

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 PRO SHOP BUSINESS AT
.....
MA ON SHAN SPORTS CENTRE
.....**

(Quotation Ref. : LRQ-LS/MOSSC/PS/2019)

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 Pro Shop Business at Ma On Shan Sports Centre”** and addressed to the Chairman, Leisure and Cultural Services Department Quotation Opening Committee, must be deposited in or mailed to the Leisure and Cultural Services Department Quotation Box situated at Sha Tin District Leisure Services Office, Unit 1207-1212, Level 12, Tower 1, Grand Central Plaza, No. 138, Sha Tin Rural Committee Road, Sha Tin, New Territories on or before **12:00 noon** on **10 September 2019**. Late quotations will not be accepted.

Dated this 19 August 2019

Ms. LO Lai-fong, DLM(ST)
Government Representative

Part I — Quotation Documents

These documents under the quotation reference LRQ-LS/MOSSC/PS/2019 consist of three (3) complete sets of :

- (a) This Quotation Form (Sheets 1 to 2);
- (b) Interpretation (Sheets 3 to 5);
- (c) Terms of Quotation (Sheets 6 to 32);
- (d) Conditions of Contract (Sheets 33 to 72);
- (e) Schedules (Sheets 73 to 87);
 - First Schedule The Monthly Permit Fee
 - Second Schedule Recommended List of Commodities and Services to be Provided and Sold at the Permit Area
 - Third Schedule Information of the Service Provider
 - Fourth Schedule Form of Security Deposit Election
 - Fifth Schedule List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the Pro Shop Business at Ma On Shan Sports Centre
 - Sixth Schedule The non-collusive Quotation Certificate
- (f) Annexes (Sheets 88 to 90); and
 - Annex A Location Plan of the Venue at Ma On Shan Sports Centre
 - Annex B Location Plan of the Pro Shop at Ma On Shan Sports Centre
 - Annex C Layout Plan of the Pro Shop at Ma On Shan Sports Centre
- (g) Articles of Agreement (Sheets 91 to 93).

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 Pro Shop Business mentioned in the Terms of Quotation, Conditions of Contract 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.
3. I/We have read Clause 3 Essential Requirement and Quotation Submission and Clause 6 Submission of Quotation of the Terms of Quotation and certify that the particulars given by me/us in completing the Quotation Documents are true and correct.

(Notes : The Service Provider **MUST** complete the following parts of the Quotation Documents :

- (i) Quotation Form (Part II – Offer to be Bound); and
- (ii) The First Schedule.

Name of Service Provider/Authorized Representative* _____
(Name in block letters)

Signature of Service Provider/Authorized Representative * _____
(Signature) (with Service Provider’s chop, if applicable)

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

Date : _____

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

* Delete as appropriate.

INTERPRETATION

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

“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 15(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).
“General Holiday”	means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
“Government”	means the Government of the Hong Kong Special Administrative Region.
“Government Representative”	means the Director of Leisure and Cultural Services or any duly authorized officer for the purpose of this Contract.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“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 conduct the Pro Shop Business.
“Permit Area”	has the meaning given to the term in Clause 3 of the Conditions of Contract.
“Permit Holder”	means the Service Provider whose Quotation is accepted by the Government.

“Pro Shop”	means the premises used to conduct the pro shop business as delineated and shown coloured red in Annexes B and C.
“Pro Shop Business”	has the meaning given to the term in Clause 3 of the Conditions of Contract.
“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 16 of the Terms of Quotation.
“Security Deposit”	means the sum of money deposited by the Permit Holder by cash, cheque or cashier’s order or in form of bank guarantee referred to in Clause 12 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 (including any extensions pursuant to Clause 2(b) of the Conditions of Contract).
“Venue”	means the premises as delineated and shown edged red in Annex A.

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) the masculine gender includes the feminine and the neuter genders and vice versa;
 - (c) the singular includes the plural and vice versa;

- (d) the “Person” includes any individual, company, corporation, partnership and firm;
 - (e) 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;
 - (f) 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
 - (g) 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 these 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 LRQ-LS/MOSSC/PS/2019 consist of THREE (3) complete sets of –

- (a) Quotation Form (Sheets 1 to 2);
- (b) Interpretation (Sheets 3 to 5);
- (c) Terms of Quotation (Sheets 6 to 32);
- (d) Conditions of Contract (Sheets 33 to 72);
- (e) Schedules (Sheets 73 to 87);
 - First Schedule The Monthly Permit Fee
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 - Third Schedule Information of the Service Provider
 - Fourth Schedule Form of Security Deposit Election
 - Fifth Schedule List of Appliances, Furniture, Fixtures and Fittings provided by the Government for the Pro Shop Business at Ma On Shan Sports Centre
 - Sixth Schedule The non-collusive Quotation Certificate
- (f) Annexes (Sheets 88 to 90); and
 - Annex A Location Plan of the Venue at Ma On Shan Sports Centre
 - Annex B Location Plan of the Pro Shop at Ma On Shan Sports Centre
 - Annex C Layout Plan of the Pro Shop at Ma On Shan Sports Centre
- (g) Articles of Agreement (Sheets 91 to 93).

2. Invitation to Quotation

Quotations are invited for the grant of a permit to conduct the Pro Shop Business within the Permit Area at the Ma On Shan Sports Centre for a contract period of

thirty-six (36) months on such terms and conditions as set out in the Quotation Documents.

3. Essential Requirements and Quotation Submission

- (a) Each Service Provider shall meet all of the essential requirements in Clause 3(b). **Failure to meet any of such essential requirements by the Quotation Closing Date shall render a quotation invalid and the quotation will not be considered further.**
- (b) The Service Provider **MUST** –
- (i) submit a duly signed “Offer to be Bound” in the Quotation Form; and
 - (ii) submit the FIRST Schedule completed to state the Monthly Permit Fee it wishes to offer.
- (c) A Service Provider who fails to submit all or any of the above items specified in Clause 3(b)(i) or (ii) above by the Quotation Closing Date shall render its quotation invalid.
- (d) The Service Provider shall complete, stamp with the Service Provider’s chop if applicable and submit the following parts of the Quotation Documents and provide all information and documents requested therein and in the remainder of the Quotation Documents –
- (i) Quotation Form - The Quotation Form with Part II “Offer to be Bound”

Service Providers should print a softcopy of the Quotation Form obtained from the Government or photocopy the Quotation Form, and not reproduce by other means (e.g. by retyping)
 - (ii) First Schedule - The Monthly Permit Fee
 - (iii) Third Schedule - Information of the Service Provider
 - (iv) Fourth Schedule - Form of Security Deposit Election

- (v) Sixth Schedule - The non-collusive Quotation Certificate
- (e) 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), a copy of its Articles of Association.
 - (iii) if the Service Provider is a company incorporated under the former Companies Ordinance (Cap. 32) as was in force from time to time before the commencement of the new Companies Ordinance (Cap. 622), a copy of each of its Memorandum of Association and Articles of Association.
 - (iv) if the Service Provider is a sole proprietor or currently running 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 has been paid.
- (f) The Service Provider must submit all Quotation Documents in **TRIPLICATE** in the manner stipulated under “Lodging of Quotation” on the front page of the Quotation Form.
- (g) Each Service Provider may only submit **ONE** quotation. The Government may, at its absolute discretion, disqualify all the quotation(s) from a Service Provider who has submitted two or more quotations.
- (h) 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 unauthorized alteration or erasure to the text of the Quotation Documents may cause the quotation to be rejected.

- (i) Subject to Clause 3(a) hereof, a quotation may be rejected if information required in the Schedules is not given with the quotation or if any particulars and data asked for in this quotation are not furnished in full or if any necessary supporting documents required to be provided are not submitted with the quotation.
- (j) Whilst the Service Provider is expected to sign each Schedule to be submitted where indicated, where any signature is found missing in any of the Schedules, the Government reserves the power to evaluate the Quotation on an “as is” basis.

