illness suffered by any person arising out of any act, negligence or default of the Permit Holder, or the Government or their employees and agents, occurring any time during the Term in connection with the Business. The Policy shall also indemnify all sums which the Permit Holder and the Government shall become legally liable to pay as compensation for bodily injury due to any drinks and/or other commodities sold by the Permit Holder at the Venue.
- (c) On top of the indemnity amount as stated in Clause 31(a), the Policy shall also indemnify each of the insured in respect of all sums which the insured shall become legally liable to pay as compensation for any death of or injury to or illness of any person due to poisoning by Drinking Water or drinks supplied by the Permit Holder through the Water Vending Machine as well as legal costs awarded in favour of any claimant of any claim covered by the Policy and legal costs incurred by the insured in defending any claim.
- (d) The Permit Holder shall keep the Policy in force during the continuance of the Contract and shall forthwith deposit with the Government Representative for safe keeping a copy of such Policy together with the receipt for payment of the current premiums.
- (e) If the terms of the Policy taken out by the Permit Holder require the insured parties to bear any excess amount in the event of claims, the Permit Holder shall be personally and solely responsible for the payment of such excess amount and shall indemnify the Government for such payment. Under no circumstances whatsoever shall the Government be responsible for the premium payable under the public liability insurance policy or the premium payable for the renewal thereof.
- (f) The Policy shall include a cross liability clause.



- (g) The Permit Holder is responsible to lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage.
- (h) The Permit Holder shall conform to the terms and conditions of the Policy and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Permit Holder shall not do or permit or suffer to be done any act or omission whereby the Policy shall be rendered void or voidable, or which would otherwise amount to breach of the Policy. The Permit Holder shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Permit Holder to observe and comply with this Clause.

32. Failure to Insure

If the Permit Holder shall fail to effect or to keep in force the Policy referred to in Clauses 30 and 31 hereof or any other policy of insurance which it may be required to effect under the terms and conditions of the Contract, the Government Representative may effect and keep in force any such insurance policy and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with Clause 8 hereof or may recover the same as a debt due from the Permit Holder.

33. Recovery of Sums Due

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

34. Termination

- (a) Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government, the Government may at any time by notice summarily terminate the Contract without entitling the Permit Holder to compensation in any of the following events –

- (i) if the Permit Holder 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 Permit Holder under the Contract, or in the case of a breach capable of being remedied, fails within fourteen (14) days or such longer period as the Government Representative may allow after the receipt of a notice in writing from the Government Representative to remedy the breach (such notice shall contain a warning of the Government Representative's intention to terminate the Contract); or
- (ii) if the Permit Holder is an individual, he is at any time adjudged bankrupt, or has a receiving order or orders for administration made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6) for the time being in force, or becomes insolvent, or makes a proposal for a composition or a scheme of arrangement or makes any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports to do so, or suffers any execution to be levied on its goods and assets whether or not in the Permit Areas, or a petition is filed for its bankruptcy winding up of its business; or
- (iii) if the Permit Holder, being a company, passes a resolution, or the court makes an order, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances which entitle the Court or debenture holders to appoint a receiver or manager have arisen, for the liquidation of the Permit Holder's assets, provided that such determination shall not prejudice or affect any right or action or remedy which have accrued or accrue thereafter to the Government; or
- (iv) if the Permit Holder assigns or transfers, or purports to assign or transfer all or any part of the burden or benefits of the Contract without the prior written consent of the Government Representative; or
- (v) if the Permit Holder unilaterally ceases its Business of the Venue and/or unilaterally terminates the Contract at any time prior to the expiry of the Term otherwise than in accordance with Clause 34(c); or
- (vi) any event or circumstance occurs which enables the Government Representative to terminate the Contract under any provision of the Contract including any of the following provisions:
  - (1) Clause 9(e) (Non-exclusive Right of the Permit Holder);
  - (2) Clause 12(b) (Licence, Permit and/or Certificate);

- (3) Clause 14(f) (Water Vending Machines and Maintenance);
  - (4) any of Clauses 22(i) to 22(p) (Permit Holder Personnel);
  - (5) Clause 28(c) (Permit Holder's Act and Default);
  - (6) Clause 36(a) (Probity);
  - (7) Clause 6(c) (Anti-collusion) of the Terms of Quotation; or
- (vii) where there is any claim or allegation or the Government Representative has reasonable grounds to believe that the Permit Holder in the course of performing the Contract, or any goods or materials supplied or to be supplied by the Permit Holder in performing the Business, has infringed or may infringe the Intellectual Property Rights of any person.
- (b) If the Government Representative is at any time prevented from performing the Contract by force majeure, or otherwise due to any event mentioned in Clause 23(b) and that the Government Representative wishes to terminate the Contract instead of requiring a temporary closure under Clause 23, the Government Representative may serve not less than fourteen (14) days' notice on the Permit Holder to this effect.
- (c) For the purpose of Clause 34(b), "force majeure" means acts of God, strikes, lockouts, acts of war, civil disorders, or other similar or different events or contingencies which prevents the parties to this Contract from performing this Contract and which is an event beyond their reasonable control. For these purposes an event shall not be deemed to be within the control of the Government on the ground that the Government could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person. Failure to obtain any Requisite Permit for whatever reason including because due to any change of applicable law and regulations may not be treated as force majeure event but a default on the part of the Permit Holder.
- (d) Notwithstanding any provision herein to the contrary, either party may terminate the Contract by giving the other party not less than six (6) months' prior written notice provided that any such notice may only be served no earlier than the expiry of the first eighteen (18) months of the Term.
- (e) If the Permit Holder has terminated the Contract early by serving prior written notice pursuant to Clause 34(d), and the Government conducts a new procurement exercise to award a contract to provide the Business from another source, any tender/quotation offer from the same Permit Holder or a related person of the Permit Holder (as defined in Clause 31(f) or 31(g) of the Terms of Quotation) for

the contract to be awarded in that new procurement exercise will be rejected.

