

Part II

TERMS OF TENDER

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PART II

TERMS OF TENDER

1. Tender Documents

The following tender documents are issued in connection with this Invitation to Tender for a Tenancy for Kai Tak Cruise Terminal (“Tender Documents”):

Part I	Tender Notice
Part II	Terms of Tender (“Terms of Tender”)
Part III	Form of Tender (“Form of Tender”)
Part IV	Form of Tenancy Agreement for Kai Tak Cruise Terminal (“Form of Agreement”)

2. Interpretation

2.1 Headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract.

2.2 Unless otherwise stated, the following definitions shall apply to the Tender Notice, Terms of Tender and Form of Tender only, and unless otherwise stated, shall not apply to the Form of Agreement or the Agreement.

“Accepted Innovative Suggestions”	shall have the meaning given to it in Paragraph 33.1 of the Terms of Tender.
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“Agreement”	means the agreement for the Tenancy to be executed by the parties thereto (in the same form as the Form of Agreement with such amendments as the Government may require).
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“Ancillary Commercial Area”	shall have the meaning given to it in Clause 1.1 of the Form of Agreement.
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“Appendices”	means the Appendices attached to the Terms of Tender unless otherwise stated, and any of them shall be referred to as an “Appendix”.
“Associate”	in relation to any person means: <ul style="list-style-type: none"> (a) a relative or partner of that person; or (b) a company one or more of whose directors is in common with one or more of the directors of that person.
“Associated Person”	in relation to another person means: <ul style="list-style-type: none"> (a) any person who has control, directly or indirectly, over the other; or (b) any person who is controlled, directly or indirectly, by another; or (c) any person who is controlled by, or has control over, a person at (a) or (b) above.
“Authorised Signatory(ies)”	shall have the meaning given to it in Paragraph 4.17 of the Terms of Tender.
“Binding Proposal”	means (a) the Execution Plans as required under Assessment Criteria 1 to 5 of Appendix K (I) – Part A (and as referred to in the Marking Scheme); <p>(b) the Accepted Innovative Suggestions; and</p> <p>(c) the Key Performance Indicators under Appendix K (I) – Part B,</p> <p>all of which are submitted by the Successful Tenderer as parts of its Tender for the Tenancy, and upon the Tenancy being awarded to the Successful Tenderer, will constitute a binding agreement between the Government and the Successful Tenderer.</p>
“Business Organisation”	means a partnership or a joint venture (whether incorporated or unincorporated).

“certified true copy” shall have the meaning given to it in Paragraph 4.18 of the Terms of Tender.

“Commissioner” means the Commissioner for Tourism of the Government or any public officer given delegated authority by him to exercise any or all of his powers and/or perform any or all of his duties.

“Consent” shall have the meaning given to it in Paragraph 20.3 of the Terms of Tender.

“Contract” means the contract between the Government and the Successful Tenderer/Tenant (as the context may require) comprising the following parts of the Tender Documents and other items as specified below:

- (a) the “Agreement”;
- (b) the “Form of Tender”;
- (c) the “Tender Acceptance”;
- (d) the “Binding Proposal”; and
- (e) all other schedules, plans, drawings and other documents which form part of the Successful Tenderer’s Tender or are incorporated by reference in any of the above documents,

in each case subject to such further changes as the Government may stipulate in exercise of its powers under the Terms of Tender, and/or otherwise subject to such further changes as the Government and the Successful Tenderer/Tenant may agree.

Each of the above documents shall be referred to throughout the Tender Documents and the Contract by their respective titles as appearing in quotation marks above.

	References to “the Contract” or “this Contract” shall mean the same Contract as defined above.
“Contract Default(s)”	shall have the meaning given to it in Paragraph 24.1(e) of the Terms of Tender.
“Control”	<p>in relation to another person means the power of a person to secure:</p> <ul style="list-style-type: none"> (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or (b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or (c) by virtue of holding as a director in that or any other person; <p>that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.</p>
“Corporate Group”	shall consist of only the parent/holding company, Subsidiary Companies and/or Related Companies.
“Cruise Terminal”	means Kai Tak Cruise Terminal.
“Cruise Terminal Building”	shall have the meaning given to it in Clause 1.1 of the Form of Agreement.
“Cruise Terminal Facility”	means cruise terminal facilities (including terminal building, passenger gangway(s), customs, immigration and quarantine (CIQ) and security facilities, and transportation area, etc) which are provided for the designated purposes of berthing of cruise vessels as well as the embarkation and

disembarkation of cruise passengers.

“Director” means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director.

“Dockage Fee” means the fee charged for a vessel to use a berth.

“Good Industry Practice” means the standards, practices, methods and procedures conforming to all laws and regulations, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.

“Government Representative” means:

- (a) the Commissioner;
- (b) any public officer of the Government authorised by (a) for the purpose of the Tender Documents and the Contract; and
- (c) any other public officer authorised by the public officer referred to in (b) for the purpose of the Tender Documents and the Contract.

The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Tenderer, Successful Tenderer or Tenant.

“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Intellectual Property Rights” “IPR”	means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
“IPR Infringement”	shall have the meaning given to it in Paragraph 24.1(d) of the Terms of Tender.
“Invitation to Tender”	means this Invitation to Tender for a Tenancy for Kai Tak Cruise Terminal on the terms and conditions set out in the Tender Documents.
“Joint Tenderer”	shall have the meaning given to it in the definition of “Tenderer” set out below.
“majority shareholder”	shall have the meaning given to it in Paragraph 24.6(a) of the Terms of Tender.
“Marking Scheme”	means Marking Scheme for Tender Evaluation as set out in Appendix B.
“original Tender Closing Date”	shall have the meaning given to it in Paragraph 5.1 of the Terms of Tender.
“Parties”	means the Government and the Tenderers; and “Party” means any one of them.
“Passenger Fee”	means the fee charged for each embarking, disembarking and in-transit passenger.
“Performance	means a performance guarantee to be executed by a Performance Guarantor pursuant to Paragraph 14 of

Guarantee”	the Terms of Tender.
“Performance Guarantor”	means any of the shareholders, parent company or holding companies of the Tenderer, or any other person having exposure or rights to variable returns from its involvement with the Tenderer, to execute the Performance Guarantee if such Tenderer shall become the Successful Tenderer. There should be only one proposed Performance Guarantor in each Tender.
“Premises”	shall have the meaning given to it in Clause 1.1 of the Form of Agreement.
“Proposals”	means the Rent Proposal and the Technical Proposal.
“Rent Proposal”	means the rent proposal in the form set out in Appendix E to be completed and submitted by a Tenderer.
“Related Company”	means, in relation to a person, any person that directly Controls or is under common direct Control with the person specified; for the purpose of this definition, a person is deemed to be in Control of another person if the first-mentioned person has/owns more than 30% (thirty percent) of the shareholder voting rights or more than 30% (thirty percent) of the issued share capital or the power to appoint or elect the majority of the directors of the other person; and references to “person” shall include any unit, enterprise, entity, company, corporation or other body corporate, any partnership, joint venture or association (whether or not having separate legal entity).
“Relevant Persons”	shall have the meaning given to it in Paragraph 24.9 of the Terms of Tender.