4. Service Provider’s Status

- (a) If the Service Provider is a sole proprietor, the Service Provider shall answer queries and sign the Quotation Documents personally and shall not authorize any other person to act for the Service Provider. If the Service Provider is a firm, the Service Provider may authorize a partner(s) of the firm to answer queries and sign the Quotation Documents.
- (b) If the Service Provider is a firm, a company or other body corporate, it shall provide a copy of the relevant document (e.g. board resolutions of the Service Provider if it is a company) showing that the authorized person(s) who sign(s) the Offer 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. Submission of Quotation

- (a) Completed Quotation Documents shall be enclosed in a sealed envelope clearly marked with the quotation reference and the subject of the quotation on the outside of the sealed envelope and that the sealed envelope shall not bear any indication which may relate the quotation to the Service Provider or any particular contractor/supplier and addressed to the Chairman, Leisure and Cultural Services Department Quotation

Opening Team. **They MUST be deposited in or mailed to the Leisure and Cultural Services Department Quotation Box** in the manner stipulated under “Lodging of Quotation” on the front page of the Quotation Form.

- (b) In case a black rainstorm warning signal or tropical cyclone warning signal no. 8 or above is issued between 9:00 a.m. and 12:00 noon on the Quotation Closing Date, the closing time of this quotation will be deferred to 12:00 noon on the next weekday (i.e. except Saturday and Sunday) other than a General Holiday and after the black rainstorm warning signal or tropical cyclone warning signal no. 8 or above is cancelled.
- (c) The Government Representative shall not be responsible for any mislaid quotation or any quotation submitted by methods other than as indicated under this Clause.

7. Anti-collusion

- (a) The Services 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 7(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 (Chapter 619 of the Laws of Hong Kong). 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 one of the Schedules titled as such) 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 7(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 7(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 37(a) of the Conditions of Contract.
- (d) By submitting a Quotation, a Services 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 undertaking in Clause 7(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 7(b) above.
- (e) A breach by a Service Provider of any of the representations, warranties and/or undertakings in Clause 7(a) above or in the Non-collusive Quotation Certificate submitted by it under Clause 7(b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government under Clause 7(a) to 7(e) above are in addition to and without prejudice to any other rights or remedies available to it against the Service Provider.

8. 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 15 hereof.

9. 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.

10. Service Provider's Response to Government Representative's Enquiries

In the event that the Government Representative determines that clarification of any quotation or submission of any required document or information is necessary, it may, but is not obliged to, request the Service Provider to make the necessary clarification and/ or supplement its quotation. The Service Provider shall thereafter within seven (7) working days or such period as specified in the request for clarifications submit such clarification, information or document in the manner as requested by the Government Representative. A quotation will not be considered further if complete information or document is not provided by the deadline specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the quotation further or may proceed to evaluate the Quotation on an "as is" basis.

11. Monthly Permit Fee

Service Providers are asked to note Clause 6 of the Conditions of Contract on Monthly Permit Fee.

12. 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 deposit (hereinafter referred to as '**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 to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155) and both form and the bank guarantor shall be approved by the Government Representative and in accordance with Clause 8 of the Conditions of Contract. Service Providers are required to state their option in the Form of Security Deposit Election.
- (b) In the event that a Service Provider fails to elect the method of paying a Security Deposit in the Form of Security Deposit Election, it will be assumed that the Service Provider will pay the Security Deposit by way of cash, cheque or cashier's order in accordance with Clause 8 of the

Conditions of Contract.

13. 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) **Essential requirements —**

A Service Provider shall note that its quotation shall be rejected if it fails to submit a signed “Offer to be Bound” in the Quotation Form, or fails to provide the Monthly Permit Fee in the First Schedule.

(ii) Price evaluation —

A Service Provider shall note that the quotation which meets essential requirements stipulated in Clause 13(a)(i) above will be evaluated according to the price information provided in the First Schedule.

- (b) Subject to Clause 17 hereof, the Service Provider whose quotation is the highest offer will usually be selected to conduct the Pro Shop Business.

14. Basis of Acceptance

- (a) The Government Representative is not bound to accept the quotation(s) with the highest offers 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.

15. 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 the award of the Contract mean the signing of these 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 12;
 - (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 15(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 15(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 35 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 15(b).

- (e) A Service Provider who does not receive any notification of acceptance within one hundred and fifty (150) days or any other period specified by the Government Representative from the Quotation Closing Date shall assume that its quotation has not been accepted.

16. Quotation 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 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 16(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 10). If the Service Provider fails to confirm compliance with Clause 16(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 10, 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.

17. Offers to be binding

All parts of the Quotation Documents submitted and offered by the Service Provider will be binding on the Service Provider after granting the Permit. 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.

18. Counter-proposals

- (a) Service Providers must not submit any proposal that has the effect of varying or modifying -
 - (i) any essential requirements specified in the Quotation Documents; and
 - (ii) the provisions in the Quotation Documents concerning the preparation, submission and evaluation of Quotations and the grant of the Contract.

- (b) If a Service Provider fails to comply with Clause 18(a), subject to any clarification which the Government may, but is not obliged to, make under Clause 10 its Quotation will be disqualified and will not be considered further by the Government.
- (c) Service Providers must not submit counter-proposals to provisions other than those as specified in Clauses 18(a) or 18(d). Upon contravention of this Clause, the Government may disqualify the Service Provider, unless the Government in its absolute discretion elects to negotiate with the Service Provider concerning such counter-proposal. Following such negotiation, if the Service Provider is unwilling to withdraw such counter-proposal, or revises it on terms acceptable to the Government, the Government may still disqualify the Service Provider. Any accepted counter-proposal following a successful negotiation shall be deemed as part of the Service Provider's Quotation and forms part of the Contract and shall be binding on the Service Provider if the Contract is eventually awarded to it.
- (d) Without prejudice to Clause 18(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.

19. State of Premises

The successful Service Provider shall arrange with the Government Representative to inspect the Permit Area at a reasonable time and the Permit Holder shall accept the Permit Area in the state and condition in which it is at the date on which possession is given.

20. 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 20(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.

21. Site Visit and Quotation Briefing

A quotation briefing and site visit session will be held at 10:00 a.m. on 27 August 2019 (Tuesday) at Conference Room of Ma On Shan Sports Centre, 14 On Chun Street, Ma On Shan, New Territories. 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 the Manager (Ma On Shan Sports Centre) at 2631 7795 for reservation of seat for the quotation briefing and site visit by 5:00 p.m. on 22 August 2019 (Thursday).

22. Regular Maintenance of the Venue

A service provider shall note that regular maintenance of the whole Venue will be carried out about two (2) times monthly and for about six (6) hours on each occasion. The venue may also be partially closed for annual maintenance. During such closure periods, no activities will be carried out in the Venue.

Irrespective of whether or not the Pro Shop Business of the successful Service Provider might be affected by such maintenance periods, the Government shall not be liable to pay any compensation whatsoever to the successful Service Provider and shall not be required to extend the Term or to abate the Monthly Permit Fee or any part thereof.

23. Provision of Air-conditioning

The successful Service Provider shall pay all fees and charges to the Government for the provision of air-conditioning or in such amount as the Government at its absolute discretion may at any time and from time to time assess as being required to reimburse the Government for the full cost of providing, maintaining and operating the air-conditioning system.

24. 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 any commodities and/or other 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 Pro Shop Business is affected by such arrangement.

25. 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 tenders/quotations 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 pro-shop 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.

26. 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.

27. 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 Pro Shop Business, the date of the award of the Contract, the name and address of the successful Service Provider and the total monies paid to the Permit Holder for the entire Term.
- (b) Nothing in Clause 27(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 27(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 27(a) above, to the extent the information relates to a Service Provider, with the prior written consent of that Service Provider.

28. 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.

29. 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, 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.

30. 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.

31. Complaint about the Quotation Process or Contract Award

The quotation process is subject to internal monitoring to ensure 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. 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 Contract.

32. 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 conduction of its Pro Shop Business at the Permit Area. The Permit Holder shall note that it will be unlawful for it to sell any commodity of which any licence, permit and/or certificate is so required without first obtaining such licence, permit and/or certificate.
- (b) The Permit Holder shall note that since it will necessarily take time for the relevant authorities to consider and decide on an application for a licence, permit and/or certificate, the Permit Holder is therefore not entitled to claim for abatement of the Monthly Permit Fee on the grounds that it cannot conduct its Pro Shop 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.

33. 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.

34. 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.