- (f) (i) If the Permit Area or any part thereof shall be rendered unfit for use by any cause whatsoever not attribute to any act, omission or default on the part of the Permit Holder or any of its servants or agents, the obligation of the Permit Holder to carry on the Business shall be suspended until such part or parts shall have been again rendered fit for use. If the period of suspension exceeds seven (7) days then the Monthly Permit Fee hereby agreed to be paid or a proportionate part thereof shall abate until the Permit Area or any part thereof shall have been rendered fit for use. If such part or parts shall not be rendered fit for use within six (6) months of the date of the occurrence of the event rendering the same unfit, then either party hereto shall be entitled at any time before the same are so rendered fit to terminate this Contract by notice in writing to the other but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach. Notwithstanding the above the Government shall have the sole right to determine whether the Permit Area or any part thereof has become unfit for use.
- (ii) For the avoidance of doubt, it is hereby expressly agreed and declared that notwithstanding anything contained herein, the Government shall not in any circumstances whatsoever be required or otherwise obliged to repair or reinstate the Permit Area or any part thereof rendered unfit for use by any cause whatsoever if the Government shall be of the opinion that it is not practicable or reasonable to do so.

### 35. 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 34 or otherwise (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
- (i) the Government Representative’s rights and claims under the Contract or otherwise at law against the Permit Holder arising from antecedent breaches of the Contract by the Permit Holder (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.

- (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 Permit Holder arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government and the Government Representative including the right to seek indemnity under Clause 29(b), in the event that this Contract is terminated under Clause 34(a), the Permit Holder 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 (calculated based on the Monthly Permit Fee actually received preceding the Termination) (where and whilst no replacement is awarded) and shortfall in such revenue and also calculated based on the aforesaid unit rate (where and whilst a new replacement contract is awarded), for the remainder of the Term 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 (including legal and administrative costs) incurred by the Government Representative for arranging stop-gap measures due to the cessation of the Business;
- (d) the Permit Holder shall forthwith pay up all unpaid Monthly Permit Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in Clause 6(d);
- (e) the Permit Holder shall immediately deliver up vacant possession of the Venue in good repair (fair wear and tear excepted) and in clean and hygienic condition, provided always that where the Permit Holder has made any alterations or installed any fixtures, fittings or additions to the Venue with or without the Government Representative's consent, the Government Representative may at its discretion require the Permit Holder to reinstate or remove at the Permit Holder'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 Venue 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 vacant possession of Venue to the Government Representative. Alternatively, the Government Representative may choose to retain all such fixtures, fittings and alterations made by the Permit Holder to the Venue if the Government Representative so

chooses without any compensation to the Permit Holder whatsoever;

- (f) the Permit Holder shall remove the Water Vending Machines from the Venue. The Permit Holder shall at its own expense make good any damage to the Venue arising from such removal;
- (g) if the Permit Holder fails to comply with any of Clauses 35(e) or (f), the Government Representative may remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property found therein including the Water Vending Machines and to effect the necessary repair and cleansing work so as to keep the Venue including the Water Vending Machines 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 Permit Holder or any other party any fixtures and fittings so installed or erected and any property (including the Water Vending Machines and all content therein) not collected or removed by the Permit Holder 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 Permit Holder; and
- (h) submit all outstanding statements and information as specified in Clause 6 and account to the Government all unpaid Monthly Permit Fee plus any interest at the rate specified in Clause 6(d) for any late payment.

36. Probity

- (a) If the Permit Holder or any of the Permit Holder's employees or agents commits an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210), the Crime Ordinance (Cap. 200) or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Permit Holder to any compensation thereof.
- (b) The Permit Holder shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract under this Clause.
- (c) The Permit Holder shall not, whether by itself or by any person employed by it to provide the services, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of such services other than charges properly approved in writing by the Government Representative under the Contract. The Permit Holder shall prohibit its employees and agents who are

involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting the Business under this Contract.

- (d) The Permit Holder shall within fourteen (14) days after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting any Permit Holder Personnel from soliciting or accepting any form of advantages in discharging its duties under the Contract. The Permit Holder shall ensure that any person employed or engaged by it to operate the Business is well aware of the prohibited acts stated in Clause 36(c) and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

### 37. Publicity and Advertisement

- (a) The Permit Holder shall not exhibit, display, publish or use any advertising or other publicity materials at or on the Water Vending Machines or the Permit Area or perform any act with an advertising nature at or on the Water Vending Machines or the Permit Area without the prior written consent of the Government Representative.
- (b) Save and except where the Government Representative at its discretion may so permit or require, the Permit Holder shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Permit Area. Any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Permit Area or any part thereof) of any advertising nature.
- (c) Without prejudice to the generality of Clause 37(b), the Permit Holder shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Permit Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Permit Area or any part thereof) of any advertising nature relating to any smoking products.
- (d) Notwithstanding Clause 37, the Permit Holder may at its own expense affix a notice with a size of not less than 15 cm (width) x 10 cm (height) on the conspicuous space of the Water Vending Machines for the details of the twenty-four (24) hours customer service hotline of the Permit Holder in both Chinese and English for the Water Vending Machines in all respects to the satisfaction of the Government.