“Security Deposit”	shall have the meaning given to it in Paragraph 13.1 of the Terms of Tender.
“Specified Tender Box”	means the tender box specified in Paragraph 5.2 of the Terms of Tender.
“Successful Tenderer”	means the Tenderer whose tender for the Tenancy is accepted by the Government.
“Subsidiary Company”	means a subsidiary as defined in Section 15 of the Companies Ordinance (Cap. 622).
“Technical Proposal”	means the technical proposals referred in Appendix K (I) and Appendix K (II) of the Terms of Tender.
“Tenancy”	means the tenancy for the Premises within which Kai Tak Cruise Terminal is located and on the terms and conditions set out in the Form of Agreement for a term of ten (10) years commencing on 1 June 2028 (or on a date to be specified by the Commissioner for Tourism).
“Tenant”	means the Successful Tenderer who has entered into the Agreement with the Government.
“Tender”	means a tender for the Tenancy submitted by a Tenderer in response to this Invitation to Tender.
“Tender Closing Date”	shall have the meaning given to it in Paragraph 5.1 of the Terms of Tender.
“Tender Deposit”	shall have the meaning given to it in Paragraph 9.1 of the Terms of Tender.
“Tender Closing Time”	means the time on the Tender Closing Date before which Tenders must be deposited with the Government in the manner stipulated in Paragraph 5

of the Terms of Tender.

“Tender Documents” shall have the meaning given to it in Paragraph 1 of the Terms of Tender.

“Tender Notice” means the Tender Notice (Tender Reference No.: TC 1/2025) for this Invitation to Tender.

“Tender Validity Period” shall have the meaning given to it in Paragraph 15.1 of the Terms of Tender.

“Tenderer” means any person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender and in the event that the Tenderer comprises of more than one person who are participants to a joint venture, each such person shall be referred to as a “**Joint Tenderer**” and the term “Tenderer” will include each of such Joint Tenderers.

“Website” means
<https://www.tourism.gov.hk/en/whats-new.php#tenderNotice>

“WTO GPA” shall have the meaning given to it in Paragraph 3.3 of the Terms of Tender.

2.3 Unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, joint venture,

partnership, body corporate or unincorporate (wherever established or incorporated and in each case whether or not having a separate legal personality);

- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented;
- (e) references to “Tenderer”, “Successful Tenderer” or “Tenant” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
- (f) references to “Government” shall include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix, Annexure 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;
- (h) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
- (i) subject to Paragraph 2.2 above, any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;

- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month mean a calendar month;
- (n) any negative obligation imposed on any Party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any Party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Tenderer, Successful Tenderer and/or Tenant (as the case may be) shall be deemed to be the act, default, neglect or omission of the Tender, Successful Tenderer and/or Tenant (as the case may be);
- (p) words importing the whole shall be treated as including a reference to any part of the whole;
- (q) the expressions “include” and “including” shall be construed without limitation to the words following;
- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- (s) references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, information which can be viewed on the Website, and any other modes of representing and reproducing words in a legible form;
- (t) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
- (u) the expressions “public body” and “public officer” have the meanings

given to them in the Interpretation and General Clauses Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622).

- 2.4 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 2.5 All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.
- 2.6 In the event that a Tenderer comprises of more than one Joint Tenderer, all obligations, liabilities, representations, warranties, undertakings, agreements and covenants on the part of the Tenderer under the Tender Documents and, if the Tenancy is awarded to such Tenderer, under the Contract (including the Agreement), whether express, implied or by reference, shall, unless the context requires otherwise, be deemed to be made, given or assumed by, and binding upon and enforceable against, such Joint Tenderers jointly and severally and, if any of them ceases to be bound in any respect, that shall not affect the obligations and liabilities of the other(s).

3. Invitation to Tender

- 3.1 The Government invites Tenders for the Tenancy pursuant to the terms and conditions as set out in the Tender Documents (including the Form of Agreement) for a term of ten (10) years commencing on 1 June 2028 (or on a date to be specified by the Commissioner for Tourism) and, subject to agreement by the Government, with an option for a further term of five (5) years.
- 3.2 Information, statistics and forecasts (if any) set out in the Tender Documents are provided for a Tenderer’s reference only. The

Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.

- 3.3 This Tender is not covered by the Agreement on Government Procurement of the World Trade Organisation (“**WTO GPA**”) and therefore, the articles of the WTO GPA shall not apply to this Invitation to Tender and/or a Tender submitted by a Tenderer in response to this Invitation to Tender.

4. Tender Preparation

- 4.1 Each Tenderer should obtain such independent advice (legal, technical or otherwise) from its own advisers as it considers appropriate.
- 4.2 Each Tenderer should check the number of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 4.3 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it fully understands all requirements of the Tender Documents. Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Form of Agreement) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract (including the Agreement). The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the Tenancy in accordance with the terms and conditions as set out in the Contract.
- 4.4 A Tender must be completed in English legibly in ink or typescript, and properly signed, and dated. Save and except for the insertion of the requisite information and particulars at the spaces as indicated in the Form of Tender and the Appendices, there shall be no insertion, deletion or alteration of or to any terms or conditions in the Tender Documents. The Government may not consider or assess any Tenders submitted with any insertion, deletion or alteration of or to any terms or conditions in the Tender Documents or which do not comply with any of the requirements contained in this Paragraph 4.4.

- 4.5 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Form of Agreement) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Form of Agreement). For the avoidance of doubt, the Successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.
- 4.6 (a) Each Tenderer shall submit only **ONE** Tender for the Tenancy. The Government will have the sole discretion to determine whether two or more Tenderers, because of their relationship of Associates or Associated Persons, should be treated as one or the same Tenderer. A Tenderer must declare its relationship (if any) with other Tenderer(s).
- (b) Tenders will be considered on an overall basis and will be assessed according to the Marking Scheme and on such other terms and conditions as set out in the Terms of Tender. The Government does not bind itself to accept the Tender with the highest combined score assessed in accordance with the Marking Scheme or any Tender submitted. The Government reserves the right to negotiate with any Tenderer about the terms and conditions of the offer. The Government will also consider the past or current performance of the Tenderers as licensees or tenants of the Government both in examining any Tender submitted and in deciding whether or not to award the Contract. The decision of the Government on whether or not to award the Contract shall be final.
- 4.7 A Tender submitted by a Tenderer should contain all applicable documents specified in Appendix A. In particular, the proposals, documents and information as referred to in Items 1(a), 1(b), 1(e), 1(f) and 2(a) of Appendix A **MUST** be submitted, otherwise its Tender will not be considered by the Government. For the avoidance of doubt, please refer to Appendix A for submission details (which include, without limitation,

the mandatory requirements regarding the particular documents and/or appendices which must be submitted and the number of original(s) and/or copy(ies) required).

- 4.8 The Technical and Rent Proposals will be assessed by a two-envelope system whereby the technical assessment will be conducted separately and before the rent assessment. **A Tenderer must not include in the envelope of the Technical Proposal any information concerning the Rent Proposal.** A Tenderer shall also include in the envelope of the Technical Proposal, CD-ROM(s) or DVD-ROM(s) (in PDF format with the “word-search” function enabled) as required in Appendix A. The Tenderer shall ensure that there is no discrepancy between the original, copies and the copies contained in the CD-ROM(s) or DVD-ROM(s) of all documents. In the event of any discrepancies, the original shall prevail.
- 4.9 The two (2) separate envelopes referred to under Paragraph 4.8 above shall contain the Technical Proposal and the Rent Proposal and should each be labelled as “**Envelope 1 – Technical Proposal**” and “**Envelope 2 – Rent Proposal**” respectively and both clearly marked with the tender reference and subject “**Tender Reference: TC 1/2025 – Tender for a Tenancy for Kai Tak Cruise Terminal**”. The bundle containing a Tender should be sealed, labelled as and addressed to the “Chairman, Central Tender Board”. **No indication of Tenderer’s identity should be evident on any envelope.**
- 4.10 A person submitting a Tender will be deemed to be acting as principal and no person shall submit a Tender as an agent for or on behalf of any other person.
- 4.11 All prices offered in the Tenders must be denominated in Hong Kong dollars. **Rent denominated in other currency may not be considered.**
- 4.12 In the Terms of Tender, there are also requirements for the submission of documents and/or information, whereby it is provided that if the same is(are) not supplied by the Tender Closing Time, or upon subsequent request of the Government made after the Tender Closing Time, by such time as required by the Government, the Tender may not be considered further. For the avoidance of doubt, for this type of documents and/or information, the Government is not obliged to make any request for

resubmission after the Tender Closing Time. If the Government chooses not to do so, or even if the Government chooses to do so, but the Tenderer fails to supply the requested document or information, the Tender may also not be considered further.

