

**Mega Events Fund Agreement**  
**(For events supported under Tier-two of the funding scheme)**

THIS AGREEMENT is made on *[Date]* between:

- (1) The GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION as represented by the Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) (“**Government**”); and
- (2) The bodies whose names and other details are set out in paragraph 1 of **Schedule 1** (“**Grantee**”).

**WHEREAS**

- (a) The Government has set up a Mega Events Fund (“**MEF**”) in 2009. In April 2012, the Government has obtained funding approval from the Finance Committee of the Legislative Council for a new allocation of HK\$150 million to extend the operation of the MEF for five years under a two-tier scheme. Tier-two of the MEF scheme aims to provide funding support to assist local non-profit-making organizations to host attractive arts, cultural, sports and entertainment events in Hong Kong for the period up to 31 March 2017 to further promote Hong Kong as the “Events Capital of Asia”.
- (b) On *[Date]*, the Grantee submitted an application form in respect of the Project (including all its appendices, attachments and supplements) to the Assessment Committee and Government. On *[Date(s)]*, the Grantee submitted revisions and supplements to the Assessment Committee and Government. A copy of such application form (including all the appendices, attachments, supplements and revisions in relation to the application submitted by the Grantee on or after *[Date]* to the Assessment Committee and Government) approved and accepted by the Government) is annexed at the **Appendix** (as may be further modified, revised, amended or supplemented by the Government from time to time) (“**Application Form**”).

Subject to the terms and conditions contained in this Agreement:-

- (i) the proposal set out in the Application Form is approved and accepted by the Government (“**Approved Project Proposal**”);
- (ii) and in particular, subject to all the conditions stipulated in **Schedules 1 and 2**, and in the payment arrangement set out in **Schedule 3**, the Government has approved the provision of a maximum sum of Hong Kong Dollars (**HK\$**)[*MEF maximum amount*] only under Tier-two of the MEF scheme to the Grantee for carrying out and completion of the Approved Project Proposal to the satisfaction of the Assessment Committee, PSCIT and Government. All the expenditure items of the Approved Project Proposal are budgeted in the Application Form (“**Approved Budget**”); and
- (iii) the Government has agreed to grant, and the Grantee has agreed to accept the Funds upon the following terms and conditions.

IT IS AGREED as follows:

## **1. Definitions**

1.1 In this Agreement, unless the context requires otherwise or expressly provides otherwise, the following expressions shall have the following meanings respectively:

“Agreement” means this agreement, including all schedules and the appendix hereto and MEF Application Guide (for funding support under Tier-two), all of which shall form and be read as an integral part of this agreement.

“Approved Date of Completion of the Project” means the date set out in paragraph 4 of **Schedule 1** or such other date as the parties may agree in writing.

“Assessment Committee”	means the MEF Assessment Committee.
“Associate”	of any person means: <ul style="list-style-type: none"> <li>(a) a Relative or partner of that person; or</li> <li>(b) any body of persons (corporate or unincorporate) one or more of whose Directors is in common with one or more of the Directors of that person.</li> </ul>
“Associated Person”	in relation to another person means: <ul style="list-style-type: none"> <li>(a) any person who has Control, directly or indirectly, over the other; or</li> <li>(b) any person who is Controlled, directly or indirectly, by the other; or</li> <li>(c) any person who is Controlled by, or has Control over, a person at (a) or (b) above.</li> </ul>
“Audited Account”	means any statement of account in respect of the Project containing an income and expenditure account and a balance sheet, prepared in accordance with the relevant laws of Hong Kong and the accounting standards as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards and Accounting Guidelines as the Hong Kong Institute of Certified Public Accountants may issue and update from time to time) and duly audited, dated, signed and certified as being accurate and complete by an independent Certified Public Accountant (Practising) registered under the Professional Accountants Ordinance (Cap. 50) who is not in any way connected with the Project and the Grantee.