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

The Contract is subject to the provisions of the Public Health and Municipal Services Ordinance (Cap. 132), and of all regulations made thereunder, which may be applicable to the Venue, the Permit Area and the Business. For activities relevant to licensing requirements regulated by the Director of Food and Environmental Hygiene, the Permit Holder should visit the Food and Environment Hygiene Department's website at the following link –

[https://www.fehd.gov.hk/english/licensing/Guide\\_on\\_Types\\_of\\_Licences\\_Required.html](https://www.fehd.gov.hk/english/licensing/Guide_on_Types_of_Licences_Required.html)

39. Intellectual Property Rights

- (a) The Permit Holder warrants to the Government Representative that:
- (i) The Permit Holder will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person in the operation of the Business or the performance of this Contract;
  - (ii) all Drinking Water and any other materials of whatsoever nature to be stocked, displayed, and for sale by the Permit Holder, through the Water Vending Machine, do not consist of or contain any materials which infringe the Intellectual Property Rights of any person;
  - (iii) in respect of any Drinking Water or any other materials of whatsoever nature to be stocked, displayed and for sale by the Permit Holder through the Water Vending Machine, and in respect of which any Intellectual Property Rights are vested in a third party, the Permit Holder has or will have a valid and continuing licence or right under which it is entitled to stock, display and sell such items;
  - (iv) the Government, the Government Representative, their respective authorised users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person by the Permit Holder's possession, stocking, display or sale or use of any Drinking Water or material of whatsoever nature, or any activity conducted in the Permit Area or in connection with the operation of the Business at the Permit Area performance of this Contract by the Permit Holder;
  - (v) the Government and the Government Representative and their authorised users, assigns and successors-in-title will not infringe any Intellectual Property Right of any person by the exercise of any of its



rights under this Contract;

- (vi) if and to the extent any material in which Intellectual Property Right subsists is required for performing the Contract, it is either the owner of the Intellectual Property Rights or has a valid and continuing licence under which it is entitled to use or sub-licence such material and the Intellectual Property Rights for itself and for the Government Representative and its authorised users to use such material;
  - (vii) all and any materials to be supplied or provided by the Permit Holder to the Government Representative under the Contract including those statements under Clause 3 of Terms of Quotation (collectively, “**Materials**”) are not eligible for and does not enjoy any Intellectual Property Rights including copyright protection and moral right protection or confidentiality or non-disclosure protection. Without prejudice to the generality of the foregoing, the Materials do not possess the degree of originality to warrant copyright protection. The Government Representative shall not be subject to any restriction and does not require any licence or consent or clearance from the Permit Holder or any other person in the use or disclosure of any such Materials; and
  - (viii) The Permit Holder will do, and will procure all other necessary parties to do, all things and sign all documents necessary to ensure consummation of the transactions contemplated in Clauses 39(b) and (c).
- (b) Notwithstanding the warranty in Clause 39(a)(vii), in the event and to the extent that any part of the Materials are treated as original materials created by the Permit Holder or any other person (“original materials”), the Permit Holder hereby agrees that, and shall ensure the creator of such original materials will agree, that the copyright and all other Intellectual Property Rights in such original materials (if any, and whether existing as at the date of the Contract or any time thereafter) shall vest in the Government absolutely immediately upon creation.
- (c) Notwithstanding the warranty in Clause 39(a)(vii), in the event that any moral right does subsist in the Materials or any part thereof, the Permit Holder hereby irrevocably waives and undertakes to procure at its own cost and expense all relevant authors of the Materials or any part thereof to irrevocably waive all moral rights (whether past, present or future) in the respective items. The waiver shall operate in favour of the Government, its authorised users assigns and successors-in-title and shall take effect upon creation of such items or upon delivery of such items to the Government Representative (as the case may be).

40. Governing Law and Jurisdiction

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

41. Service of Notices

- (a) Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address, facsimile number set out in the Articles of Agreement (or such other postal address, facsimile number as the addressee has by not less than seven (7) working days' prior written notice specified to the other party).
- (b) Such notices, demands, invoices, correspondence or other communications shall be addressed as provided in Clause 41(a) and, if so addressed, shall be deemed to have been duly given or made as follows:
  - (i) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
  - (ii) if sent by post, four (4) days (for any place in Hong Kong) and seven (7) days (for any place outside Hong Kong) after the date of posting;
  - (iii) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.

42. Waiver of Remedies

- (a) Time shall be of the essence of the Contract. No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party. Nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to the party and each such right, power, or remedy shall be cumulative.
- (b) Acceptance of any payment by the Government Representative shall not be deemed to operate as a waiver by the Government of any right to proceed against

the Permit Holder in respect of any breach, non-observance or non-performance by the Permit Holder of any of the terms and conditions of this Contract on the Permit Holder's part to be observed and performed.

- (c) No condoning, excusing or overlooking by the Government Representative of any default, breach, non-observance or non-performance by the Permit Holder of any of the obligations of the Permit Holder under the Contract shall operate as a waiver of the Government or the Government Representative's right under the Contract in respect of any continuing or subsequent default, breach, non-observance or non-performance.