- 4.13 For all other proposals, documents and information which do not fall within Paragraph 4.7, 4.8 or 4.12 above, the Government reserves the right to seek submission under Paragraph 8 below or evaluate the Tender on an “as is” basis.
- 4.14 The Tenderer’s submission shall be in English, except where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English. For the avoidance of doubt, any legal opinion required to be submitted by a Tenderer (in the form and substance set out in Appendix H or in any other form as the Government may require) shall be made in accordance with the requirements set out in Paragraphs 12.5 and 14.2.
- 4.15 The Government may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:
- (a) false, inaccurate or incorrect information is given in the Tender; or
 - (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.
- 4.16 When completing the Tender Documents (including the Form of Tender and the Appendices), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer; or
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer;

- (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Cap. 310); or
- (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Paragraph 4.16(a)(i), (a)(ii), (a)(iii) or (b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established,

provided that where the Tenderer comprises Joint Tenderers, the above requirements apply to each of the Joint Tenderers.

4.17 A Tender will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Tender (including all applicable documents) is signed in the following applicable manner:

- (a) if the Tenderer is a sole proprietorship, the Tender is signed by the Tenderer in the name of the Tenderer (or of the sole proprietorship), or by a person authorised by the Tenderer to sign the Tender for and on behalf of the Tenderer;
- (b) if the Tenderer is a partnership, the Tender is signed by one or more partner(s) of the Tenderer (and in the case of limited partnership, such partner(s) must be general partner(s) and not merely limited partner(s)) who is/are authorised by the partnership (in a letter of authorisation signed by all partners of the partnership and in compliance with all requirements set out in any applicable partnership agreement, certified copy of which shall be submitted together with the Tender), to sign the Tender for and on behalf of the Tenderer;
- (c) if the Tenderer is a company, the Tender is signed by a director or director(s) of the Tenderer who is/are duly authorised by the resolutions of the board of directors of the Tenderer (certified copy of which shall be submitted together with the Tender) to sign the Tender for and on behalf of the Tenderer; or

- (d) if the Tenderer is a joint venture, the Tender is signed by each person authorised by each Joint Tenderer in the manner applicable to such Joint Tenderer as set out in Paragraph 4.17(a) to (c) above (and the signing of such person authorised by each Joint Tenderer shall be in compliance with all requirements set out in any applicable joint venture agreement, certified copy of which shall be submitted together with the Tender), to sign the Tender for and on behalf of each Joint Tenderer.

In respect of the Performance Guarantee and any other documents to be executed and/or submitted pursuant to the Tender Documents, the manner of signing as set out above shall also apply to the signing of such documents by the Performance Guarantor. The person(s) authorised by the Tenderer/its Performance Guarantor to sign all documents in relation to the Tender (including the Form of Tender) and the Performance Guarantee and/or any other documents in relation thereto in the manner set out above shall be referred to as the “**Authorised Signatory(ies)**”. The Tenderer should refer to the appropriate execution block when signing and submitting the Tender.

4.18 Unless otherwise required in the Tender Documents, apart from the Form of Tender (which must be originally signed by or on behalf of the Tenderer), wherever there is any provision in the Tender Documents requiring submission of any document as part of the Tender:

- (a) the Tenderer may submit a photocopy certified to be true and complete by the Authorised Signatory(ies);
- (b) in the case of any certificate which is required to be issued by a specified body (for example an Independent Accredited Laboratory or a recognised certification body (if applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and
- (c) if only a photocopy without any certification has been submitted, the

Government reserves the right to request a certified true copy as required in (a) or (b) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date; the Tender may not be considered further if the certified true copy is not provided.

- 4.19 Rent quoted by a Tenderer shall only be shown in the Rent Proposal. The Tenderer shall not submit any separate rent quotation where it is not expressly asked to do so in the Rent Proposal. Any separate rent quotation submitted in contravention of the aforesaid restriction shall be disregarded and will not form part of the Contract, or otherwise, the Tender will be disqualified.
- 4.20 A Tender with any rent variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- 4.21 Each Tenderer shall undertake and ensure that all proposals (including, without limitation, any key performance indicators proposed by the Tenderer) offered in its Tender (including those set out in the Appendices) are accurate and complete before it submits the Tender. The Tenderer shall be bound by all proposals offered in its Tender if the Tender is accepted by the Government.

5. Submission of Tender

- 5.1 The Tender Closing Time (“**Tender Closing Time**”) is 12:00 noon (Hong Kong time) on the Tender Closing Date which shall be 22 May 2026 (“**original Tender Closing Date**”), provided that if a Tropical Cyclone Warning Signal No. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 9:00 am and 12:00 noon (Hong Kong time) on the original Tender Closing Date, the same will be extended to the next working day (i.e. except Saturday, Sunday and public holidays). In the Tender Documents, the term “**Tender Closing Date**” shall mean the original Tender Closing Date or, if the original Tender Closing Date is extended as aforesaid, such extended date. Tenderer must submit its Tender by the Tender Closing Time.
- 5.2 The sealed Tender (containing the two separate envelopes for the Technical Proposal and Rent Proposal as referred to in Paragraph 4.9 above) should

be labelled as “Tender Reference: TC 1/2025 – Tender for a Tenancy for Kai Tak Cruise Terminal” and addressed to the “Chairman, Central Tender Board” and placed in the “Government Secretariat Tender Box” situated at the following location (“**Specified Tender Box**”):-

Ground Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

by the Tender Closing Time. In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 am and 12:00 noon (Hong Kong time) on the Tender Closing Date, the Government will announce extension of the Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended Tender Closing Time as soon as practicable. These announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

Late Tenders and Tenders not deposited in the Specified Tender Box will not be considered.

- 5.3 The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Tender submission submitted and/or deposited by Tenderers in the Specified Tender Box whether such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government or for any other reasons whatsoever. Following any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning the Tender submission as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

6. Modifications to Tender Submission

- 6.1 Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary. Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be initialled by the Tenderer in manuscript.
- 6.2 The Tenderer may not initiate any request for amendment of its Tender after the Tender Closing Time on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Paragraph 8 below, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government elects not to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an "as is" basis (i.e., in the form as originally submitted prior to the Tender Closing Time) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.

7. Contact with the Government after Tender Submission

After lodging a Tender with the Government, Tenderers shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right, but shall not be obliged, to initiate any such further contact and all such contacts and replies of Tenderers thereto shall be in writing or formally documented in writing.

8. Government's Right to Clarify Information Provided and Request for Further Information

- 8.1 The Government may, but shall not be obliged to, request the Tenderer to make clarification of or submit missing information or document in relation to any part of the Tender as it may reasonably require in connection with the Tender. Each Tenderer shall submit such clarification, information or document in a manner as specified in the request. A Tender may not be considered if the requested clarification or missing information or document is not provided in accordance with the request, or in the case of clarification, such clarification is not acceptable to the Government. Any excess information or document supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to this Paragraph 8.1 will be ignored for the purposes of the evaluation of the Tender and the Government will be entitled, but not obliged, to not consider the Tender further. As an alternative to seeking clarification of submission, the Government may, at its discretion, disqualify the Tender in accordance with other applicable terms of the Tender Documents, or proceed to evaluate the Tender on an as-is basis. The Government reserves the right to incorporate such additional information or any part thereof into the Agreement and in such manner as the Government thinks appropriate and to make such changes to the Agreement as may be necessary as a result of such incorporation.
- 8.2 To facilitate the technical assessment of the Tenders, the assessment panel may require Tenderers to attend interview(s) to provide clarification on their Tenders. The Tenderers concerned shall only use information that are submitted with their Tenders in the interview(s). Any Tenderer who is required to attend an interview will be notified of the date and venue about seven (7) days before the interview.