“Commencement Date”	means the date of this agreement.
“Completion of the Project”	means completion of the Project to the satisfaction of the Assessment Committee, PSCIT and Government.
“Control”	<p>in relation to another person means the power to secure:</p> <p>(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</p> <p>(b) by virtue of any 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</p> <p>(c) by virtue of holding office as a Director in that or any other person;</p> <p>that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.</p>
“Deputy Project Co-ordinator”	means the deputy project co-ordinator employed or engaged by the Grantee to carry out the Project including as of the date hereof the individual named in paragraph 2 of <b>Schedule 5</b> .
“Director”	means any person occupying the position of director by whatever name called, including a de facto or shadow director and any person in charge of the day-to-day management or operation of a body of persons (corporate or unincorporate).

- “Director of Audit” means the Director of Audit appointed pursuant to the Audit Ordinance (Cap. 122).
- “Equipment” means the equipment, instrument or machinery listed as Equipment stated in the Application Form and approved by the Government to be procured with the Funds.
- “Evaluation Report” means the final post-event evaluation report which details the Project Result (in such form as the Government may prescribe) to be submitted by the Grantee pursuant to this Agreement.
- “Event of Default” means any event described in Clauses 19.1(a) to 19.1(q).
- “Force Majeure” means:
- (a) any supervening outbreak of war affecting Hong Kong (whether war be declared or not), hostilities, invasion, acts of foreign enemies, rebellion, terrorism, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government, civil war, riot, civil disturbances, fire, civil commotion and acts of God; or
  - (b) influenza pandemic or Severe Acute Respiratory Syndrome affecting Hong Kong; or
  - (c) any supervening catastrophic event which is similar to the foregoing;
- and which (1) is not caused or contributed to by the Grantee, its Associates or Associated Persons or any employee or agent or ex-employee or ex-agent thereof and (2) prevents the performance of the Grantee’s duties and obligations under this Agreement.

“Funds”	means the approved grant under MEF, up to the maximum sum stated in paragraph (ii) of the recitals on page 2 of this Agreement, provided to the Grantee, on and subject to the terms and conditions of this Agreement.
“HK” or “Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“HK\$” or “Hong Kong Dollars”	means Hong Kong Dollars, the lawful currency of Hong Kong.
“ICAC”	means the Independent Commission Against Corruption.
“Income”	means all income generated from the Project, including Interest and funding from the Grantee and from other sources (such as contributions or sponsorships from third parties).
“Insurance Policy”	means any or all insurance policies referred to in Clause 17.
“Interest”	means all interest accrues or shall accrue to the Project Account.
“IPRs”	means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wheresoever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the grant of any such rights.

“MEF Application Guide”	means the publication “Mega Events Fund Guide to Application (for Funding Support under Tier-two)” published at the Tourism Commission’s website <a href="http://www.tourism.gov.hk">http://www.tourism.gov.hk</a> (including all its subsequent amendments and supplements as the Government may make from time to time).
“New Project”	has the meaning ascribed to it in Clause 14.3.
“Operating Surplus”	means the surplus of the Project described in Clause 14.2.
“OSO”	means the Official Secrets Ordinance (Cap. 521).
“PBO”	means the Prevention of Bribery Ordinance (Cap. 201).
“PDPO”	means the Personal Data (Privacy) Ordinance (Cap. 486).
“Potential Event of Default”	means any event which would become (with the passage of time or the giving of notice or both) an Event of Default.
“Progress Report”	means all or any progress reports (in such form as the Government may prescribe) to be submitted by the Grantee pursuant to this Agreement.
“Project”	means the project in respect of organizing the [ <i>description of the event</i> ] and performing and providing all tasks, services and duties, as detailed in the Approved Project Proposal.
“Project Account”	means the account referred to in Clause 11.1.
“Project Co-ordinator”	means the project co-ordinator employed or engaged by the Grantee to carry out the Project including as of the date hereof the individual named in paragraph 1 of <b>Schedule 5</b> .