43. Severability

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

44. Relationship of the Parties

- (a) The Permit Holder enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall be construed as in any way constituting a contract of employment, a relationship of agency or partnership, a relationship of landlord and tenant, or a joint venture between the parties.
- (b) Neither party shall without the prior approval in writing of the other commit that other party to any obligation other than those prescribed in the Contract. 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.

45. Mediation

- (a) 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. In default of agreement, the Dispute shall be referred to mediation at the Hong Kong International Arbitration Centre in accordance with its Mediation Rules. In case the Dispute cannot be resolved by mediation, the Dispute shall be referred to, and finally settled by, arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609).
- (b) The Permit Holder shall be obliged to carry on the Business in accordance with the Contract irrespective of a notice of mediation or arbitration having been served by either party or whether mediation or arbitration is in progress.

46. Assignment and Sub-Contracting

- (a) Unless otherwise provided for in the Contract, the Permit Holder must not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Permit Holder shall be personal to it.
- (b) If the Permit Holder proposes to appoint any sub-contractor, it must submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A certified copy of the sub-contract must be deposited with the Government within seven (7) days after the effective date of the sub-contract.
- (c) The Permit Holder must 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 and the Permit Holder must be responsible for the acts, defaults or neglect of any of the Permit Holder Personnel as if they were its own.

47. Entire Agreement

The Contract embodies the entire understanding of the parties and supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire contract between the parties relating to the subject matter hereof. No addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties.

48. Variations

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

49. Contracts (Right of Third Parties) Ordinance

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 the Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

**SCHEDULES**

<b><u>No.</u></b>	<b><u>Contents</u></b>	<b><u>Sheet</u></b>
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3.	Third Schedule - Information of the Service Provider	74
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**SCHEDULES**

**FIRST SCHEDULE**

**Monthly Permit Fee**

Business	Monthly Permit Fee (in Hong Kong Dollars)	
Provision of Water Vending Machine for Sale of Drinking Water	(i)	Water Vending Machine A HK\$ _____ (in figures)
	(ii)	Water Vending Machine B HK\$ _____ (in figures)
	Total: (i) + (ii) =  HK\$ _____ (in figures) Monthly Permit Fee	

Name of Service Provider / Authorised Representative\* :

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

Signature of Service Provider / Authorised Representative\*:

\_\_\_\_\_  
(with Service Provider's chop, if applicable)

\* Delete as appropriate

**SCHEDULES****SECOND SCHEDULE****Information on Water Vending Machines**

A Service Provider shall:

- (1) Specify in Part A below the proposed brands and prices of Drinking Water offered; and
- (2) Insert in Part B below the model of the Water Vending Machines offered and attach hereto descriptive literature on the Water Vending Machines.

**PART A - Brands of Drinking Water and Prices Offered**

<u>Brands</u>	<u>Volume Control for Dispensing per Sale (mL)</u>	<u>Price per Transaction</u>
---------------	--	------------------------------

**PART B - Model of Water Vending Machines to be offered (model shall be equipped with sterilization function and have electronic payment function (including but not limited to Octopus); energy saving model is preferable)**

Model of Water Vending Machines :

- (1) Model : \_\_\_\_\_
- (2) Sterilisation method adopted : \_\_\_\_\_

Notes:

1. The price for the Drinking Water shall be prominently displayed at the Water Vending Machines.
2. The Permit Holder shall provide the details of the proposed Water Vending Machines (including photographs, dimension, payment mode, weight, etc.) applicable to the Venue (models shall be equipped with sterilization function and have electronic payment function (including Octopus)).
3. It is not the intention of the Government Representative to exercise control over price of Drinking Water for sale at the Permit Area.



Name of Service Provider / Date :  
Authorised Representative\* : \_\_\_\_\_

Signature of Service Provider or  
Authorised Representative \* : \_\_\_\_\_  
(with Service Provider's chop, if applicable)

\* Delete as appropriate

**SCHEDULES****THIRD SCHEDULE****Information of the Service Provider**

1. The Service Provider is required to provide the information required below -

(A) **If the Service Provider is a Sole Proprietor or an individual proposing to be registered as a sole proprietorship with the Business Registration Office -**

(a) Name of Service Provider (in English) \_\_\_\_\_  
(in Chinese) \_\_\_\_\_

(b) Hong Kong Identity Card Number: \_\_\_\_\_

(c) Residential Address:  
\_\_\_\_\_  
\_\_\_\_\_

(d) Telephone Number: \_\_\_\_\_

(e) Facsimile Number: \_\_\_\_\_

(f) Business Registration Certificate Number  
of the sole proprietorship being operated (if any): \_\_\_\_\_

(g) Expiry Date of Business Registration Certificate  
(if applicable): \_\_\_\_\_

(h) Name of Bank and Branch dealing with the business being operated:  
\_\_\_\_\_

(i) Address of Branch: \_\_\_\_\_

(j) Bank Account Number: \_\_\_\_\_

(k) I submit this quotation with details as shown above.

**(B) If the Service Provider is a Firm**

(a) Name of Firm: (in English) \_\_\_\_\_

(in Chinese) \_\_\_\_\_

(b) Address of the Firm:  
\_\_\_\_\_

(c) Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

(d) Business Registration Certificate Number of the business  
being operated: \_\_\_\_\_

(e) Expiry Date of Business Registration Certificate: \_\_\_\_\_

(f) Name of Bank and Branch dealing with the business being operated:  
\_\_\_\_\_

(g) Address of Branch:  
\_\_\_\_\_

(h) Bank Account Number: \_\_\_\_\_

(i) Names of all Partners in BLOCK letters: \_\_\_\_\_

(j) Residential Address(es) of Partners (in above order):  
\_\_\_\_\_  
\_\_\_\_\_

(k) I myself am a partner of the said firm and am duly authorised to bind the said firm and all its partners by my signature in the name of the firm.