9. Tender Deposit

- 9.1 Each Tenderer shall pay to the Government a tender deposit of HK\$600,000 (Hong Kong Dollars Six Hundred Thousand only) as a pledge of the bona fides of its Tender ("**Tender Deposit**"). The Tender Deposit shall be paid by a cashier's order payable to "The Government of the Hong Kong Special Administrative Region" and drawn on a bank within the

meaning of the Banking Ordinance (Cap. 155). The Tenderer shall submit its tender together with a Tender Deposit. Any Tender which is not accompanied by a Tender Deposit will not be considered and will be rejected.

9.2 All Tender Deposits will be retained uncashed until a decision has been made on the Tenders submitted. The Tender Deposit will be returned without interest to unsuccessful Tenderers after the Successful Tenderer has executed the Agreement.

9.3 The Tender Deposit provided by the relevant Tenderer will be absolutely forfeited by the Government if the relevant Tenderer withdraws or revokes its Tender within the Tender Validity Period, or, where the relevant Tenderer is the Successful Tenderer, if it fails or refuses to execute the Agreement (or any part(s) thereof) or to act in accordance therewith or in default of any provisions thereof, or fails or refuses to provide the documents set out in Paragraph 17 below. For the avoidance of doubt, the forfeiture of the Tender Deposit as aforesaid shall not prejudice any other rights or remedies of the Government under the Tender Documents or under any applicable law as regards any costs, expenses, losses, damages or liabilities whatsoever which the Government may suffer, sustain or incur arising from or attributable to any breach, default, act, omission or negligence on the part of the Tenderer. The Tender Deposit provided by the Successful Tenderer, shall, if successfully cashed by the Government, be deemed to form part of the Security Deposit required to be paid by the Successful Tenderer under Paragraph 13.1 below.

10. Tender Assessment

10.1 Tender assessment will be carried out by an assessment panel comprising representatives from relevant Government bureaux and departments.

10.2 The tender assessment procedures are detailed in the Marking Scheme.

10.3 The Tender with the highest combined score and demonstrates that it possesses the necessary financial capability will normally be recommended for acceptance but the Government shall not be bound to accept the recommended Tender. The Government has the sole and absolute right

and discretion to decide whether to accept the recommended Tender.

11. Financial Vetting

- 11.1 A Tenderer and its proposed Performance Guarantor must demonstrate their financial capability before the Tenderer can be considered for the award of the Contract. For this purpose, the Tenderer is required to provide the respective documents set out in Items 2(b) – 2(h) of Appendix A for financial vetting. For the avoidance of doubt, any other documents submitted by the Tenderer in its Tender may also be considered during financial vetting.

12. Company/Business Organisation Status

- 12.1 At the time of submitting its Tender, a Tenderer and its proposed Performance Guarantor shall be in existence and, where applicable, duly registered under the laws of Hong Kong or the laws of its place of incorporation or establishment if outside Hong Kong, so that a Tenderer and its proposed Performance Guarantor which is a company (or all companies comprising a joint venture) must be incorporated and a Tenderer and its proposed Performance Guarantor which is a partnership (and all partnership comprising a joint venture) must have been formed and shall continue in existence during the Tender Validity Period.
- 12.2 A Tenderer is required to provide detailed information on the company/Business Organisation status of the Tenderer and its proposed Performance Guarantor respectively by completing the form set out in Appendix C and submitting the documents as required thereunder.
- 12.3 For the purpose of Paragraph 12.2 above, the following information and/or documents (non-exhaustive) of the Tenderer and, where applicable, its proposed Performance Guarantor shall be submitted:
- (a) name, principal place of business and registered address and nature of business of the Tenderer / the proposed Performance Guarantor and names of the managing director and director(s), partners or sole proprietor of the Tenderer / the proposed Performance Guarantor;

- (b) length and details of relevant business experience of the Tenderer / the proposed Performance Guarantor;
- (c) shareholders/members/participants/proprietors/partners of the Tenderer/the proposed Performance Guarantor and their respective shareholdings/participation/interests in percentages;
- (d) names of the sole proprietor, each director/partner/member of the company/joint venture/partnership (as the case may be) of the Tenderer/the proposed Performance Guarantor;
- (e) a copy of each of (I) a valid business registration certificate issued under the Business Registration Ordinance (Cap. 310) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Cap. 310) or equivalent document(s) issued by the authority(ies) from the Tenderer's/its Performance Guarantor's place of incorporation (**if the Tenderer is incorporated or formed outside of Hong Kong**) and (II) the Memorandum (if any) and Articles of Association, the Certificate of Incorporation, Certificate of Change of Name (if any), the latest Annual Return filed with the Companies Registry and all subsequent filings since the latest annual return (**if the Tenderer/its Performance Guarantor is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance (Cap. 622)**) or equivalent documents issued by the authority(ies) from the Tenderer's/its Performance Guarantor's place of incorporation (**if the Tenderer/its Performance Guarantor is incorporated or formed outside of Hong Kong**);
- (f) the shareholders' agreement, (where the Tenderer comprises Joint Tenderers) joint venture agreement, or (where the Tenderer/its Performance Guarantor is a partnership) partnership agreement, or any other equivalent documents from their places of incorporation if formed outside Hong Kong, evidencing its corporate and business status, certified as true, complete and up-to-date by the Authorised Signatory(ies) or financial controller of the Tenderer and its proposed Performance Guarantor (as the case may be);

- (g) place and date of incorporation or formation of the Tenderer/its proposed Performance Guarantor;
- (h) business profile information of the Tenderer/its Performance Guarantor including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (i) where the Tenderer/its proposed Performance Guarantor is a subsidiary, the name(s) and place(s) and date(s) of incorporation of its immediate and ultimate holding companies;
- (j) certified copy of each of (as applicable)
 - (I) the Tenderer's/its Performance Guarantor's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's/its Performance Guarantor's authorisation and approval for, where applicable and as appropriate, (a) the submission of its Tender/executing the Performance Guarantee in the form as set out in Appendix G (subject to any amendments as may be required by the Government) in favour of the Government and (b) the Authorised Signatory(ies) to sign all the documents in relation to its Tender (including the Form of Tender) on the Tenderer's behalf (as referred to in Paragraph 4.18 above)/to execute the Performance Guarantee and/or any other documents in relation thereto on the Performance Guarantor's behalf **(If the Tenderer/its Performance Guarantor is an incorporated company);**
 - (II) documentary evidence(s) acceptable to the Government demonstrating the Tenderer's/its Performance Guarantor's authorisation and approval for, where applicable and as appropriate, (a) the submission of its Tender/executing the Performance Guarantee in the form as set out in Appendix G (subject to any amendments as may be required by the Government) in favour of the Government and (b) the Authorised Signatory(ies) to sign all the documents in

relation to its Tender (including the Form of Tender) on the Tenderer's behalf (as referred to in Paragraph 4.18 above)/to execute the Performance Guarantee and/or any other documents in relation thereto on the Performance Guarantor's behalf (**If the Tenderer/its Performance Guarantor is a Partnership**); and/or

- (III) documentary evidence(s) from each Joint Tenderer or each member comprising the Performance Guarantor demonstrating each Joint Tenderer/each member comprising the Tenderer's Performance Guarantor authorisation and approval for, where applicable and as appropriate (a) the submission of its Tender/executing the Performance Guarantee in the form as set out in Appendix G (subject to any amendments as may be required by the Government) in favour of the Government; (b) the person(s) duly authorised by each member of the joint venture to sign all the documents in relation to its Tender (including the Form of Tender) for and on behalf of each Joint Tenderer/to execute the Performance Guarantee and or any other documents in relation thereto for and on its behalf; and (c) the Authorised Signatory(ies) to sign all the documents in relation to its Tender (including the Form of Tender) on behalf of each Joint Tender (as referred to in Paragraph 4.18 above)/to execute the Performance Guarantee and/or any other documents in relation thereto on behalf of each Performance Guarantor, **together** with a certified copy of the joint venture agreement showing the requirements of executing documents by or on behalf of the joint venture (**If the Tenderer/its Performance Guarantor is a Joint Venture**).