- “Project Cost” means the total actual expenses (in Hong Kong Dollars) incurred by the Grantee to carry out and complete the Approved Project Proposal to the satisfaction of the Assessment Committee, PSCIT and Government in accordance with the expenditure items in the Approved Budget.
- “Project Materials” means all deliverables, reports, works of authorship, training manuals, equipment, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, plans, models, analyses, studies, technical notes, information papers, opinions, comments, specifications, formulae, works of authorship, scripts, screenplay, music, lyrics, songs, soundtracks, sound recordings, diagrams, drawings, animated drawings, storyboards, pictures, films, images, set and costume designs and other designs, artworks, expression of ideas or information, themes, plots, stories, characterizations, dialogue, writings, rewrites, changes, additions, deletions, titles, subtitles, translation, synchronizations, doubling, dubbing, performance, models, documents, and other things and materials collected, compiled, developed, written, prepared, produced, created or supplied by the Grantee, the Project Co-ordinator, the Deputy Project Co-ordinator, the Directors, employees, agents, contractors or sub-contractors (whether individually or jointly with the Government) in relation to the Project or in the course of carrying out the Project or for the purpose of this Agreement, including all pre-contractual and contractual documents thereof, which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above.



“Project Result”	means the outcome of the Project as evaluated and measured against the Project’s Key Performance Indicators, approved performance deliverables, objectives, targets and key milestones of the Project and any other additional conditions of the above as specified in <b>Schedule 2</b> .
“Project Team”	means the team of officers, agents or employees of, or the consultants to, the Grantee and/or its contractors and sub-contractors employed or engaged to carry out the Project.
“PSCIT”	means the Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) of the Government, or any public officer authorized by him to act on his behalf in relation to this Agreement.
“Publicity Report”	means the publicity report which keeps all the publicity materials and media coverage summary, both local and non-local in relation to and arising from the Project (in such form as the Government may prescribe) to be submitted by the Grantee pursuant to this Agreement.
“Relative”	means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and of any step parent.
“Reserved Fund”	means the Operating Surplus approved for retaining in the Project Account in accordance with Clause 14.
“Secretariat”	means the MEF Assessment Committee Secretariat.

“Sponsor”	means the third party sponsors or donors who have agreed to support the Project by making contribution thereto in the manner as provided in the Application Form, or in the manner as secured by the Grantee.
“Sub-contractors”	includes sub-contractors at all tiers of sub-contracting.
“Survey Report”	means the survey report which contains the feedback for the Project as obtained from participants and spectators of the Project and from key stakeholders including the participating players or performers and organizations, the Hong Kong Tourism Board (HKTB), tourism and travel trade operators and other related operators, through an independent survey arranged to be conducted by the Grantee during the term of this Agreement, such report shall be in such form as the Government may prescribe and submitted by the Grantee pursuant to this Agreement.
“Third Party Materials”	means any Project Materials in respect of which any IPRs therein are vested in a third party.
“Use”	means to use or exploit in whatever manner, including doing the “acts restricted by the copyright” within the meaning of sections 22 to 29 of the Copyright Ordinance (Cap. 528).

1.2 In this Agreement, except where the context otherwise requires:

- (a) headings to Clauses are for reference only and do not affect the interpretation of this Agreement;
- (b) a reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, substituted, re-enacted or replaced (whether before or after the date of this Agreement) and including all subsidiary legislation from time to time made under it;

- (c) any act, default, neglect or omission of any Director, employee, licensee, agent, contractor or sub-contractor of either party hereto shall be deemed to be the act, default, neglect or omission of that party;
- (d) words denoting the singular shall include the plural and vice versa; words denoting any gender shall include the other genders; references to any person shall include references to an individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (e) words importing the whole shall be treated as including a reference to any part of the whole;
- (f) the words “include” and “including” shall be construed without limitation to the words following; and
- (g) all references to “any” shall be construed to mean “any and all”.