35. Government Discretion

- (a) Notwithstanding anything to the contrary in this Quotation Document, 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 Time 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 judgment 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 35(a)(i) to 35(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 35(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 35(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 Time and thereafter up to the time of award;
 - (iii) details of all infringement claims as mentioned in Clause 35(a)(iii);
and
 - (iv) details of all breaches or performance deficiencies of the Service Provider or a related person as mentioned in Clause 35(a)(iv).

If none of the events as mentioned in Clauses 35(b)(i) to 35(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 Information Schedule at the time of submission of its Quotation. If found missing, the Government reserves the right to seek clarification pursuant to Clause 35(c).

(c) In addition to the information mentioned in Clause 35(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 35(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 35(b)(ii) or details of any breaches or performance deficiencies referred to in Clause 35(a)(iv), details of any serious crimes or serious offences referred to in Clause 35(a)(v), of any professional misconduct, acts or omissions referred to in Clause 35(a)(vi) and of any failure to pay taxes to the Government referred to in Clause 35(a)(vii) above.

(d) If the Service Provider fails to comply with the request made by the Government pursuant to Clause 35(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 35(a)(ii) above.

- (e) In providing the information required under Clauses 35(b) and 35(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 (Chapter 622 of the Laws of Hong Kong).

- (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 35(a)(iv), 35(a)(v), 35(a)(vi), 35(a)(vii) or Clause 35(b)(ii).

36. 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.

37. Disclaimer

- (a) Service Provider should study all attachments to the Quotation Documents (including the Annexes and Contract Schedules) carefully before submitting their quotations. Service Provider should note that all information and statistics provided by the Government in connection with this 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 Pro Shop 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.

38. Authentication of Documents

By submitting a quotation in response to the Invitation to Quotation, each Service Provider authorizes 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.

39. Licence to Use of 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 quotation exercise for purposes including but not limited to quotation evaluation, contract management, the disclosure made pursuant to Clause 27 of the Terms of Quotation and all other purposes incidental thereto.

40. 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 44 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.

41. 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 2633 4687.

Post: Manager (Ma On Shan Sports Centre)

Address: Ma On Shan Sports Centre, 14 On Chun Street, Ma On Shan, Sha Tin.

- (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.

42. 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 grant of the Contract or cancellation of this Invitation to Quotation.

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1. Nature of the Permit

- (a) It is expressly agreed between the parties that neither the Permit nor the Contract creates 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) The Permit granted to the Permit Holder is personal to it and unless with the prior consent in writing from the Government Representative, the Permit Holder shall not assign, sublet, part with the possession of the whole or any part of the Permit Area or transfer any of its rights or obligations under the Contract.

2. The Term

- (a) Subject to Clause 9 hereof, the Permit Holder must conduct the Pro Shop Business for a period of thirty-six (**36**) months from the 1st day of January 2020 or a date specified in the Articles of Agreement, whichever is later, subject to prior termination and extension as are hereinafter provided.
- (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 its Pro Shop 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) If the Commencement Date of the Term of the Contract shall be advanced or deferred under Clause 9(a) hereof, the expiry date of the Term shall be advanced or deferred accordingly with the length of the Term remains unchanged.

3. The Pro Shop Business

Subject to the terms and conditions of the Contract, the Government grants to the Permit Holder during the Term the permission to conduct the business of selling any of the commodities and/or provision of services as set out in the Second Schedule (the “Pro Shop Business”) and to conduct such Pro Shop Business with an area of about 40 square metres as delineated and shown **coloured red** in Annexes B and C (the “Permit Area”).

4. Hours of Business

- (a) Subject to the terms and conditions of the Contract, the Permit Holder shall carry out its Pro Shop Business at the following hours -

Maintenance day	1:00 p.m. to 8:00 p.m.
Days other than maintenance day	10:00 a.m. to 8:00 p.m. daily

- (b) The Government Representative is entitled to the right to revise at any time and from time to time the business hours of the Permit Holder’s Pro Shop Business as specified in Clause 4(a) above and the Permit Holder shall operate the business in such revised hours.
- (c) The Permit Holder shall not vary the business hours of its Pro Shop Business 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 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 Pro Shop Business and shall not use, cause, suffer or permit to be used the Permit Area or any part thereof as sleeping quarters or domestic premises or for

any other purposes.

- (c) The Permit Holder shall conduct its Pro Shop Business only in the Permit Area and shall not use, cause, suffer or permit to be used any area of the Venue except the Permit Area for such purpose or for any other purposes.

6. Monthly Permit Fee

- (a) The Permit Holder shall in each and every month pay to the Government a fee (“**Monthly Permit Fee**”);
- (b) The Permit Holder shall pay to the Government the Monthly Permit Fee in the following manner –
 - (i) 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 15(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 1st 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) In the event, any Monthly Permit Fee payable under this Contract is overdue, the Permit Holder shall pay to the Government a surcharge on that outstanding Monthly Permit Fee at an interest rate equivalent to the average best lending rate of the three note-issuing banks in Hong Kong plus 2% per annum. Such interest shall be calculated and payable from the day on which such payment falls due.

7. Abatement

If the Government Representative shall require a closure of the Permit Area or a suspension of the Permit Holder's Pro Shop Business under Clause 19(b) for a continuous period of more than seven (7) days or a deferment of the commencement of the Term under Clause 9 hereof, the Monthly Permit Fee will abate, notwithstanding Clause 6 hereof, for the total period of such closure or suspension or deferment on a pro rate 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 Representative 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 four (4) times the quoted Monthly Permit Fee as specified in the First Schedule as security for the due and proper performance 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 either case, from the date of commencement of the Term 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 37(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.

9. Advancement, Deferment and Suspension of Business

- (a) Notwithstanding the provision of Clause 2 hereof and any other provisions of the Contract, the Government Representative shall be entitled to advance or defer the Commencement Date for whatsoever reasons and for such period as the Government Representative shall in its sole discretion decide.
- (b) If there shall be such advancement or deferment of commencement of the Term under this Clause –
 - (i) the Government Representative shall not be liable for any losses or expenses incurred whatsoever by the Permit Holder due to such deferment or termination under Clause 9(b)(ii);
 - (ii) upon the expiry of such period of deferment and without further notification by the Government Representative of the commencement of the Term, the Contract shall terminate automatically. The Government Representative will return to the Permit Holder without interest the balance of the Security Deposit and any Monthly Permit Fee already paid in advance;
 - (iii) the Government Representative shall, so far as it is practicable in the circumstances, give the Permit Holder notice of advancement of the commencement of the original Term in writing at least fourteen (14) days prior to the revised Commencement Date of the Term; and
 - (iv) the Government Representative shall, so far as it is practicable in the circumstances, give the Permit Holder notice of deferment in writing at least fourteen (14) days prior to the original Commencement Date of the Term.
- (c) If the commencement of the Term has been advanced under Clause 9(a), the Monthly Permit Fee shall be paid in accordance with Clause 6 hereof.

- (d) If the commencement of the Term has been deferred under Clause 9(a), the Monthly Permit Fee shall be adjusted in accordance with Clause 7 hereof.
- (e) The Permit Holder may suspend its Pro Shop Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained as far as it is practicable in the circumstances and the Government Representative's decision on the duration of such period of suspension shall prevail.