For the avoidance of doubt, the name(s) of the Authorised Signatory(ies) shall be clearly stated in the aforesaid board resolution or documentary evidence (as the case may be) and shall be the same as shown in the Form of Tender/the Performance Guarantee (as applicable) and document(s) in relation thereto, failing which the Government reserves the power to seek clarification;

- (k) where a Tenderer/its proposed Performance Guarantor is not a company, a partnership, a joint venture, or a sole proprietorship, some of the information mentioned in the foregoing Sub-paragraphs of this Paragraph 12.3 may not apply and may not be available. The Government reserves the right to request such relevant information and documents in relation to the Tenderer/its Performance Guarantor to ascertain the identity of the Tenderer/its Performance Guarantor as well as to ensure that the submission of the Tender has been duly authorised and approved;
- (l) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer/its proposed Performance Guarantor; and
- (m) details of the Tenderer's/its proposed Performance Guarantor's Employee's Compensation Insurance Policy.

12.4 For the avoidance of doubt, in case the Tenderer/its Performance Guarantor is an unincorporated joint venture, the Tenderer/its Performance Guarantor shall submit details of each Joint Tenderer/each member of the joint venture comprising the Performance Guarantor as set out in Paragraphs 12.2 and 12.3 above. Such details shall be submitted under the name of each Joint Tenderer/each member of the joint venture comprising the Performance Guarantor. Each Joint Tenderer/each member of the joint venture comprising the Performance Guarantor is required to sign on all applicable parts of the Tender Documents, including but not limited to the Form of Tender and all the relevant Appendices to be submitted by the Tenderer as required in the Terms of Tender.

12.5 Where the Successful Tenderer is incorporated outside Hong Kong, it shall provide, within thirty (30) days from the date of notification of award, a legal opinion in English in the form and substance set out in Appendix H (with such other matters as the Government may require) with regard to the Successful Tenderer and the Contract. The legal opinion must be issued by a lawyer or a firm of lawyers duly qualified to practise the laws of the place where the Successful Tenderer is incorporated. The legal opinion must be addressed to, and issued for the benefit of, "The Government of the

Hong Kong Special Administrative Region”. The legal opinion must also be satisfactory to the Government in all respects. The Government may require the Successful Tenderer to provide additional legal opinion satisfactory to the Government in all respects issued by a lawyer or a firm of lawyers duly qualified to practise the laws of the place where the Successful Tenderer is incorporated on all and any other matters arising from its Tender or the Contract. In the event that it is impossible for the legal opinion to be made in English, the legal opinion must still be in the form and substance set out in Appendix H (with such other matters as the Government may require) but made in the official language of the place of incorporation of the Successful Tenderer. The Successful Tenderer shall also provide an English translation of the legal opinion certified to be a true, complete and accurate translation thereof by the lawyer or firm of lawyers preparing the legal opinion.

13. Security Deposit

13.1 Upon receipt of the notification of award under Paragraph 17 below, as security for the due and punctual performance of the Contract by the Successful Tenderer, the Successful Tenderer shall deposit with the Government, within thirty (30) days from the date of notification of award, an amount (“**Security Deposit**”) equivalent to:

- (a) where the Successful Tenderer (with its proposed Performance Guarantor) has passed the financial vetting referred to in Paragraph 11.1 above, six (6) months of the tendered monthly fixed rent proposed by the Successful Tenderer in its Rent Proposal or a lump sum of HK\$5,000,000 (Hong Kong Dollars Five Million only), whichever is greater; or
- (b) where the Successful Tenderer (with its proposed Performance Guarantor) fails the financial vetting referred to in Paragraph 11.1 above, twelve (12) months of the tendered monthly fixed rent proposed by the Successful Tenderer in its Rent Proposal or a lump sum of HK\$10,000,000 (Hong Kong Dollars Ten Million only), whichever is greater.

For the avoidance of doubt, the Tender Deposit provided by the Successful

Tenderer, if successfully cashed by the Government, shall be deemed to form part of the Security Deposit pursuant to Paragraph 9.3 above.

- 13.2 After deducting the Tender Deposit provided by the Successful Tenderer and cashed by the Government from the amount of the Security Deposit required under Paragraph 13.1 above, the Successful Tenderer shall pay the remaining balance of the Security Deposit either in cash or in the form of a banker's guarantee. If the Successful Tenderer elects to pay the balance of the Security Deposit by way of a banker's guarantee, the proposed guarantor and the form and substance of the banker's guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the banker's guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence issued under the Banking Ordinance (Cap. 155) and acceptable to the Government; and
 - (b) unless otherwise agreed by the Government, it must be on the terms set out in Appendix F; and any authorisation used by the bank for the execution of the banker's guarantee shall be acceptable to the Government.
- 13.3 Upon the Agreement being duly executed by the Government and the Successful Tenderer, the Security Deposit paid to the Government pursuant to the Tender Documents shall be deemed to form the "security deposit" payable under Clause 51 of the Agreement and shall be dealt with pursuant to the terms and conditions of the Agreement.
- 13.4 For the avoidance of doubt, if the Successful Tenderer fails or refuses to execute the Agreement or to act in accordance therewith or is in default of any provisions thereof or fails or refuses to pay the remaining balance of the Security Deposit pursuant to Paragraph 13.2 above or to provide the documents set out in Paragraph 17 below, the part of Security Deposit deemed to be formed by the Tender Deposit shall be absolutely forfeited by the Government. The forfeiture of that part of Security Deposit as aforesaid shall not prejudice any other rights or remedies of the Government under the Tender Documents or under any applicable law as

regards any costs, expenses, losses, damages or liabilities whatsoever which the Government may suffer, sustain or incur arising from or attributable to any breach, default, act, omission or negligence on the part of the Successful Tenderer.

14. Performance Guarantee

14.1 Upon receipt of the notification of award under Paragraph 17 below, as security for the due and punctual performance of the Contract by the Successful Tenderer, the Successful Tenderer shall submit to the Government, within thirty (30) days from the date of notification of award, a Performance Guarantee in the form and on the terms set out in Appendix G duly executed by its proposed Performance Guarantor. A Performance Guarantee in the form or on terms other than that as set out in Appendix G will not be accepted by the Government.

14.2 Where the proposed Performance Guarantor is incorporated outside Hong Kong, the Successful Tenderer shall submit to the Government within thirty (30) days from the date of notification of award, a legal opinion in English in the form and substance set out in Appendix H (with such other matters as the Government may require) with regard to the Performance Guarantor and the Performance Guarantee. The legal opinion shall be issued by a lawyer or a firm of lawyers duly qualified to practise the laws of the place where the Performance Guarantor is incorporated. The legal opinion shall be addressed to, and issued for the benefit of, “The Government of the Hong Kong Special Administrative Region”. The legal opinion must also be satisfactory to the Government in all respects. The Government may require the Successful Tenderer to provide additional legal opinion satisfactory to the Government in all respects issued by a lawyer or a firm of lawyers duly qualified to practise the laws of the place of incorporation of the Performance Guarantor on all and any other matters arising from the Performance Guarantor or the Performance Guarantee. In the event that it is impossible for the legal opinion to be made in English, the legal opinion must still be in the form and substance set out in Appendix H (with such other matters as the Government may require) but made in the official language of the place of incorporation of the Performance Guarantor. The Successful Tenderer shall also provide an English translation of the legal opinion certified to be a true, complete and accurate translation thereof by

the lawyer or firm of lawyers preparing the legal opinion.