1.3 Any agreement, consent or approval to be given by the Assessment Committee, PSCIT or Government may be given or withheld in its discretion, and subject to any conditions as the Assessment Committee, PSCIT or Government may consider appropriate, must be given before the act or matter or thing for which agreement, consent or approval is required to be effective. Failure by the Assessment Committee, PSCIT or Government to give any agreement, consent or approval shall be deemed a denial or refusal.

1.4 Except as expressly provided otherwise, all obligations to be performed by the Grantee under this Agreement shall be performed at the cost and expense of the Grantee.

1.5 If there is any conflict, inconsistency, ambiguity or repugnance between Clauses 1 to 30, the Schedules and Appendix of this Agreement and the MEF Application Guide, Clauses 1 to 30, the Schedules and Appendix of this Agreement shall prevail.

1.6 Notwithstanding any other provisions of this Agreement, each representation and warranty by the Grantee and each declaration, agreement, undertaking and covenant by and the obligation of the Grantee under this Agreement:

- (a) shall be joint and several;
- (b) is deemed to have been given by the Grantee jointly and severally; and
- (c) shall be binding on the Grantee jointly and severally.

## **2. Commencement and Completion of the Project**

2.1 This Agreement shall commence on the Commencement Date and shall expire on the Completion of the Project unless this Agreement is earlier determined or extended pursuant to the provisions of this Agreement, or the Government agrees otherwise.

2.2 The Grantee shall carry out the Project on or before the Approved Date of Completion of the Project, of which time shall be of the essence, unless the Government agrees otherwise.

## **3. Grantee's Obligations, Warranties, Undertakings and Indemnity**

3.1 In consideration of the Government agreeing to grant the Funds, the Grantee shall:

- (a) carry out and complete the Project and deliver the Project Result to the satisfaction of the Assessment Committee, PSCIT and the Government in accordance with the terms and conditions of this Agreement and any directive, advice and opinion relating to the Project as may from time to time be given by the Assessment Committee, PSCIT or the Government in writing;
- (b) deliver and make available the Audited Accounts, Progress Report, Evaluation Report, Publicity Report, Survey Report and Project Result to the satisfaction of the Assessment Committee, PSCIT and the Government in accordance with the terms and conditions of this Agreement;

- (c) secure and make available evidence of contribution and deliver the secured contribution from the Grantee and/or from Sponsor and/or from other sources, which shall amount to not less than 50% of the Project Cost, and that the Grantee shall apply all Income to offset the expenditures of the Project, to the satisfaction of the Assessment Committee, PSCIT and the Government; and
- (d) grant a licence in respect of the IPRs relating to and arising from the Project Materials (including Third Party Materials) to the Government and/or any other persons in accordance with the terms and conditions of this Agreement, and the Grantee shall deliver the Project Materials to the Government.

3.2 The Grantee hereby warrants and undertakes and with continuing effect that:

- (a) the Project shall be carried out and completed in an impartial, timely and diligent manner and the Grantee, the Project Co-ordinator, the Deputy Project Co-ordinator, the Grantee's Directors, employees, agents, contractors and sub-contractors who are engaged to carry out or otherwise involved in the Project have all the necessary experience, skill and expertise to carry out the Project on the terms and conditions set out in this Agreement;
- (b) all information supplied, and statements and representations made by or on behalf of the Grantee in relation to the Project, the Approved Project Proposal, the Approved Budget or this Agreement are true, accurate and complete in all respects;
- (c) it shall forthwith notify and seek the prior written consent of the Assessment Committee and PSCIT in writing if there is any material change to any information provided in the Approved Project Proposal or any matters in relation to this Agreement subsequent to the signing of this Agreement, including whether the Grantee has secured any source of Income for the Project (other than those set out in the Application Form) or commits to any sponsorship or donation particularly where such sponsorship or donation may bring the image of the Assessment Committee and the Project into disrepute; any changes to the financing arrangements of the Project (including change of the major sponsors and the amount of contributions, the Project's operational plan and budget, sales estimates, cash-flow schedule);

change of implementation timetable, size or scope of the Project, content or nature of the Project, or change to the Approved Budget, cash-flow projection; or change of the objects, not-for-profit operation, registration status, business, nature, ownership, management or control of the Grantee and in particular there is any change of Directors or shareholders or other key personnels of the Grantee or the Project Team;