10. Resumption of Business

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

11. Permit Holder's Warranties and Undertakings

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

- (a) it shall produce its Business Registration Certificate or Certificate of Incorporation, as the case may be, upon demand by the Government Representative;
- (b) it shall use only those appliances, fixtures and fittings which have previously been approved by the Government Representative. It shall not make any alteration or addition to any of the appliances, furniture, fixtures or fittings therein or the decoration thereof without the prior permission in writing by the Government Representative, and it shall not carry out the repairs to the appliances, furniture, fixtures and fittings supplied by the Government without first obtaining the approval of the Government Representative. Subject to such approval being sought, the relevant works shall be carried out at the expenses of the Permit Holder by workers approved by the Government Representative and to a standard acceptable to the Government Representative;

- (c) it shall furnish and provide all such equipment and furniture necessary for the efficient operation of its Pro Shop Business. All such equipment and furniture shall be of a design and safety standard to the satisfaction of the Government Representative;
- (d) it shall take all reasonable precautions to protect the Permit Area from damage by fire, storm, tropical cyclone or the like;
- (e) it shall maintain the Permit Area and its surroundings in a clean, tidy and serviceable condition to the satisfaction of the Government Representative and if in the opinion of the Government Representative the Permit Holder fails to do so, the Government Representative may without notice close the Permit Area and suspend the Permit Holder's Pro Shop Business for a period or periods not exceeding seven (7) days on any one (1) occasion to cause the Permit Area and its surroundings to be cleaned and serviced and the Permit Holder shall pay the costs thereof to the Government Representative on demand and shall remain liable to pay the Monthly Permit Fee to the Government without any deduction;
- (f) it shall not use the Permit Area or any part thereof, or cause, or permit or suffer the same to be used for any illegal, immoral purpose, gambling or any other purposes not permitted under the Contract;
- (g) it shall not permit any games to be played in the Permit Area including but not limited to mahjong and tin kau whether for gambling purpose or otherwise;
- (h) it shall not permit the Permit Area to be used as a changing room by users of the Venue or other members of the public;
- (i) it shall not cause or permit any floorshow or any type of entertainment to be staged in the Permit Area or its vicinity;
- (j) it shall permit the Government Representative and its agents, at all times to have unimpeded access to all parts of the Permit Area to examine the conditions thereof and to execute repairs thereto;
- (k) it shall assume full responsibility for the safety of all operations and methods of operations;

- (l) it shall not stock, sell or provide at the Permit Area any smoking products whatsoever and to ensure the compliance of the relevant clauses of the Smoking (Public Health) Ordinance (Cap. 371) and other relevant legislation regarding prohibition of selling or giving of smoking products to minors;
- (m) it shall be responsible for the safety of any vehicles which it uses or brings alongside or onto the Venue and it shall indemnify the Government in respect of any losses or damages thereto as a result of the use of such vehicles;
- (n) it shall pay all the costs and deposits in connection with all telephone(s) installed and electricity supplied to the Permit Area, and shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Permit Area and its Pro Shop Business;
- (o) it shall not request or receive any charge or fee from any Person for admission to the Permit Area or its surroundings, nor request or receive any other additional charge whether by way of service charge or otherwise;
- (p) 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 Pro Shop Business, and make available copies of the same to the Government Representative, if required;
- (q) it shall not later than fourteen (14) days after the expiry of each month during the continuance of this Contract and not later than fourteen (14) days after the termination of this Contract howsoever caused, submit to the Government Representative a statement of account in the form as the parties hereto may mutually agree, or in default of agreement as the Government Representative may from time to time prescribe, showing the monthly gross turnover of the Pro Shop Business, for that month. For the purpose of these provisions "monthly gross turnover of the Pro Shop Business" shall mean the gross proceeds or receipts as received or receivable for 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;

- (r) it shall accept internationally recognized credit cards and electronic money as means of payment in the Pro Shop Business as the Government Representative and the Permit Holder may from time to time agree;
- (s) it shall pay to the Government any cost incurred by the Government plus an administrative overhead charge to be advised by the Government Representative if it fails to carry out any of its obligations or duties under this Contract and the Government Representative executes such obligations or duties on its behalf; and
- (t) it shall not keep, or cause, permit or suffer to be kept any animals or pets in the Permit Area or any part thereof and to take all such steps and precautions to be reasonable satisfaction of the Government Representative to prevent the Permit Area or any part thereof from becoming infested by any pests or vermin.

12. Cleansing, Collection and Disposal of Refuse and Litter

- (a) The Permit Holder shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government Representative and shall collect all refuse and litter therein.
- (b) The Permit Holder shall arrange at least once every day or at a frequency as prescribed by the Government Representative at any time and from time to time for the removal and disposal of all refuse and litter thus collected in the course of its Pro Shop Business. Such refuse and litter shall be collected in polyethylene bags to be supplied by the Permit Holder, or in any other containers approved by the Government Representative and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Venue designated by the Government Representative or to such places as shall be specified by the Government Representative at any time and from time to time in such manner as approved or prescribed by the Government Representative. The Government Representative reserves the right to alter the designated refuse collection points and disposal method and the Permit Holder shall follow such directions by the Government Representative and make

necessary arrangement as approved by the Government Representative at its own cost.

- (c) In the event of failure to comply with this Clause, the Permit Holder shall pay the Government Representative on demand the costs incurred by the Government Representative if the removal and disposal of such refuse and litter is carried out by the Government Representative due to the act, default or negligence of the Permit Holder or any of its employees or agents.
- (d) The permit Holder is required to collect and sort all refuse in an environmentally friendly manner as instructed by the Government Representative and remove and dispose of properly in polythene bags (to be supplied by the Permit Holder) or containers as may be approved or prescribed by the Government Representative all refuse, except those recyclable waste collected, immediately after each cleansing operation.
- (e) The Permit Holder shall not place or leave or cause, or suffer, or permit to be placed or left in any part of the Venue (including but not limited to fire exits, common area, stairways, landings and passages of such buildings) any boxes, furniture, rubbish, chattels or any other materials or otherwise in any way to encumber, obstruct or block the same. The Permit Holder shall arrange at its own cost proper and immediate disposal of the same at designated locations as approved by the Government authorities from time to time.

13. Monies or Valuables Found or Property Lost

All monies or other items of value found by the Permit Holder, its employees and/or agents in carrying out its Pro Shop Business in the Permit Area shall be handed to the Government Representative's management in the Venue as soon as possible and a written receipt shall be obtained therefrom.

14. Staffing

- (a) The Permit Holder shall arrange all persons employed at the Permit Area to submit to such medical examination at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Permit Area any person found by the medical

practitioner to be likely to spread a communicable disease.

- (b) The Permit Holder shall ensure that its managerial or supervisory staff shall be in attendance at the Permit Area at all times when its staff are at work.
- (c) The Permit Holder shall be responsible for the good conduct of its employees or agents while they are in the Permit Area, 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, health, security and disciplinary grounds, the removal or replacement of any of the Permit Holder's employees or agents.
- (e) The Government and the Government Representative shall in no circumstances be liable either to the Permit Holder or to its employees or agents in respect of any liabilities, losses or damages occasioned by such removal as stipulated in Clause 14(d) and the Permit Holder shall fully indemnify the Government Representative against any claim made by such employees or agents.
- (f) The Government shall be entitled to refuse to admit to the Venue or any part thereof for the purposes of the Contract any person employed by the Permit Holder, or by the Permit Holder's agents, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- (g) Any removal demanded or refusal made under Clauses 14(d) and 14(f) shall not be construed as a breach of the Contract by the Government Representative and the Permit Holder shall continue to carry out its obligations under the Contract.
- (h) The Permit Holder shall ensure that all persons employed by it in carrying out the Contract shall keep to such parts of the Venue as are necessary for the due discharge of the Permit Holder's obligations under the Contract.
- (i) The Permit Holder shall maintain a proper, current and accurate record of all its employees or agents employed for carrying out its Pro Shop Business. Such record shall include the name, Hong Kong Identity Card

number, grade, age and photograph of each employee. The Permit Holder shall produce such record for inspection by the Government Representative on request.

- (j) The Permit Holder shall not employ any person who is forbidden in 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 contracts. If there is any breach of this Clause by the Permit Holder, the Government Representative may, by notice in writing, terminate this Contract and the Permit Holder is not entitled to claim any compensation. The Permit Holder shall be responsible for any expenses or loss that the Government Representative may incur or suffer due to the breach of this Clause by itself.
- (k) Unless otherwise approved by the Government Representative, all workers and staff employed by the Permit Holder for the execution of this Contract shall be local residents engaged in Hong Kong. Any contravention to this Clause shall be deemed as a material breach of the Contract which shall entitle the Government Representative to terminate the Contract by giving fourteen (14) days' notice to the Permit Holder.
- (l) The Permit Holder shall be liable for all expenses necessarily incurred by the Government Representative as a result of the termination of this Contract.
- (m) The Permit Holder shall not employ any person at the Permit Area who has not been inoculated against typhoid and paratyphoid and inoculated and vaccinated against such other diseases as the Government Representative may direct.

15. Publicity and Advertisement

- (a) The Permit Holder shall not publish or use any advertising or other publicity materials or perform any act with an advertising nature in relation to its Pro Shop Business except with the prior written consent of the Government Representative.
- (b) Save and except where the Government Representative at its discretion may permit or require, the Permit Holder shall not exhibit or display, or

cause, or 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 15(b) above, the Permit Holder shall not exhibit or display, or cause, or 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) The Permit Holder shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the product supplied or other work done in connection with the Contract wherein the Government's name is mentioned or from the language used a connection with the Government can reasonably be inferred or implied.