15. Binding Period of Tender

- 15.1 A Tender must remain valid and open for acceptance on and subject to the terms and conditions set out in the Tender Documents for a period of two hundred and forty (240) days from the Tender Closing Date (“**Tender Validity Period**”).
- 15.2 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Paragraph 15.1 above, or if it rejects the Tender Validity Period prescribed in Paragraph 15.1 above, its Tender will not be further considered.

16. Basis of Acceptance

- 16.1 The Government is not bound to accept the highest rent Tender, the Tender with the highest combined score or any Tender submitted, and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period or to cancel the Tender exercise in case the proposed rent of the Tenderer with the highest combined score is, in the Government’s sole and absolute discretion, unreasonably low.
- 16.2 If a Tender is accepted, then until the Agreement and other relevant agreements (if any) are duly signed or executed, the Tender together with the Binding Proposal shall constitute a binding agreement and shall form part of the Contract between the Successful Tenderer and the Government. The said binding agreement shall be governed by and construed and enforced in accordance with the laws of Hong Kong.
- 16.3 All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate.

17. Award of Tenancy

17.1 The Successful Tenderer will, within the Tender Validity Period, receive a notification of award from the Government (such notification is referred to as “conditional acceptance of tender”). Tenderers who do not receive any notification within the Tender Validity Period may assume that their Tenders have not been accepted. The award of the Tenancy is subject to the condition that the Successful Tenderer will submit the following documents to the Government within thirty (30) days from the date of the notification:-

- (a) the Security Deposit as required under Paragraph 13.1;
- (b) a Performance Guarantee as required under Paragraph 14;
- (c) a legal opinion as required under Paragraph 12.5 if the Successful Tenderer is incorporated outside Hong Kong; and
- (d) a legal opinion as required under Paragraph 14.2 if the Performance Guarantor is incorporated outside Hong Kong.

17.2 Unless and save to the extent waived by the Government, only upon receipt of the documents specified in Paragraph 17.1 and the Government being satisfied with the contents of these documents, the Government will enter into the Agreement with the Successful Tenderer.

17.3 The Government has the right, in its sole and absolute discretion, to incorporate all or any of the Binding Proposals of the Successful Tenderer or part thereof into the Agreement, subject to such further changes as the Government may stipulate in exercise of its powers under the Tender Documents or as the parties may agree, and if the Government exercises such right, the Binding Proposals shall be deemed to be incorporated into and shall form part of the Agreement. The Successful Tenderer shall execute the Agreement within the time limit as specified by the Government. Any failure by the Successful Tenderer/Tenant to perform any Binding Proposal which have been incorporated into the Agreement shall constitute a breach of the Agreement, and the Government shall be entitled to take actions against the Successful Tenderer/Tenant in accordance with the provisions of the Agreement and applicable law.

17.4 In the event the Successful Tenderer fails to provide the documents specified in Paragraph 17.1 (unless and save to the extent they are waived by the Government), the conditional acceptance of tender will become void. The Government will disqualify the Tenderer concerned, and it may, but is not obliged to, award the Tenancy to another Tenderer. Without prejudice to the other rights and remedies of the Government, the disqualified Tenderer shall be liable to compensate the Government for the difference in the rent tendered in the Rent Proposal submitted by the disqualified Tenderer and that submitted by the eventual party whom will be awarded the Tenancy (whether appointed pursuant to this Invitation to Tender or another subsequent invitation to tender).

18. Complaint

The tendering process is subject to internal monitoring to ensure that the Tenancy is awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Commissioner who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of the Tenancy.

19. Cancellation of the Tender

The Government may at any time and without liability on the part of the Government, cancel this Invitation to Tender before or after the Tender Closing Time at the Government's sole and absolute discretion and the Government is not bound to give any reasons for the cancellation and is not in any way liable to compensate any persons (including the Tenderers) whatsoever. Without prejudice to such right of the Government, where there are any changes in the requirements of the Government after the Tender Closing Time for whatsoever reasons, the Government is not bound to consider any conforming Tender and reserves the right to re-issue or alter the terms of any of the Tender Documents, or withdraw this Invitation to Tender. Upon cancellation or withdrawal of this Invitation to Tender, if and when it considers fit, the Government may re-issue an invitation to tender for the Tenancy on such terms and conditions as the Government thinks fit.

20. Consent to Disclose

20.1 The Government may disclose, whenever it considers appropriate, to the public or any third party (whether upon request or otherwise) information on, without any further reference to or consent from the Successful Tenderer, any other Tenderer, member of the public (which may have been a Tenderer) without any further reference to or consent from the Successful Tenderer or any other Tenderer,

- (a) a brief description of the services provided or to be provided by the Successful Tenderer in accordance with the Contract (including the Agreement);
- (b) the identity of each of the Successful Tenderer and its parent company (if any) and the Performance Guarantor;
- (c) the amount of Monthly Fixed Rent and Annual Turnover Rent tendered and any other fees, cost and expense incurred by the Successful Tenderer pursuant to the Contract (including the Agreement);
- (d) the engagement by the Government of the Successful Tenderer under the Agreement and the name and address of each of the Successful Tenderer and the Performance Guarantor; and
- (e) the date of award of the Tenancy.

The Tenderers hereby waive and forego (and shall procure their respective Performance Guarantors to waive and forego) their right, if any, to make any claims against the Government or the Commissioner for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of any disclosure made by the Government or the Commissioner under this Paragraph 20.1.

20.2 Nothing in Paragraph 20.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not the information is specified in Paragraph 20.1 above and including information recorded in whatever

media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Paragraph 20.2(a) above);
- (d) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant);
- (e) 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 tribunal with competent jurisdiction; and/or
- (f) without prejudice to the power of the Government under Paragraph 20.1 above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

20.3 By submitting its Tender, the Tenderer gives consent to the Government (“**Consent**”) to obtain from:

- (a) any person whose particulars are provided or required to be provided by the Tenderer under the Contract; and
- (b) any issuing body of any test reports/ certificates or documentary evidence required under the Contract,

all information which the Government considers appropriate and relevant

for the enforcement and administration of the Contract, including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. In respect of the Successful Tenderer, the Consent shall be valid throughout the term of the Tenancy. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer and/or the Successful Tenderer undertakes that it can obtain such consent when required by the Government. Further, upon request by the Government, the Tenderer and/or the Successful Tenderer shall provide a written authorisation to the Government if such written authorisation is needed for the Government to obtain information and/or document(s) from the person or issuing body referred to in Sub-paragraphs (a) and (b) above. The Government has the sole discretion to disqualify the Tenderer if the Tenderer fails to provide such written authorisation upon request by the Government.

21. Personal Data Provided

- 21.1 All personal data provided in a Tender will be used by the Government for the purposes of this Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Tenancy, resolution of any dispute arising from this Invitation to Tender, and the disclosure pursuant to Paragraph 20 above.
- 21.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Paragraph 21.1 above, and/or the disclosure pursuant to Paragraph 20 above.
- 21.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 21.4 Enquiries concerning the personal data collected by means of this Invitation

to Tender, including the making of access and corrections, should be addressed to the Commissioner, 11/F, Hong Kong Li-Ning Building, 218 Electric Road, Fortress Hill, Hong Kong.