- (d) subject to the additional funding conditions (items (c) and (d) in **Schedule 2**), it shall not charge any expenses of the Project incurred prior to the Commencement Date to the Funds without prior written approval of the Secretariat;
- (e) it shall not charge any expenses of maintaining the Grantee's own operation or administration, including the cost for setting up or refurbishing an administration office, water and electricity bills, entertainment fees incurred by any members or staff of the Grantee, general administrative cost, legal and insurance fees to the Funds;
- (f) it shall carry out its obligations in accordance with the terms and conditions of this Agreement (including the Approved Project Proposal) and any directive, advice or opinion relating to the Project as may from time to time be prescribed by the Assessment Committee, PSCIT or the Government in writing;
- (g) it shall apply the Funds directly, solely and exclusively for the purpose of carrying out the Project and in accordance with the terms and conditions of this Agreement (including all additional conditions imposed in **Schedules 1 and 2**);
- (h) it shall account for all Income and apply all such Income to offset the expenditures in respect of the Project in accordance with this Agreement and any directive, advice and opinion as the Assessment Committee, PSCIT or Government may issue from time to time;
- (i) it shall, upon request, permit members of the Assessment Committee, Secretariat, Director of Audit, PSCIT and any of their authorized representatives to enter at all reasonable times into and upon any premises of or controlled by the Grantee (including its Directors, employees, agents or

any persons acting on its behalf) where any documents or records (including electronic records) pertaining to the Project is kept or any item arising out of the Project is experimented, manufactured, produced, displayed or stored by the Grantee, for the purpose of inspection or copying or for verifying the accuracy of any information given by the Grantee or otherwise verifying that the Grantee has complied with its obligations under this Agreement;

- (j) it shall maintain the original invoices and bills in respect of the Project and shall produce them for inspection as and when required by the Assessment Committee, Secretariat, Director of Audit, PSCIT and any of their authorized representatives;
- (k) it shall permit members of the Assessment Committee, Secretariat and Government or their authorized representatives to participate in progress review or organizing committee meetings relating to the Project, to attend the events organized under the Project and/ or any related activities to examine the progress of the Project, and to conduct visits to all relevant venues in respect of the Project; and that it shall permit and assist the Assessment Committee, Secretariat and Government or their authorized representatives to verify the number of staff employed for the Project and the number and market prices of the Equipment deployed for the Project or for the events and activities of the Project being visited;
- (l) it shall permit members of the Assessment Committee, Secretariat and Government or their authorized representatives to record their observations during the visits to any events and activities of the Project; and it shall further accept and agree that such observations will be taken into account by the Government in determining whether or not to exercise its rights under Clause 15.3 of this Agreement;
- (m) it shall use the Equipment purchased by the Funds solely and exclusively for the purpose of carrying out the Project; hold, operate and use the Equipment in a proper way; and keep and maintain the same at all times in good repair and condition, fair wear and tear excepted;
- (n) it shall promptly pay the Funds and all other receipts relating to the Project (including the contributions from the Grantee and/or from all Sponsor and/or from any other sources, the Income and all sale proceeds from all Equipment

disposed of) into the Project Account, cause all payments relating to the Project to be paid out of the Project Account and ensure that all receipts and payments in respect of the Project are properly and timely recorded;