**(C) If the Service Provider is a Body Corporate**

(a) Name of the Body Corporate: (in English) \_\_\_\_\_

(in Chinese) \_\_\_\_\_

If a Subsidiary, Name of Parent Company: \_\_\_\_\_

(in English) \_\_\_\_\_

(in Chinese) \_\_\_\_\_

(b) Address of Registered Office: \_\_\_\_\_

(c) Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

(d) Certificate of Incorporation Number of the Company: \_\_\_\_\_

(e) Limited or Unlimited Liability: \_\_\_\_\_

(f) Year of Establishment: \_\_\_\_\_

(g) Business Registration Certificate Number of the business being operated: \_\_\_\_\_

(h) Expiry Date of Business Registration Certificate: \_\_\_\_\_

(i) Name (in BLOCK letters) and Residential Address of the Managing Director: \_\_\_\_\_

(j) Name (in BLOCK letters) and Residential Address of the Company Secretary: \_\_\_\_\_

(k) Name of Bank and Branch dealing with the business being operated: \_\_\_\_\_

(l) Address of Branch: \_\_\_\_\_

(m) Bank Account Number: \_\_\_\_\_

All Service Providers, regardless of their legal status, shall provide the information in parts (D), (E), (F), (G) and (H) below:

**(D) Proposed investment -**

\_\_\_\_\_

**(E) Proposed number of staff to be employed for operating the Business -**

\_\_\_\_\_

**(F) Confirmation required under Clause 31 of the Terms of Quotation-**

#I/We confirm that none of the events as mentioned in Clauses 31(b)(i) to 31(b)(iv) of the Terms of Quotation has ever occurred within the applicable period as mentioned in therein;  
OR

#I/We hereby provide the details as required in any of Clauses 31(b)(i) to 31(b)(iv) where applicable.

#Delete where inapplicable

**(G) Details or any proposed sub-contracting arrangements for the Contract (including those which will be entered into after the Contract is awarded)**

\_\_\_\_\_

**(H) Other information -**

\_\_\_\_\_

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

Name: \_\_\_\_\_ Telephone Number : \_\_\_\_\_

Name(s) and address(es) of Service Provider and Authorised Representative signing this document :

\_\_\_\_\_

\_\_\_\_\_

Telephone Number : \_\_\_\_\_

Signature of Service Provider or  
Authorised Representative\* :

\_\_\_\_\_  
(with Service Provider's chop, if applicable)

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Notes: \*Delete as appropriate.

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

**SCHEDULES**

**FOURTH SCHEDULE**

**Form of Security Deposit Election**

Pursuant to Clause 11 of the Terms of Quotation, \* I/We select to furnish the Security Deposit by \* cash / cheque/ cashier's order / bank guarantee.

Signature of Service Provider  
or Authorised Representative\* : \_\_\_\_\_  
(with Service Provider's chop, if applicable)

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\* Delete as appropriate

**SCHEDULES****FIFTH SCHEDULE**

To: the Government

Dear Sir/Madam,

The Non-collusive Quotation Certificate

1. I/We, (name of the Service Provider)  
of (address(es) of the Service Provider(s))

refer to the Government's invitation to quotation for the Contract (" Invitation to Quotation") and my/our Quotation in response to the Invitation to Quotation.

Non-collusion

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



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

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

#### Disclosure of subcontracting

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

#### SCHEDULES

## Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 6(a) of the Terms of Quotation, the Government may exercise any of the rights under Clause 6(c) to 6(e) of the Terms of Quotation in addition to and without prejudice to any other rights or remedies available to it against me/us.
  
6. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the "Commission") and provide the Commission with any relevant information, including but not limited to information on my/our Quotation and my/our personal information.

Signed by the Service Provider / :  
 Signed by an authorised signatory for and  
 on behalf of the Service Provider \_\_\_\_\_

Name of the authorised signatory (where :  
 applicable) \_\_\_\_\_

Title of the authorised signatory :  
 (where applicable) \_\_\_\_\_

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

**SCHEDULES****SIXTH SCHEDULE****Form of Bank Guarantee  
for the Performance of a Contract**

THIS GUARANTEE is made on the \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

By \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_, a bank within the meaning of the Banking Ordinance (Chapter. 155 of the Laws of Hong Kong) (hereinafter called the “Guarantor”)

In favour of

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

WHEREAS

(A) By a contract (hereinafter called the “Contract”) dated the [Day]\_\_\_\_\_ of \_\_\_\_\_ [Month] 202\_\_\_\_\_ made between <<Contractor-Name>> \_\_\_\_\_ of <<Contractor-Address>> \_\_\_\_\_ (hereinafter called the “Contractor”) of the one part and the Government of the other part (designated as LC/LS/Q/VM/WCH/VP/2022/02.” ), the Contractor agreed and undertook to operate the business of provision of Water Vending Machines for Sale of Drinking Water at Victoria Park and Victoria Park Swimming Pool of the Leisure and Cultural Services Department upon the terms and conditions of the Contract.