22. Warning Against Bribery and Warranty Against Collusion

22.1 The offer of an advantage to any public officer with a view to influencing the award of the Tenancy is an offence under the Prevention of Bribery Ordinance (Cap. 201) and Tenderers shall not, and shall ensure that their officers (including directors), employees, agents and their employees shall not, offer or give any gratuity, bonus, discount, bribe, loan or advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) of any sort to any officer, agent or employee of the Government. Any breaches of or non-compliance with this paragraph by a Tenderer shall, without limiting the Tenderer's liability for such breach or non-compliance, invalidate its Tender as null and void, and if the Tenancy has been awarded to the Tenderer without knowing the breach, the Government shall be entitled to immediately terminate the Tenancy and the Contract (including the Agreement) and claim for all losses, expenses, charges and costs that may arise out of or in consequence of the termination or the breach. The Successful Tenderer shall inform its officers, directors, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Successful Tenderer's obligations in accordance with the Contract (including the Agreement) which include without limitation, the operation and management of the Cruise Terminal, that the offering, soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The Successful Tenderer shall also caution its officers, directors, employees and agents and sub-contractors against soliciting or accepting any entertainment which may impair their impartiality in relation to the execution of the Contract (including the Agreement).

22.2 The Tenderer must ensure that the Tender 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 Tendering Certificate referred to in Paragraph 22.3 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently

anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

22.3 The Tenderer shall complete and submit to the Government a Non collusive Tendering Certificate (in the form set out in Appendix L) as part of its Tender.

22.4 (a) By submitting a Tender, the Tenderer represents and warrants that in relation to the Tender:

- (i) it/he has not communicated and will not communicate to any person other than the Government its/his Rent Proposal;
- (ii) it/he has not fixed or adjusted and will not fix or adjust its/his Rent Proposal by arrangement with any person;
- (iii) it/he has not made and will not make any arrangement with any person as to whether it/he or that other person will or will not submit a Tender;
- (iv) it/he has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tender process; and
- (v) it/he has not prepared its Tender with any agreement, arrangement, communication, understanding, promise or undertaking with any other person regarding without limitation, its/his Rent Proposal, Technical Proposal or any terms of the Tender.

(b) In the event that the Tenderer is in breach of any of the representations and/or warranties in Paragraph 22.4(a) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (i) reject the Tender;

- (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (iii) if the Government has entered into the Contract (including the Agreement) with the Tenderer, terminate the Contract (including the Agreement).
- (c) The Tenderer shall fully indemnify and keep the Government fully indemnified against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Paragraph 22.4(a) above or in the Non-collusive Tendering Certificate submitted by the Tenderer under Paragraph 22.3.
- (d) Paragraph 22.4(a) shall have no application to the Tenderer's communications in strict confidence with its/his own insurers or brokers to obtain an insurance quotation for computation of the Rent Proposal, or with its professional advisers, consultants or contractors to solicit their assistance in preparation of tender submission.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in Paragraph 22.4 above or in the Non-collusive Tendering Certificate submitted by it under Paragraph 22.3 above may prejudice its future standing as a Tenant, Government contractor or service provider.
- (f) The rights of the Government under Paragraphs 22.4(b), (c) and (e) above are in addition to and without prejudice to any other rights or remedies against the Tenderer at law or otherwise.

22.5 Tenderers shall not employ officers and employees in the Government's service for whatever purpose relating to the tender submission and the Tenancy.

23. Proprietary Information

A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed by the Government in

accordance with Paragraph 27 below. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from this Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

24. Disqualification of Tenders

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

- (a) a tender that (i) varies or modifies (or directly or indirectly attempts to vary or modify) any provisions of the Tender Documents (including any requirements and instructions set out in the Form of Tender, the Terms of Tender or Appendices) and/or (ii) precludes or limits (or directly or indirectly attempts to preclude or limit) the effect of any provisions of the Tender Documents;
- (b) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the award of the Tenancy or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer;

- (c) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (d) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person (“**IPR infringement**”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Tenancy award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Tenancy award;
- (e) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Tenancy, the Tenderer or a related person of the Tenderer (as defined in Paragraphs 24.6 and 24.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Tenancy) has committed significant or persistent default(s) or deficienc(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficienc(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided

that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied (“**Contract Default(s)**”); and the Government Representative in its sole and absolute discretion considers that such Contract Default(s) casts a doubt on the capability of the Tenderer to perform the Contract (including the Agreement) to be awarded in this Invitation to Tender;

- (f) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Tenancy award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Tenancy award;
- (g) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Tenancy award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice;
- (h) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Tenancy award;
- (i) the Government considers that the Tenderer will not be capable of fulfilling the terms of the Contract (including the Agreement);
- (j) the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the disqualification is necessary in the interest

of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety; and/or

- (k) the Government considers that it is in the public interest to disqualify any Tenderer.

The grounds specified in Paragraphs 24.1(a) to 24.1(k) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

24.2 For the purposes of Paragraph 24.1 above, each Tenderer shall provide at the time of submission of its Tender (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 in relation to itself and its related person or its director or management staff (which it has knowledge and is relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Paragraph 24.1(b) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Paragraph 24.1(d) above;
- (c) details of all Contract Defaults as mentioned in Paragraph 24.1(e) above;
- (d) details of conviction as mentioned in Paragraph 24.1(f) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Paragraph 24.1(g) above; and
- (f) details of any failure to pay taxes as mentioned in Paragraph 24.1(h) above.

If none of the events as mentioned in Paragraphs 24.1(a) to 24.1(k) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant

part of the Information Schedule in the form set out in Appendix C at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Paragraph 24.3 below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 24.3 In addition to the information mentioned in Paragraph 24.2 above, the Government reserves the right (but not obligation) to request from a Tenderer, proposed sub-contractor, customer or client of the Tenderer, a related person (as defined in Paragraphs 24.6 and 24.7 below) of the Tenderer, or a director or management staff of the Tenderer or those of the related person (as defined in Paragraphs 24.6 and 24.7 below) of the Tenderer, or any other person or independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Paragraph 24.1 above.
- 24.4 If the Tenderer fails to comply with the request made by the Government pursuant to Paragraph 24.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Paragraph 8 above. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Paragraph 24.1(c) above.
- 24.5 In providing the information required under Paragraphs 24.2 and 24.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Paragraph 24.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract (including the Agreement) to be awarded in this Invitation to Tender. In such event, the Government shall have the sole and absolute discretion to determine whether it is satisfied that no doubt has been cast on the fitness, propriety or capability of the Tenderer to perform the Contract (including the Agreement).
- 24.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:

- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer (“**majority shareholder**”);
- (b) a holding company or a subsidiary of the Tenderer;
- (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
- (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

24.7 If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:

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

24.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-paragraph of Paragraph 24.1 above include persons who were in such capacity at such time of the event referred to in that Sub-paragraph.

24.9 All Tenderers and the respective related persons, directors, officers, staff, employees, agents, contractors, sub-contractors (“**Relevant Persons**”) of

the Tenderers shall observe and comply with the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region and all applicable laws of Hong Kong in relation to the safeguarding of national security (including any amendments thereto from time to time).

- 24.10 Notwithstanding anything to the contrary in this Invitation to Tender, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer or its principal (if any) or any of its Relevant Persons has engaged, is engaging, or is reasonably believed to have engaged or to be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the disqualification is necessary in the interest of national security, or is necessary to protect the public interest, public morals, public order or public safety of Hong Kong. For the avoidance of doubts, the word “engage” or its variants in this Paragraph 24.10 shall include but not be limited to aiding, abetting, counselling or procuring. The decision of the Government to disqualify the Tenderer shall be final, conclusive and binding on the Tenderer.
- 24.11 The Government may terminate the Contract (including the Agreement) immediately at any time without compensation or liability to the Successful Tenderer or any other person whomsoever if the Successful Tenderer or any of its Relevant Persons has engaged, are engaging, or is reasonably believed to have engaged or to be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise termination is necessary in the interest of national security, or is necessary to protect the public interest, public morals, public order or public safety of Hong Kong, or which would otherwise be contrary to the interest of national security. The decision of the Government to terminate the Contract (including the Agreement) shall be final, conclusive and binding on the Successful Tenderer.