- (o) it shall return to the Government any Operating Surplus and residual Funds of the Project (as the Government may determine in its sole discretion) in accordance with the provisions of this Agreement;
- (p) it shall accept liabilities for all deficits arising from the Project. It shall immediately inform the Secretariat if it foresees that the expenditures of the Project will exceed the Approved Budget by whatever amount;
- (q) it shall not mortgage, charge or otherwise encumber its interests, rights or benefits to receive the Funds or the Equipment or part with possession, transfer or dispose of the Equipment without PSCIT's prior written consent;
- (r) it shall comply in all respects, including the giving of all notices, the paying of all fees and the obtaining of all consents and approvals, with the provisions of all legislation, regulations and by-laws affecting or in any way relating to the Project;
- (s) the Project and all advertising, marketing, promotional and publicity materials relating thereto shall not contravene any legislation, regulations or by-laws or undermine public health or moral;
- (t) the obligations expressed to be assumed by the Grantee in this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof;
- (u) the execution of this Agreement and the exercise of its rights and performance of its obligations under this Agreement do not and shall not (i) contravene any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets; (ii) conflict with any judicial order or any applicable law. It has the power to enter into this Agreement and all action required to authorize the execution of this Agreement and the performance of its obligations under this Agreement has been duly taken;



- (v) it is able to pay its debts as they fall due and has not commenced negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or made a general assignment for the benefit of or a composition with its creditors;
- (w) no actions or steps have been taken or legal proceedings have been started or threatened against the Grantee for its winding up, dissolution, insolvency, administration, reorganization or reconstruction (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Grantee or of any or all of the Grantee's assets or revenues; and
- (x) it shall notify the Secretariat immediately upon any of its Director becoming aware of the occurrence of any Event of Default or Potential Event of Default.

#### **4. Grantee Indemnity**

4.1 The Grantee shall indemnify and keep indemnified each of the Government, its employees and authorized persons fully and effectively against (a) all actions, claims (whether or not successful, compromised, settled, withdrawn or discontinued) and demands threatened, brought or established against the Government and (b) all costs (including all legal fees and other awards, costs, payments, charges and expenses), losses, damage and liabilities suffered or incurred by the Government, which in any case arise directly or indirectly in connection with, out of or in relation to:

- (i) a breach of Clause 18 or a breach of the duty of confidence under general law by the Grantee, or any of its employees, contractors, sub-contractors and agents (or any person acting on its or their behalf) (each a “**Relevant Person**”);
- (ii) the use by the Grantee or any Relevant Person of any personal data in contravention of PDPO;
- (iii) the performance or breach of this Agreement by the Grantee;

- (iv) the negligence, recklessness, wilful misconduct, unauthorized act or omission of the Grantee or a Relevant Person;
- (v) death, injury or property damages arising from or in connection with the carrying out of the Project; or
- (vi) any allegation or claim that the Use, operation or possession of the Project Materials or the exercise of any rights granted under this Agreement infringes any IPRs of any persons.

4.2 The provisions of Clause 4 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **5. Project Co-ordinator and Deputy Project Co-ordinator**

5.1 The Grantee shall appoint a Project Co-ordinator and a Deputy Project Co-ordinator for the Project.

5.2 The responsibilities of the Project Co-ordinator and Deputy Project Co-ordinator are as follows:

- (a) oversee the carrying out of the Project in accordance with the terms and conditions of this Agreement;
- (b) monitor the use of the Funds to ensure that the Funds are properly expended;
- (c) ensure the accuracy and completeness of the information provided in the Progress Reports, Evaluation Report, Publicity Report, Survey Report and other information submitted to the Assessment Committee, Secretariat and Government;
- (d) liaise with the Assessment Committee, Secretariat and Government on matters relating to the Project; and

(e) attend progress meetings and visits as may be convened by the Assessment Committee, Secretariat or Government from time to time and the events and activities organized under the Project; and assist the Assessment Committee, Secretariat and Government or their authorized representatives in verifying the number of staff employed for the Project and the number and market prices of the Equipment deployed for the Project or for the events and activities of the Project being visited.