16. 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 any other competent authority, or for the purpose of the operation of its Pro Shop 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.

17. Provision of Air-conditioning

- (a) The Government shall use its best endeavours but without incurring liability to the Permit Holder to provide the interior of the Pro Shop with air-conditioned ventilation each day and to maintain with due diligence the same in proper working order. Provided always that the Government shall in no event whatsoever be held responsible for any failure or interruption of any such air-conditioning service from any cause whatsoever (including

but not limited to any negligence or wrongful act or omission of any of its servants or agents or any other causes beyond the Government's control) or for any damage or loss whatsoever caused thereby. Provided further that notwithstanding any failure or interruption as aforesaid, all payments payable under this Agreement including but not limited to air-conditioning charges shall remain payable in full at all times.

- (b) The Permit Holder shall pay all fees and charges to the Government for the provision of air-conditioning or in such an amount as the Government at its absolute discretion may at any time and from time to time assess as being required to reimburse the Government for the full cost of providing, maintaining and operating the air-conditioning system and its related charges.

18. Electricity Supply

- (a) The Permit Holder, if so permitted by the Government Representative, may consume electricity from supply point which is available at the Venue to conduct its Pro Shop Business and shall pay all deposits, fees and charges in connection therewith. The maximum electricity loading available to the Pro Shop is 60 AMP three-phase.
- (b) If electricity supply point is not available at the Permit Area, or permission to use available supply point is not granted or is withdrawn, the Permit Holder shall at its own expense install and provide its own source of electricity supply required for its Pro Shop Business and pay all fees and charges in connection therewith.
- (c) Any installation of wiring and lighting fittings, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out by a Registered Electrical Contractor (REC)/ Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406 sub. leg. (D)) and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government. The Permit Holder shall be responsible to maintain and repair such installation at its own expense as well as to remove the same should the Government Representative so directs.

19. Rights Reserved by Government Representative

- (a) The Government Representative reserves the right to suspend at its sole discretion the Permit Holder's Pro Shop Business by closing the Permit Area for a specified period of not more than seven (7) days at any one (1) time if the Government Representative is of the opinion that the Permit Holder is in breach of any of the terms and conditions of the Contract and in such event the Permit Holder shall remain liable to pay the Monthly Permit Fee in full during such period of suspension.
- (b) The Government Representative reserves the right to close the Venue in whole or in part, including the Permit Area and/or to suspend the Pro Shop Business by reason of fire or storm or damage (not being the result of willful default or misconduct or negligence of the Permit Holder, its employees or agents) or an act of God or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Term. The Government shall not be liable for any loss suffered or expenses incurred whatsoever by the Permit Holder due to such closure or suspension.
- (c) In connection with Clause 19(b) above, if the demand of such closure or suspension of the Pro Shop Business by the Government Representative is due to repair or maintenance or building modification, the Government Representative will give the Permit Holder one (1) month's advance notice before the commencement date of such closure and/or suspension, if it is practicable in the circumstances.
- (d) If there shall be suspension of the Pro Shop Business as required under Clause 19(b), the Monthly Permit Fee shall be adjusted according to Clause 7 hereof.
- (e) Notwithstanding Clause 3 hereof, the Government Representative may permit any person or organization to provide in the Venue by way of sale or otherwise any commodities or services. Irrespective of whether or not the Pro Shop Business of the Permit Holder might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Permit Holder and shall not be required to abate the Monthly Permit Fee or any part thereof.

- (f) For the avoidance of doubt, nothing expressed or implied in the Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorize any person or organization to bring into the Venue or distribute freely therein any commodities for consumption or for use or provide services with or without a charge whatsoever. The Permit Holder is not entitled to claim for any compensation or prohibition for whatsoever causes resulting from the grant of the said permissions and authorizations. The Permit Holder shall continue to carry on its Pro Shop Business on any day covered by such permission if it is not required to suspend its Pro Shop Business.
- (g) Notwithstanding Clause 3 hereof, the Government Representative may, by giving not less than seven (7) days' notice to the Permit Holder, hold or permit any person or organization to hold any function in the Venue. Where the Government Representative considers it necessary to do so, it may require the Permit Holder to suspend the whole or part of the Pro Shop Business temporarily during the time when such functions are being held in the Venue. The Permit Holder is not entitled to claim for any compensation whatsoever resulting from the grant of the said permissions and the holding of the functions. If the Permit Holder suspends its Pro Shop Business whether in whole or in part as demanded by the Government Representative under this Clause, the Monthly Permit Fee shall abate on a pro rata basis depending on the length and extent of such suspension of the Pro Shop Business which shall be determined by the Government Representative. The Permit Holder shall continue to carry on its Pro Shop Business on any day covered by such permission if it is not required to suspend its Pro Shop Business.
- (h) Notwithstanding Clause 3 hereof, the Government Representative reserves the right to provide or allow any person or contractor to provide any commodities and/or other services within any other areas of the Venue during the Term of the Contract. Irrespective of whether or not the Pro Shop Business of the Permit Holder might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Permit Holder and shall not be required to abate the Monthly Permit Fee or any part thereof.

20. Sale of Commodities and Provision of Services

- (a) The Permit Holder shall notify the Government Representative of the latest price list whenever the Government Representative so demands.
- (b) The Permit Holder shall provide to customers upon request receipts for commodities sold and/or services provided specifying the commodities and/or services provided and the respective price.
- (c) The Permit Holder shall abide by any directions as to the quality of the commodities sold or offered for sale at the Permit Area as may be given by the Hong Kong Consumer Council.

21. Display of Commodity Prices

The Permit Holder shall prominently display at all times the prices of commodities for sale and services provided in respect of the Pro Shop Business at the Permit Area. The displays shall be in both Chinese and English and put up in such form, manner and at such locations as shall be approved or prescribed in writing by the Government Representative.

22. Erection of Structure

- (a) The Permit Holder shall not allow or permit any structure to be erected in or on the Permit Area and its immediate vicinity except for the following:
 - (i) those stipulated in Clauses 21 above.
 - (ii) one (1) signboard bearing the words “Pro Shop” at the Pro Shop.

in both English and Chinese approved in writing by the Government Representative.

- (b) The size and location of the signboard shall be those approved or prescribed by the Government Representative in writing.

23. Watchman

- (a) The Permit Holder shall not allow any person to remain in the Permit

Area overnight without the permission of the Government Representative in writing. Such permission shall only be given to enable the Permit Holder to post a watchman/watchmen to look after the contents of the Permit Area.

- (b) The Permit Holder shall ensure each watchman shall possess a valid security personnel permit issued under the Security and Guarding Services Ordinance (Cap. 460) and submit to the Government Representative for approval the name and Hong Kong Identity Card number of such watchman.
- (c) The Permit Holder shall immediately remove such person(s) from the Permit Area if the Government Representative notifies the Permit Holder in writing of the withdrawal of its approval for such person(s) to stay overnight in the Permit Area.

24. Store of Dangerous Goods and Prohibited Goods

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

25. Fire Fighting Equipment

The Permit Holder shall provide and maintain in proper and serviceable condition fire fighting equipment to the satisfaction of the Government Representative and comply with any directions issued by the Director of Buildings or the Director of Fire Services in connection with the Permit Area.

26. Arrangement during Epidemic Illness

In the event of illness of any epidemic nature breaking out or situation 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 diseases of any kind.