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

Now this Guarantee as a deed witnesses as follows:

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

SCHEDULES

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

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations, terms, conditions, stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.
- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations, terms or conditions, stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

(3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Contractor" or where "the Contract" is a partnership, any change in the partners or in its constitution.

(4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

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

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganization 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 (3) months after the expiry or early termination of the Contract; or

(b) in the event that upon early termination or expiry of the Contract, there are any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, the date on which all such obligations and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing), but in the absence of any such confirmation, this Guarantee shall expire upon thirty-six (36) months after the expiry of early termination of the Contract, whichever is applicable.

(8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.

- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, at the Leisure and Cultural Services Department of 1-3, Pai Tau Street, Sha Tin, New Territories, Hong Kong, marked for Director of Leisure and Cultural Services facsimile number (852) 2603 0235;
  - (b) upon the Guarantor, at \_\_\_\_\_, Hong Kong, marked for the attention of \_\_\_\_\_, facsimile number \_\_\_\_\_.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed \_\_\_\_\_.
- (15) The Guarantor hereby acknowledges that the Guarantor should read and fully understand, with the benefit of independent legal advice if necessary, the terms and conditions of this Guarantee before entering into this Guarantee.

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

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

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

@ Signed Sealed and Delivered )  
 for and on behalf of and as )  
 lawful attorney of the Guarantor )  
 under power of attorney dated )  
 \_\_\_\_\_ and deed of delegation )  
 dated \_\_\_\_\_ )  
 by \_\_\_\_\_ )  
 [Name & Title] )  
 and in the presence of )

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

\* Please delete as appropriate

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

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

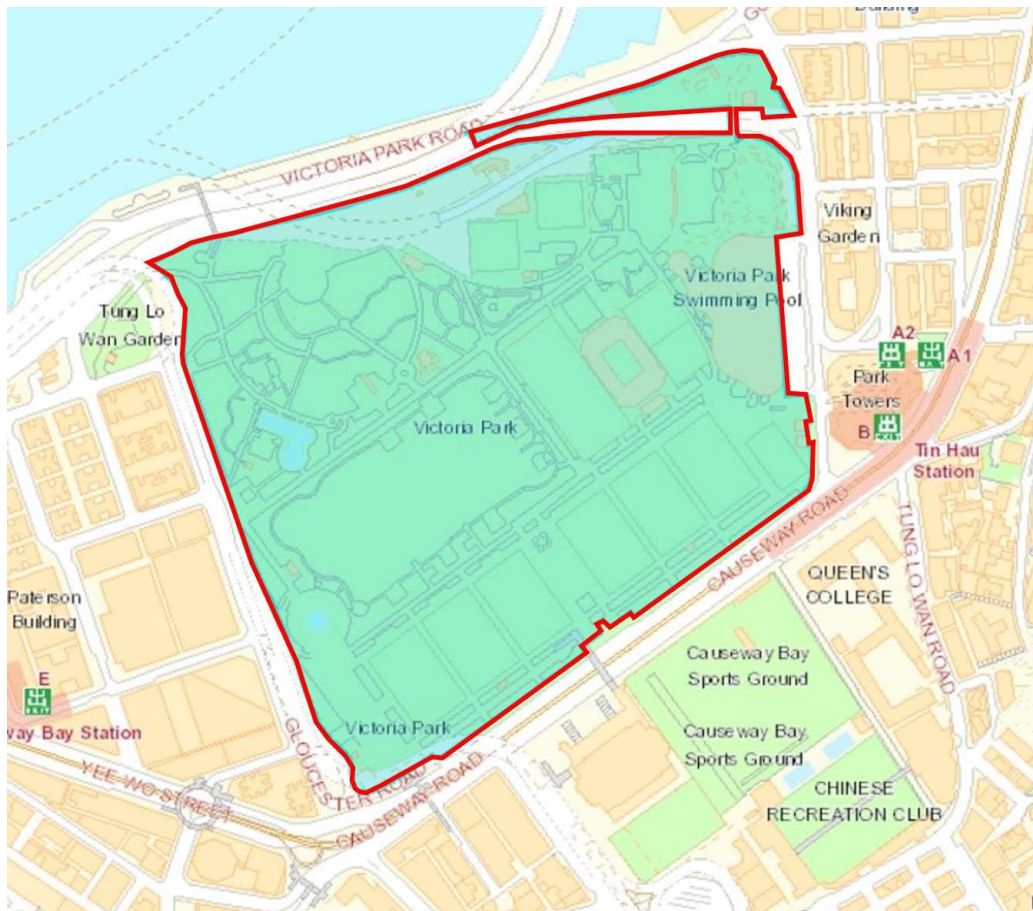


**ANNEXES**

**ANNEX A**

**Location Plan of the Venue at Victoria Park and Victoria Park Swimming Pool**

(Venue as delineated and showed edged red)