5.3 In the event of the death, incapacity or termination of employment of the Project Co-ordinator or Deputy Project Co-ordinator before the Completion of the Project, the Grantee shall immediately or within such period as may be approved by the Government, arrange to substitute or replace the outgoing individual, provided that such substitute or replacement is (a) no less qualified in terms of relevant experience and qualifications than the out-going individual; and (b) available at the relevant time to act as such substitute or replacement. The Grantee shall without delay forward a curriculum vitae of the proposed substitute or replacement to the Government and shall warrant that it is complete and accurate in all material respects. The deployment of such substitute or replacement shall be subject to the Government's prior consent. The Grantee shall be solely responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of the Project Co-ordinator or Deputy Project Co-ordinator.

5.4 The appointment or replacement of the Project Co-ordinator or Deputy Project Co-ordinator to undertake any part of the Project shall not relieve the Grantee from any liabilities or obligations under this Agreement.

## **6. Payment of Funds**

6.1 In consideration of and subject to the Grantee carrying out the Project, and performing all its duties and obligations in accordance with this Agreement to the satisfaction of the Assessment Committee, PSCIT and Government, and subject to all the conditions as specified in **Schedules 1 and 2**, Government shall make available the Funds to the Grantee in accordance with the payment arrangement set out in **Schedule 3** hereto.

6.2 All the Funds, Income and sale proceeds from all Equipment disposed of shall be paid into the Project Account established by the Grantee, who shall, until such

Funds are spent by the Grantee in accordance with the terms of this Agreement, hold the same as trustee for the Government. The Grantee acknowledges that all Interests generated from amounts standing in the Project Account (including those other than the Funds), belong to the Government at the time they accrue.

- 6.3 For the avoidance of doubt, the Grantee shall not be entitled to charge any interests or claim any compensation or relief of whatever nature against the Government in the event of any late or withholding of payment of the Funds by the Government for any reason whatsoever.

## **7. Acknowledgment of Government's Support**

- 7.1 The Grantee shall prominently feature the Brand Hong Kong (“BrandHK”) signature and Tourism Commission’s logo as specified in **Schedule 4** plus the wordings “**Sponsored by Mega Events Fund 盛事基金贊助**” on all publicity materials for the Project (including, but not limited to, printed materials, backdrops, programme booklets, TV commercials, posters, website, banners, advertisements, prizes and souvenirs). The Grantee shall ensure that the BrandHK signature shall be prominently featured as the location identifier for Hong Kong and set apart from Sponsor’s logos and shall be no smaller or less prominent than those logos of the Grantee and any other Sponsor. The Grantee shall ensure that the BrandHK signature shall have dominant presence at the venues of the events organized under the Project and other related locations, to the satisfaction of the Information Services Department and the Assessment Committee.
- 7.2 The Grantee shall seek prior written consent from the BrandHK Management Unit of the Information Services Department on presentation of the BrandHK signature and the Tourism Commission’s logo on all publicity materials for the Project. The Grantee shall submit information on all advertising, publicity and sponsor(s) displays at event venues, including but not limited to banners, boards, signs and stands, to the BrandHK Management Unit of the Information Services Department and the Secretariat for written approval prior to finalization. Such information shall include the dimensions, locations, quantity and other relevant details of the displays. To ensure proper application, the Grantee shall comply with all requirements and guidelines set out in the brand manual accessible at <http://www.brandhk.gov.hk/en/#/en/about/guidelines.html>.