27. Government Premises, Property, Machinery and Equipment

- (a) When the Government premises, property, machinery or equipment is provided for the Permit Holder under the Contract (inclusive of those listed in the Fifth Schedule), the Permit Holder shall keep and maintain the same in good, clean and serviceable condition (fair wear and tear excepted), and shall be responsible for the due and immediate return of all such premises, property, machinery and equipment in good repair, clean and serviceable condition (fair wear and tear excepted) at any time upon request by the Government Representative and/or upon the expiry or termination of the Contract.
- (b) The Permit Holder shall not make any alteration or addition to the premises, property, machinery and equipment provided by the Government therein without the prior permission in writing by the Government Representative and shall not carry out the repairs to the same without obtaining the prior written approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified Person approved by and to a standard acceptable to the Government Representative.
- (c) The Permit Holder shall be liable to the Government for any damage or loss to such premises, property, machinery and equipment provided by the Government. If any such premises, property, machinery or equipment is found damaged or lost, as the case may be, in whatsoever scale and from whatsoever cause while in the occupancy or control of the Permit Holder, the Permit Holder shall pay the cost for all repair or replacement of the same plus a sum to be advised by the Government Representative as an administrative overhead charges.
- (d) All premises, property, machinery and equipment so provided for the Permit Holder under the Contract, shall remain the property of the Government, and the Government Representative reserves the right to check stock of the same at any time and the Permit Holder shall provide every assistance to the Government Representative for this purpose.
- (e) The Permit Holder shall accept the Permit Area and the Government's provision of property, machinery or equipment under the Contract (inclusive of those listed in the Fifth Schedule) in the state and condition

in which occupancy is given.

28. Access Granted to the Permit Holder

- (a) The Government Representative shall grant access of the Venue or any part thereof to the Permit Holder as may be necessary for it, its employees or agents to perform its obligations under the Contract, provided that the Government Representative shall be entitled to close the Venue or any part thereof or to prohibit any vehicular access to the Venue at any time and for any period if the Government Representative considers it prudent and expedient to do so. Such closure should not be deemed to be a breach of the Contract by the Government Representative.
- (b) Upon such closure or prohibition of access or on demand of the Government Representative, the Permit Holder and its employees and agents shall forthwith suspend its Pro Shop Business, remove the plant, equipment, materials and vehicles under the control of the Permit Holder from the Venue.

29. 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 endeavours 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 its Pro Shop 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 Pro Shop Business or by whatever means the Government 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.

30. Inspection and Rejection

- (a) The Pro Shop 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 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 notified by the Government) 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 shall fail to rectify such rejected action or result of action, the Government Representative may without prejudice to any other rights and remedies available to the Government carry out and complete such rectification by its own staff or by its agents. All costs and expenses whatsoever which may be incurred by the Government thereof shall be

recoverable in full from the 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.

31. Permit Holder's Act, Default, etc.

- (a) Any act, default, negligence or omission of any employee, agent or sub-contractor (of whatever tier), or any employee or agent of sub-contractor, or visitors, 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, 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 30(c) hereof within the time specified.
- (c) Without prejudice to any other rights provided for under the Contract, the Permit Holder shall indemnify the Government and the Government Representative against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government may sustain or incur or which may be brought or established against it as a result of the Permit Holder's default.
- (d) Notwithstanding the above provision, the Government Representative may at its own discretion terminate the Contract in accordance with Clause 37 hereof as a result of the Permit Holder's default.

32. Public Liability Insurance

- (a) The Permit Holder shall effect, take out, maintain and renew upon expiry

the benefit of and at its own expense a policy of insurance (including public liability) (“the Policy”) in the joint names of the Permit Holder and the Government of the Hong Kong Special Administrative Region 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 authorized 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 full 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. 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 commodities sold/provided by the Permit Holder at the Venue.
- (c) 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.
- (d) 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.
- (e) The Policy shall include a cross liability clause.
- (f) 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.
- (g) 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.

33. Accident to Permit Holder's Employees

- (a) The Government, 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) The Permit Holder shall effect and keep in force at its own expense the Policy against all liability to pay damages or compensation as aforesaid in respect of all staff and other persons, other than the Government employees, who may be employed by the Permit Holder on any work done in pursuance of the Contract with an insurance company authorized by the Insurance Ordinance (Cap. 41) and on such terms and conditions to be approved by the Government Representative, and shall, as and when required, deposit with the Government Representative for safe keeping a copy of the Policy together with the receipt for payment of the current premiums.
- (c) 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.

34. Liability and Indemnity

- (a) The Permit Holder shall indemnify the Government and keep the Government fully and effectively indemnified against all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Government may sustain or incur or which may be brought or established against it by any person and which in any cases arising out of or in relation to or by reasons of –
- (i) the negligence, recklessness, tortious act or wilful misconduct of the Permit Holder, its employees or agents or sub-contractors (of whatever tier) or those employees or agents of such sub-contractors, or any visitor or patron of the Permit Area (all of the aforesaid persons collectively the “**Permit Holder Responsible Group**”); or
 - (ii) the performance or breach or the non-performance or non-observance of any of the warranties and undertakings, obligations or conditions by any member of the Permit Holder Responsible Group; or
 - (iii) any defaults, unauthorized acts or omissions of any member of the Permit Holder Responsible Group; or
 - (iv) the non-compliance with any applicable laws and any requirements or regulations of any Government authorities or agencies in connection with the performance of the obligations under this Contract by any member of the Permit Holder Responsible Group; or
 - (v) any loss or damage sustained by or any injury to or death of any third party which is partially or jointly in consequence of any negligence, omission, default of the Government Representative or its employees or any agents under statute and under common law as long as such loss or damage sustained by or any injury to or death of such third party is partially or jointly attributable to any member of the Permit Holder Responsible Group in the manner as described in (i) to (iv) above.
- (b) The indemnities, payment and compensation given in pursuance of the

Contract by the Permit Holder shall not be affected or reduced by reasons 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 any member of the Permit Holder Responsible Group.

35. Failure to Insure

If the Permit Holder shall fail to effect or to keep in force the policy referred in Clauses 32 and 33 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.

36. Corrupt Gifts

- (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) 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 therefor.
- (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 the 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 business in

connection with 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 person employed by it to provide the services from soliciting or accepting any form of advantages in discharging its duties under the Contract. The Permit Holder shall ensure that any person employed by it to provide the services is well aware of the prohibited acts explicitly 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. Termination

- (a) Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government Representative, 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 so to do 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 goes into liquidation, or is at any time adjudged bankrupt, or has a receiving order or orders for administration of its estate made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6) for the time being in force, or becomes insolvent, or makes a proposal for a composition or a scheme of arrangement or makes any conveyance or assignment of its effects

- for the benefit of its creditors or purports so to do, or suffers any execution to be levied on its goods and assets in the Permit Area, or a petition is filed for the bankruptcy or winding up of its business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government Representative in writing; 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 purports to assign all or any part of the burden or benefits of the Contract without the prior written consent of the Government Representative.
- (b) Notwithstanding any provision to the contrary, either party may terminate the Contract by serving to the other party not less than a six (6) month's prior written notice for termination to take effect at any time after the expiration of the eighteen (18) months from the commencement of the Term.
- (c) If the Permit Holder has terminated the Contract early by serving prior written notice pursuant to Clause 37(b), and the Government conducts a new procurement exercise to award the same contract to replace the existing Contract, any quotation offer from the same Permit Holder or a related person of the Permit Holder (as defined as below) for the contract to be awarded in that new procurement exercise will be rejected.

For the purpose of this Clause 37(c):

- (i) If the Permit Holder is a company, the expression "related person" of the Permit Holder includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly

beneficially owns fifty (50) percent or more of the issued share capital of the Permit Holder (“majority shareholder”); or

- (b) a holding company or a subsidiary of the Permit Holder; or
- (c) a holding company or a subsidiary of a majority shareholder of the Permit Holder; or
- (d) a company in which a majority shareholder (being an individual) of the Permit Holder 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).

- (ii) If the Permit Holder is a sole proprietor or partnership, the expression “related person” includes any one of the following:
 - (a) any partner of the Permit Holder (if it is a partnership); or
 - (b) the spouse, parent, child, brother or sister of the Permit Holder, and, in deducing such a relationship, an adopted child shall be deemed to be a child of both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Permit Holder or any partner of the Permit Holder beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- (d) If the Government Representative shall at any time be prevented from performing the Contract by force majeure, then the Contract shall terminate immediately but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of any of the terms and conditions of the Contract.
- (e) For the purpose of Clause 37(d), “force majeure” means acts of God, strikes, lockouts, acts of war, civil disorders, governmental laws, orders or

regulations or other similar or different events or contingencies beyond the reasonable control of the respective parties. For these purposes an event shall not be deemed to be within the control of the Government on the grounds that the Government could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.

- (f) (i) If the Permit Area or any part thereof shall be rendered unfit for use by any cause whatsoever not attributable 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.