25. Tender Addenda

The Government may issue addendum or supplementary information to the Tender Documents. Any addenda, or supplementary information or changes to the Tender Documents will be notified and posted to the

Website. The Tender Documents shall be taken as having amended, clarified or adjusted accordingly upon the issue of these addenda. Tenderers are advised to check the Website regularly. The Website is not a guaranteed secured site and no representation, warranty or undertaking is given by the Government as to the accuracy or completeness of the information posted there. If Tenderers experience any difficulty in accessing the Website or are in doubt as to the security of the Website, assistance may be sought in writing from the Commissioner.

26. Cost of Tender

Each Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender and the doing of all acts required for the purpose of this Invitation to Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the Government, (b) site walk, visits or surveys made by the Tenderer, (c) presenting the Tenderer's reference sites and equipment to the Government Representative during the site walk, visits or surveys and (d) provision of tender samples, whether before or after the Tender Closing Time.

27. Tender Documents of Unsuccessful Tenderers

Tenderers shall note that the documents of any unsuccessful Tenderer will be destroyed after a period of three (3) months following the date of the execution of the Agreement. In no circumstances will documents be returned to unsuccessful Tenderers.

28. Licence, Permit and Certificate

- 28.1 The Successful Tenderer will be required to comply with all applicable statutory provisions and requirements pertaining to the occupation and use of the Premises for the operation of the Cruise Terminal and other requirements as set out under the Agreement by 1 June 2028 (or such other date to be specified by the Commissioner for Tourism). The grant of the Tenancy does not confer any exemption from complying with the necessary

licensing requirements pertaining to the operation of the Cruise Terminal. Tenderers shall obtain their own professional advice as to the application, scope and effect of such statutory provisions and requirements.

28.2 The Successful Tenderer shall at its own costs and expense be responsible for obtaining all licences, permits and certification required by law or any competent authorities for the operation of the Cruise Terminal.

28.3 For the avoidance of doubt, execution of the Contract (including the Agreement) shall not be taken as agreement on the part of the Government that any approval, permit, consent or licence required under any legislation in connection with the occupation or use of the Premises and for the operation of the Cruise Terminal will be given. No claim shall be made against the Government in respect of the Successful Tenderer's inability or failure to obtain any such approval, permit, consent or licence nor shall the Government's rights and remedies under or pursuant to the Contract (including the Agreement) be in any way affected by reason thereof. The Successful Tenderer enters into the Contract (including the Agreement) entirely at its own risk.

29. Tenderer's Enquiries

29.1 Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be made in writing and shall be submitted to the Government not later than fourteen (14) working days before the Tender Closing Date. The request shall be submitted in the manner specified in Paragraph 32.1 below. Any enquiries in relation to this Tender should be addressed to the Tourism Commission by writing to 11/F, Hong Kong Li-Ning Building, 218 Electric Road, Fortress Hill, Hong Kong (fax no.: 3848 4126); or by e-mail to ktcttenderenquiry@cstb.gov.hk.

29.2 Answers to the enquiries will be placed on the Website. The Government reserves the right to disclose in full or in part the contents of these enquiries and the answers given without the need to seek the prior agreement of the enquirers.

29.3 After lodging a Tender with the Government, the Tenderer shall not

attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.

29.4 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 potential Tenderer 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 Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

29.5 Any statement or disclosure mentioned in Paragraph 29.4 above shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions in the Tender Documents. The Government will not accept any liability in respect of the adequacy, accuracy and completeness of or otherwise arising out of or in relation to any statement, disclosure or action taken by its officers.

30. Tender Pre-submission Briefing and Site Walk Sessions

30.1 A tender pre-submission briefing session will be held on 20 January 2026. Tenderers are strongly recommended to attend this briefing session. Tenderers who would like to attend the briefing session should complete and return the registration form as detailed in Appendix M. Tenderers may choose to attend the briefing session either online (via live video conference) or in person.

30.2 The date and time of the briefing session is subject to change at the sole discretion of the Government.

30.3 Any information given at the briefing session should not be taken as varying the information and/or the terms and conditions contained in the Tender Documents unless subsequently confirmed in writing by the

Government.

- 30.4 In addition to the briefing session, a separate site walk along a designated route at the Cruise Terminal may be arranged. If Tenderers intend to attend the site walk, such Tenderers shall make a written request to the Tourism Commission by e-mail (e-mail address: ktctpresubbriefing@cstb.gov.hk) or fax (fax no: (852) 3848 4126) on or before 21 January 2026 for making necessary arrangements. Each Tenderer may only enrol for the site walk once. Late registration may not be accepted.

31. Tender Negotiations

The Commissioner reserves the right to negotiate with any Tenderer in relation to the Tenderer's Tender and/or conditions of the Contract (including the Agreement).

32. Communication with the Government

- 32.1 Without prejudice to the requirements set out in Paragraph 17 above concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to this Invitation to Tender shall be in writing and sent or delivered to the other Party at the address, facsimile number or email address specified in the Form of Tender, save that in the case of lodging any enquiries under Paragraph 29, the Tenderer shall lodge such enquiries by post, by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Form of Tender and should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Tenancy. For the avoidance of doubt, all communications in relation to the tender pre-submission briefing and the site walk sessions shall be in writing and sent at the email address as set out in Appendix M.
- 32.2 All communications in relation to this Invitation to Tender shall be conducted directly between the Government and the Tenderer unless the Government elects to contact any proposed sub-contractor, customer or client of the Tenderer, related person (as defined in Paragraphs 24.6 and

24.7 above) of the Tenderer, director or management staff of the Tenderer or those of the related person (as defined in Paragraphs 24.6 and 24.7 above) of the Tenderer or any other person directly.

33. Innovative suggestions

33.1 The Government reserves the right to refuse acceptance of any proposal or innovative suggestion submitted in Appendix K (II) as per Assessment Criteria 6 and 7 to the Marking Scheme by reason that it is inconsistent with or does not comply with any requirement of the Terms of Tender or for any other reason which the Government shall at its sole and absolute discretion decide or consider proper. The decision by the Government as to whether to accept or refuse a proposal or an innovative suggestion shall be final and conclusive and shall be binding on the Successful Tenderer. The Successful Tenderer will be notified in writing by the Commissioner the innovative suggestions that are accepted by the Government (“**Accepted Innovative Suggestions**”) which shall, subject to Paragraph 17.3, be deemed to be incorporated into and form part of the Agreement.

33.2 Any failure to perform the Accepted Innovative Suggestions will constitute a breach of the Agreement, and the Government will be entitled to take actions against the Successful Tenderer/Tenant in accordance with the provisions of the Agreement and applicable law (e.g. claiming damages and/or termination of the Agreement).

34. Dispute Resolution

34.1 Notwithstanding anything to the contrary herein, the Tenderers and the Government shall first refer any dispute or difference arising out of or in connection with the Tender Documents to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

34.2 If the said dispute or difference is not settled by mediation according to Paragraph 34.1 above, the Tenderers or the Government may institute litigation in respect of the said dispute or difference. The Tenderers and the Government agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

35. New Information

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

36. Tenant's Performance Monitoring

If a Tenderer is awarded the Tenancy, its subsequent performance of the Contract will be monitored and may be taken into account when its future offers for other tenders or quotation exercises are evaluated.

37. Site Visits

- 37.1 For the purposes of evaluating whether the Tenderer will be capable of performing the Contract, the Government may, at its own costs, conduct site visit(s) to any premises (including the premises of the Tenderer (including its registered office and warehouse)) and/or the premises of the Tenderer's sub-contractor, with or without prior notice, whether by the Government Representative or any person appointed by the Government. The Tenderer shall make all necessary arrangements to facilitate such site visit(s) and shall complete the contact details including the address(es) of its office and/or sub-contractor's office (if any), facsimile number and email address when completing the Form of Tender.
- 37.2 The making of any such site visit does not imply that the Tenderer will be awarded the Contract.