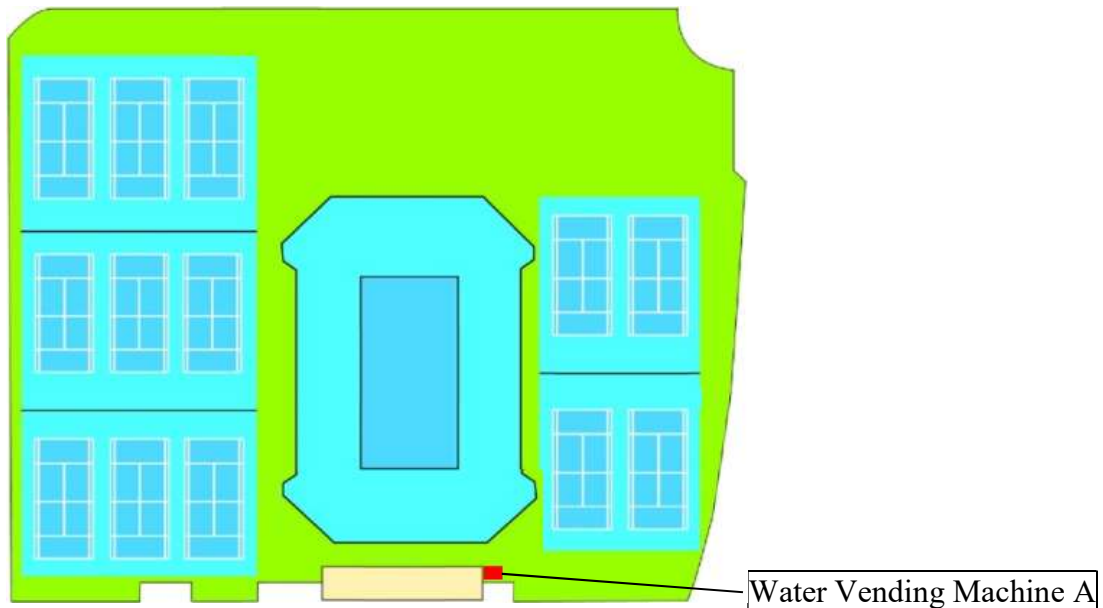
(Not to scale)

**ANNEXES**

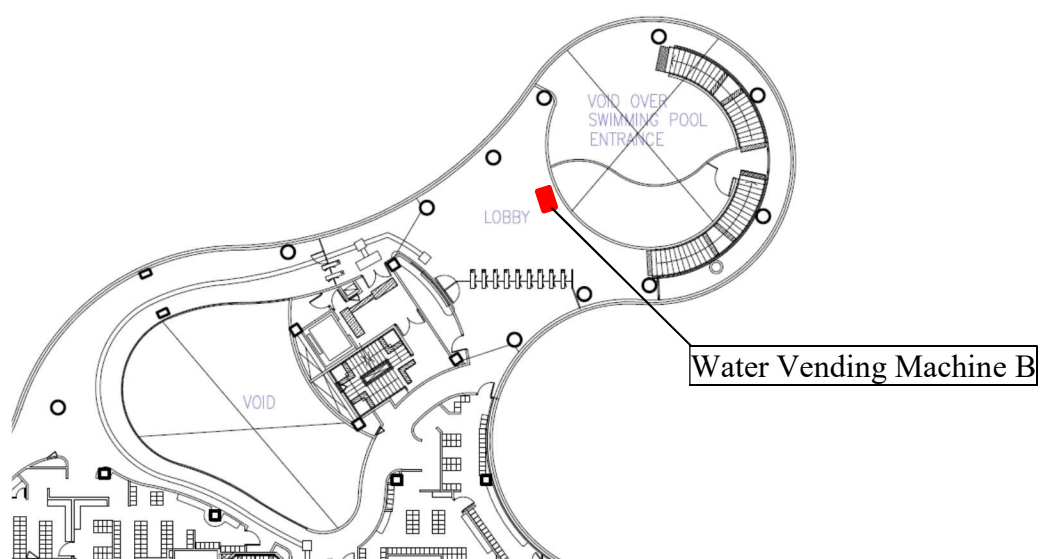
**ANNEX B**

**Location Plan Showing the Water Vending Machines at Victoria Park and Victoria Park Swimming Pool**

- Location of the Permit Area is delineated and shown coloured red.



about 1.2 square meters (Tennis Courts)



about 1.2 square meters (UG floor of Swimming Pool)

(Not to scale)

**ARTICLES OF AGREEMENT**

THESE ARTICLES OF AGREEMENT are made the \_\_ day of \_\_\_\_\_ 2022 BETWEEN THE ASSISTANT DIRECTOR (LEISURE SERVICES)2 OF LEISURE AND CULTURAL SERVICES DEPARTMENT whose office is situated at the Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, New Territories acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (hereinafter referred to as “**Government**”) of the one part, AND \_\_\_\_\_ (hereinafter referred to as “**Permit Holder**”) of the other part.

**WHEREAS:**

- (A) By an Invitation to Quotation (Quotation Ref.: LC/LS/Q/VM/WCH/VP/2022/02), the Government has invited quotations for the grant of a permit to conduct the Provision of Water Vending Machines for Sale of Drinking Water at Victoria Park and Victoria Park Swimming Pool.
- (B) The Permit Holder’s quotation for the Contract was accepted in principle by the Government by a notification of Conditional Acceptance of Quotation to the Permit Holder pursuant to Clause 14(b) of the Terms of Quotation.
- (C) The Permit Holder has apparently fulfilled all conditions specified in the notification of Conditional Acceptance of Quotation.
- (D) Pursuant to Clause 14(c) of the Terms of Quotation, the parties hereto enter into these Articles of Agreement.