38. Effect of Termination

- (a) Upon termination of the Contract –
- (i) the Permit Holder shall immediately deliver up vacant possession of the Permit Area including the appliances, furniture, fixtures and fittings provided by the Government Representative or the Government therein 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 or additions to the Permit Area 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 expense 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 Permit Area and to the Government's fixtures and installations thereof before delivering up the Permit Area to the Government Representative;

- (ii) the Permit Holder shall at its own expense forthwith retreat all its employees or agents and remove from the Permit Area all its fixtures, fittings, structures, materials, machinery, equipment, plant and all other properties which the Government Representative does not desire to take over. The Permit Holder shall at its own expense make good any damage to the Government premises, property, machinery and equipment which are caused by such retreat or removal;
- (iii) the Permit Holder shall return all Government premises, property, machinery and equipment provided by the Government under the Contract in the manner as stipulated in Clause 27 hereof.
- (iv) if the Permit Holder shall fail to comply with Clause 38(a)(ii), the Government Representative may forthwith enter the Permit Area to remove any person therein, or to remove any fixtures and fittings so installed or erected, or any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Permit Area in a good repair, and 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 chattels not collected or removed by the Permit Holder upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government as a direct or indirect result of the

breach of the Contract under this Clause shall be recoverable as a debt due from the Permit Holder.

- (v) If the Contract is terminated by the Government (other than pursuant to Clause 37(b) and Clause 37(f)(i)) and the Government makes other arrangements for the operation of the Pro Shop Business, the Government may recover from the Permit Holder:
 - (1) any amount short of the total Monthly Permit Fee (which would have been payable by the Permit Holder had the Contract not been terminated) suffered by the Government in engaging another Permit Holder to conduct the pro shop business and all costs and expenses incurred in making the arrangements for the same including conducting tender/quotation exercise to award a contract under which a person is granted a permit to conduct the pro shop business; and
 - (2) any additional expenditure incurred by the Government in connection with a default by the Permit Holder referred to in Clause 37(a).
- (b) Any termination of the Contract howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. All warranties and indemnities given by the Permit Holder under this Contract shall survive the expiration or early termination of this Contract.
- (c) In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in this Clause or otherwise, 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 or expiry.

39. Recovery of Sums Due

Whenever under the Contract any sum of money (including but not limited to rates and Government rent payable in respect of the Permit Area) shall be recoverable from or payable by the Permit Holder to the Government (but the Permit Holder has failed to pay the same by the due date), the Government is entitled to deduct the same from any sum then due or which at any time thereafter may become due to the Permit Holder under this or any other agreement(s) and/or contract(s) with the Government or from the Security Deposit in cash, cheque or cashier's order or by making a call on the bank guarantee in accordance with Clause 8 hereof forthwith without notice.

40. Jurisdiction

The Contract shall be governed by and construed according to the laws of Hong Kong and subject to Clause 48 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. Licence, Permit and/or Certificate

- (a) The Contract does not confer exemption from any licensing requirements pertaining to the Permit Holder's Pro Shop 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 Pro Shop Business. The Permit Holder shall make no claim of any kind whatsoever against the Government Representative 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 conduct its Pro Shop 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 any service or sell of any commodities for which any license, 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

licenses, 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 agrees 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 Pro Shop 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.

42. Applicability of Public Health and Municipal Services Ordinance

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

43. Compliance with Law and Government Requirements

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

44. Service of Notice

- (a) Any notice to be given herein shall be in writing and shall be sent to the address of the recipient set out in the Articles of Agreement or to such other address as either party shall notify the other in writing. Notice may be delivered personally or by post, by courier or facsimile.
- (b) Any notice shall be deemed given –
 - (i) when left at the address of the recipient if delivered by hand during

normal business hours; or

- (ii) one (1) working day after despatch by post; or
- (iii) when successfully despatched by facsimile.

45. 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.

46. 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, to 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.

47. Relationship of the Parties

- (a) 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.

48. 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 Pro Shop 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.

49. 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.
- (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 must 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 sub-contractor, its employees and agents.

50. Entire Contract

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

51. Exclusion

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

SCHEDULES

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SCHEDULES

FIRST SCHEDULE

The Monthly Permit Fee

Business	Monthly Permit Fee (in Hong Kong dollars)
Pro Shop	HK \$ _____ (in figures)

Name of Service Provider: _____ Date : _____

Authorized Representative: _____

Signature of Service Provider or
 Authorized Representative* : _____
 (with Service Provider's chop, if applicable)

*Delete as appropriate

SCHEDULES**SECOND SCHEDULE****Recommended List of Commodities and Services to be Provided and Sold
at the Permit Area****1. Description of commodities for Sale at Pro Shop****A. Sports related goods, merchandises and commodities**

(The Commodities should be at least 70% of the total number of items for sale within the Permit Area)

Item

1. Badminton racket
2. Squash racket
3. Table-tennis racket
4. Squash ball
5. Badminton feather shuttlecock
6. Table-tennis ball
7. Eye goggles
8. White tape for rim of squash racket
9. Colour tape for grip of squash racket
10. Rubber soled shoes
11. Non-slippery gloves
12. Clamp & net for table-tennis
13. Head cover for squash racket
14. Head cover for table-tennis racket
15. Support sleeve
16. Support wrist
17. Support sock
18. Support knee
19. Box of table-tennis ball
20. Rubber for table-tennis
21. Tape for table-tennis
22. Table-tennis shoes
23. Net for pick up table-tennis ball
24. Clean chack
25. Key-holder

26. Red/Black sheet for table-tennis
27. Badminton racket for kids
28. Table-tennis racket for kids
29. Squash racket for kids
30. Mini colour counter

B. Miscellaneous sports-related goods, merchandise and commodities

(The commodities should not be more than 30% of the total number of items for sale within the Permit Area)

Item

1. T-shirt
2. Shorts
3. Socks
4. Head band
5. Wrist band
6. Towel
7. Shampoo
8. Foam bath
9. Sun-glasses
10. Sports bag
11. Chain for souvenir
12. Pendant for souvenir
13. Souvenir flag
14. Souvenir stand
15. Mini table-tennis racket
16. Ruler for table-tennis net
17. Umbrella
18. Squash bag
19. Sports magazine
20. Jacket
21. Rubber cleaner
22. Rubber cleaning sponge

2. Description of Sports-related Services

Item

1. Mounting of strings of squash racket
2. Repairing of head rubber of table-tennis racket

3. Repairing of sponge of table-tennis racket
4. Pasting adhesive rubber rest
- 5 Repairing of squash racket

Notes :

- (1) All services offer or items for sale and their respective prices shall be prominently displayed at the Permit Area
- (2) Service Provider may offer with prior written consent of Government Representative any other commodity and services, which is compatible with the categories mentioned in 1 and 2 or with any licensing requirement relating to the Pro Shop Business.
- (3) It is not the intention of the Government Representative to exercise control over prices of commodities for sale or fee for charged services offer at the Permit Area.

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

- (a) Name of (in English) _____
Owner/Proprietor: (in Chinese) _____
- (b) Hong Kong Identity Card Number: _____
- (c) Residential Address:

- (d) Telephone Number: _____
- (e) Facsimile Number: _____
- (f) Business Registration Certificate Number of the
business 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 for and on my own behalf as the sole proprietor with details as shown above.

(B) If the Service Provider is a Firm

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

(b) Address of the Firm: _____

(c) Telephone Number: _____ Facsimile Number: _____

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

(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 authorized to bind the said firm and all its partners by my signature. I attach to the Quotation Form a letter certifying that I am an authorized person to sign contracts on behalf 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) and (F) below:

(D) Proposed investment-

(E) Proposed number of staff to be employed for operating the business bidding for -

(F) 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 Authorized Representative signing this document:

Telephone Number: _____

Signature of Service Provider or
Authorized Representative*: _____
(with Service Provider's chop, if applicable)

Dated this _____ day of _____

- Notes: (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, should 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.

*Delete as appropriate.

SCHEDULES

FOURTH SCHEDULE

Form of Security Deposit Election

Service Provider is required to provide the information required below –

I/We select to furnish the Security Deposit by* cash, cheque or cashier's order/ bank guarantee.

Signature of Service Provider

or Authorized

Representative* : _____

(with Service Provider's chop, if applicable)

Dated this: _____ Day of _____

* Delete as appropriate

SCHEDULES**FIFTH SCHEDULE****List of Appliances, Furniture, Fixtures and Fittings
provided by the Government for the Pro Shop Business
at Ma On Shan Sports Centre**

Item	Description	Quantity
1.	Air-conditioner	1 no.
2.	Fluorescent tube	2 nos.

SCHEDULES**SIXTH SCHEDULE**

To: the Government

Dear Sir/Madam,

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 prepared 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.

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 38.1 of the Terms of Quotation, the Government may exercise any of the rights under Clauses 38.3 to 38.5 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 : _____

ANNEXES

ANNEX A

Location Plan of the Venue at Ma On Shan Sports Centre

Venue as delineated and shown edged red

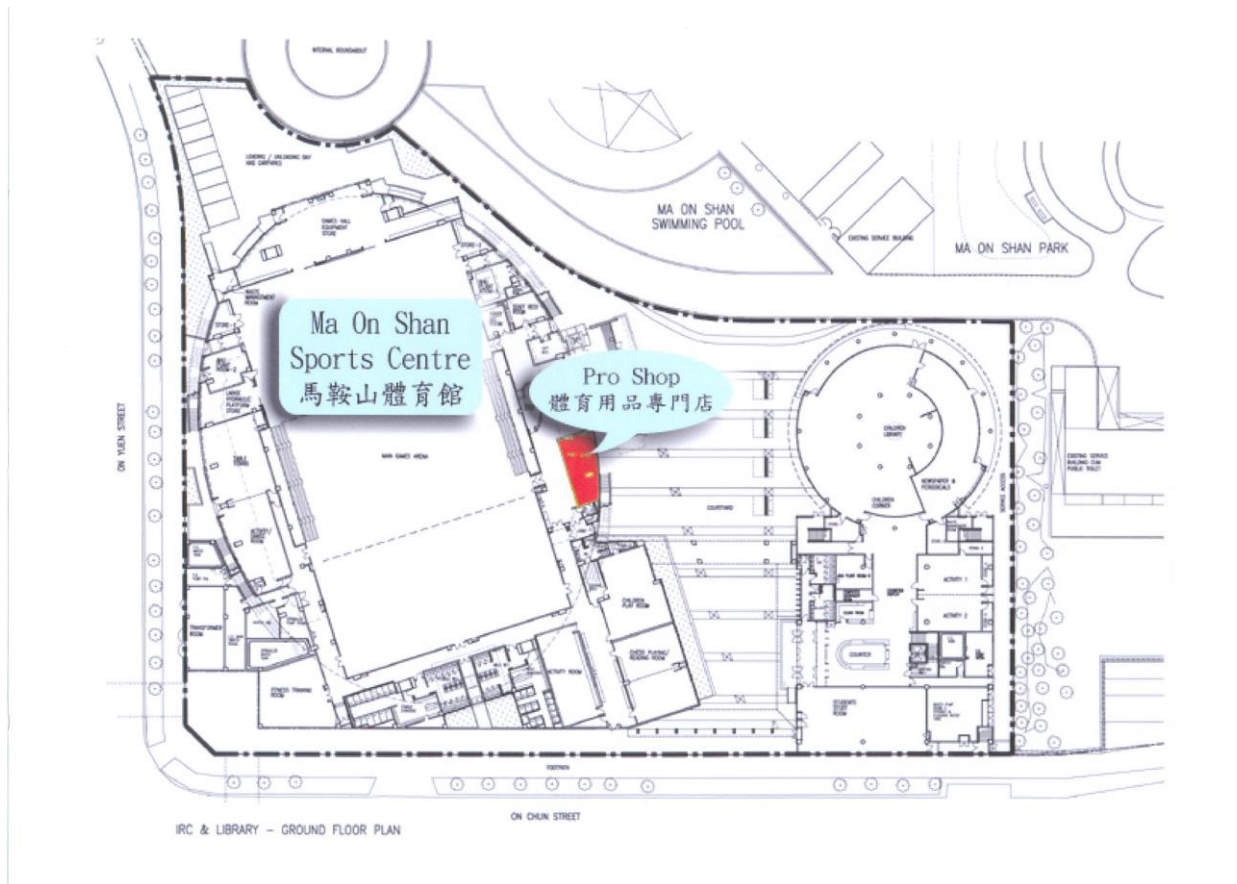


(Not to scale)

ANNEXES

ANNEX B

Location Plan Showing the Pro Shop at Ma On Shan Sports Centre
(The Premises for the Pro Shop Business is delineated and shown coloured red)



(Not to scale)

ANNEXES

ANNEX C

Layout Plan of the Pro Shop at Ma On Shan Sports Centre

(The Premises for the Pro Shop Business is delineated and shown coloured red)



(Not to scale)

ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT are made the _____ day of _____ 2019 BETWEEN THE ASSISTANT DIRECTOR (LEISURE SERVICES) 3 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.

WHERE AS:

- (A) By an Invitation to Quotation (Quotation Ref.:LRQ-LS/MOSSC/PS/2019), the Government has invited quotations for the grant of a permit to conduct the Pro Shop Business at Ma On Shan Sports Centre.
- (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 15(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 15(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 (including the recitals).
- 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

ARTICLES OF AGREEMENT

- (v) Conditions of Contract
- (vi) First to Sixth Schedules (in their original form as found in the Quotation Documents)
- (vii) First, Third, Fourth and 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)
- (viii) Annexes A to C

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

4. For the purposes of Clause 44 of the Conditions of Contract, the address and facsimile number of the Permit Holder are as follows:

Name of the Permit Holder: _____
 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/ Authorized Representative: _____
 (with Permit Holder’s chop,
 if applicable)

Title of the Permit Holder / Authorized Representative: _____

ARTICLES OF AGREEMENT

In the presence of:

Name of witness:

Title of witness:

Signature of witness:

SIGNED BY THE ASSISTANT DIRECTOR
(LEISURE SERVICES) 3 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 of Pro Shop Business at Ma On Shan Sports Centre before
Submission of Quotations**

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

- | | Pls tick if completed |
|--|------------------------------|
| ◆ Completion of Part II of Quotation Form - “Offer to be Bound” | |
| 1. Have you completed Part II of the Quotation Form - “Offer to be Bound” with all the required information (i.e. name of service provider, address, name of authorized representative (if applicable), etc.)? | <input type="checkbox"/> |
| 2. If you are a sole proprietor, have you crossed out 5(a) to 5(c) in Part II of the Quotation Form? | <input type="checkbox"/> |
| 3. If you are a company/ firm/ corporation, have you completed 5(a) to 5(c) in Part II of the Quotation Form? | <input type="checkbox"/> |
| 4. Have you/your authorized representative <u>signed on Part II of the Quotation Form?</u> | <input type="checkbox"/> |
| ◆ Completion of First Schedule | |
| 5. 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/authorized representative (if applicable), etc.). | <input type="checkbox"/> |
| 6. Have you/your authorized representative <u>signed on the First Schedule?</u> | <input type="checkbox"/> |
| ◆ Completion of the Third Schedule | |
| <i>If you submit the quotation in the capacity of a <u>sole proprietor</u> –</i> | |
| 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"/> |
| <i>If you submit the quotation in the capacity of a <u>firm</u> –</i> | |
| 9. Have you crossed out Paragraphs 1(A) and 1(C) of the Third Schedule? | <input type="checkbox"/> |
| 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 | <input type="checkbox"/> |

operating the business, business registration certificate no., name and address of partners, bank account no., etc.)?

11. If you are an authorized representative of your firm/partners, have you attached documentary proof showing that you have been authorized 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 authorized 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 authorized to act on behalf of the statutory body as per Paragraph 5(b) of the Quotation Form?

15. Have you/your authorized representative **signed on Paragraph 2 of the Third Schedule**?

◆ **Completion of the Fourth Schedule**

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

◆ **Final Check**

17. Have you initialed against any marked amendments on the Quotation Documents to be submitted?

18. Have you/your authorized representative **signed** on all required documents in particular:

(a) Part II of the Quotation Form - “Offer to be Bound”

(b) *First Schedule*

(c) *Third Schedule*

(d) *Fourth Schedule*