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

- 1. All terms and expressions defined in the Quotation Documents published by the Government in connection with the Invitation to Quotation have the same meanings when used herein.
- 2. The Contract between the Government and the Permit Holder is hereby constituted and shall comprise the following documents:
  - (i) Articles of Agreement
  - (ii) Quotation Form
  - (iii) Interpretation
  - (iv) Terms of Quotation
  - (v) Conditions of Contract
  - (vi) The First to Sixth Schedules (in their original form as found in the Quotation Documents)
  - (vii) The First Schedule to Sixth Schedules (in the form as submitted by the Permit Holder as part of its quotation subject to any modifications as the parties may agree or as the Government may stipulate in exercise of its powers under the Quotation Documents)

**ARTICLES OF AGREEMENT**

(viii) Annexes A and B

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

4. For the purposes of Clause 41 of the Conditions of Contract, the postal address and facsimile number of each party are as follows:

Government:

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

Facsimile Number : \_\_\_\_\_

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

Permit Holder:

Name of the Permit Holder : \_\_\_\_\_

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

Facsimile Number : \_\_\_\_\_

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

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

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

\_\_\_\_\_

Name of the Permit Holder/ Authorised Representative:

\_\_\_\_\_  
(with Permit Holder’s Chop, if applicable)

Title of the Permit Holder / Authorised Representative:

\_\_\_\_\_

In the presence of:

Name of witness:

\_\_\_\_\_

**ARTICLES OF AGREEMENT**

Title of witness:

\_\_\_\_\_

Signature of witness:

\_\_\_\_\_

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

\_\_\_\_\_

Name

In the presence of:

Name of witness:

\_\_\_\_\_

Title of witness:

\_\_\_\_\_

Signature of witness:

\_\_\_\_\_

**This is a blank sheet.**

**Checklist for Potential Service Providers for Revenue Contracts  
for Conducting the Provision of Water Vending Machines for sale of Drinking  
Water at Victoria Park and Victoria Park Swimming Pool  
before Submission of Quotations**

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

- |  | <b>Pls tick if completed</b> |
|--|------------------------------|
| <b>◆ Completion of Part II of Quotation Form - “Offer to be Bound”</b>   |                              |
| 1. Have you completed Part II of the Quotation Form - “Offer to be Bound” with all the required information (i.e. name of service provider, address, name of authorised representative (if applicable), etc.)?                 | <input type="checkbox"/>     |
| 2. Have you/your authorised representative <b><u>signed on Part II of the Quotation Form?</u></b>  | <input type="checkbox"/>     |
| <b>◆ Completion of First Schedule</b>  |                              |
| 3. Have you completed the First Schedule of the Quotation Documents with all the required information (i.e. the monthly permit fee you offered, name of service provider/authorised representative (if applicable), etc.).     | <input type="checkbox"/>     |
| 4. Have you/your authorised representative <b><u>signed on the First Schedule?</u></b>   | <input type="checkbox"/>     |
| <b>◆ Completion of Second Schedule</b>   |                              |
| 5. Have you completed the Second Schedule of the Quotation Documents with all the required information?  | <input type="checkbox"/>     |
| 6. Have you/your authorised representative <b><u>signed on the Second Schedule?</u></b>  | <input type="checkbox"/>     |
| <b>◆ Completion of the Third Schedule</b>  |                              |
| <b><i>If you submit the quotation in the capacity of <u>a sole proprietor</u> –</i></b>  |                              |
| 7. Have you crossed out Paragraphs 1(B) and 1(C) of the Third Schedule?  | <input type="checkbox"/>     |
| 8. Have you filled in the required information in Paragraph 1(A) (i.e. your name, ID no. address, telephone number, length of years in operating the business, business registration certificate no., bank account no., etc.). | <input type="checkbox"/>     |

***If you submit the quotation in the capacity of a firm –***

9. Have you crossed out Paragraphs 1(A) and 1(C) of the Third Schedule?
10. Have you filled in the required information in Paragraph 1(B) (i.e. name of the firm, address of the firm, telephone number, length of experience in operating the business, business registration certificate no., name and address of partners, bank account no., etc. or evidence of exemption from business registration under the Business Registration Ordinance (Cap.310))?
11. If you are an authorised representative of your firm/partners, have you attached documentary proof showing that you have been authorised by the firm/partners to act on its behalf as per Paragraph 1(B)(k) of the Third Schedule?

***If you submit the quotation in the capacity of a body corporate –***

12. Have you crossed out Paragraphs 1(A) and 1(B) of the Third Schedule?
13. Have you filled in the required information in Paragraph 1(C) (i.e. name of body corporate/parent company, address of registered office, telephone number, certificate of incorporation no., business registration certificate no., name and address of the managing director and company secretary, bank account no., etc.)?
14. If you are an authorised representative of your body corporate, have you attached the audited copy of the minutes of the meeting of the Board of Directors of your company showing that you are authorised to act on behalf of the statutory body as per Paragraph 5(b) of the Quotation Form?
15. Have you/your authorised representative **signed on Paragraph 2 of the Third Schedule**?

**◆ Completion of the Fourth Schedule**

16. Have you/your authorised representative selected and then **signed the Form of Security Deposit Election**?

**◆ Completion of the Fifth Schedule**

17. Have you/your authorised representative **signed the Non-collusive Quotation Certificate of the Fifth Schedule**?



◆ **Final Check**

18. Have you initialed against any marked amendments on the Quotation Documents to be submitted?
19. Have you/your authorised representative **signed** on all required documents in particular:
- (a) Part II of the Quotation Form - “Offer to be Bound”
  - (b) First Schedule with proposed Monthly Permit Fee filled in