- 7.3 If required by the Government, the Grantee shall distribute promotional materials produced by the Government to target participants or audiences in respect of the events organized under the Project.
- 7.4 The Grantee shall not accept any donation and/or sponsorship which, in the reasonable opinion of the Government, may jeopardize the image or reputation of the Government, Assessment Committee or the Project.
- 7.5 The Grantee shall include the following disclaimer in all print advertisements, programme booklets, website and any other publicity materials, for the events organized under the Project as may be required by the Assessment Committee or the Government -

*“Any opinions or recommendations expressed in this material / any activities organized under this event do not reflect the views of the Government of the Hong Kong Special Administrative Region or the Mega Events Fund Assessment Committee.”*

## **8. Prevention of Bribery and Conflict of Interest**

- 8.1 The Grantee shall observe the relevant provisions of the PBO. Further, the Grantee shall not, and shall notify in writing and procure that the Project Co-ordinator, Deputy Project Co-ordinator, all its Directors, employees, contractors, sub-contractors, agents and other personnels who are in any way involved in the Project that they shall not offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the performance of this Agreement or the Project.
- 8.2 If the Grantee, the Project Co-ordinator, Deputy Project Co-ordinator, any of its Directors, employees, contractors, sub-contractors, agents or other personnels who are in any way involved in the Project commit any offence under the PBO or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government shall be entitled to terminate this Agreement pursuant to Clause 19.

**9. Conflict of Interests**

9.1 The Grantee shall, during the continuation of this Agreement and for six (6) months thereafter:

- (a) ensure that it (including its Associates and Associated Persons, each of the Project Co-ordinator and Deputy Project Co-ordinator and each of the Grantee's Directors, employees, agents, contractors and sub-contractors and their respective Associates and Associated Persons) shall not undertake any service, task or sub-contract job or do anything whatsoever for or on behalf of the Grantee or any third party (other than in the performance of this Agreement) which conflicts, or which may be seen to conflict, with the Grantee's duties to the Government under this Agreement unless and to the extent the Government permits otherwise and before giving such permission, the Government has been fully informed by the Grantee in a timely fashion of all the circumstances in which the permission is sought; and
- (b) immediately notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Grantee or any of the Project Co-ordinator or Deputy Project Co-ordinator or any of the Grantee's Directors, employees, agents, contractors and sub-contractors, or any of their respective Associates or Associated Persons, conflict or compete, or may conflict or compete, with the Grantee's duties to the Government under this Agreement.

9.2 The Grantee shall notify the Government in writing immediately upon knowing of any financial, professional, commercial, personal or other interest (whether actual or potential, direct or indirect) that the Grantee or any of the Project Co-ordinator or Deputy Project Co-ordinator or any of the Grantee's Directors, employees, agents, contractors and sub-contractors, or any of their Associates or Associated Persons may have in, or of any association or connection which the Grantee or the aforesaid persons may have with, any person, product, service or Equipment proposed or recommended or to be acquired or procured by the Grantee under this Agreement.

9.3 The Grantee shall ensure that each of its Associates and Associated Persons, each of the Project Co-ordinator and Deputy Project Co-ordinator and each of its Directors, employees, agents, contractors and sub-contractors and their respective Associates and Associated Persons shall keep themselves informed and shall inform the Grantee and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Grantee's duties to the Government under this Agreement.

9.4 When required by the Government, the Grantee shall procure its Associates and Associated Persons, each of the Project Co-ordinator and Deputy Project Co-ordinator and each of its Directors, employees, agents, contractors and sub-contractors and their respective Associates and Associated Persons who are involved in the Project to execute a legally binding written undertaking in favour of the Grantee and the Government jointly and severally in a form prescribed by the Government agreeing to observe Clauses 9.1 to 9.3 above and the Grantee shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Grantee further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

## **10. Procurement of Equipment, Services etc.**

10.1 With the objectives of ensuring openness, fairness and value for money, the Grantee shall, and shall procure that the Project Co-ordinator, Deputy Project Co-ordinator, the Grantee's Directors, employees, agents, contractors, sub-contractors and other personnels who are in any way involved in the Project shall, exercise the utmost prudence in procurement of goods, services and Equipment, ensure that all purchases of all goods, services and Equipment of any value in relation to or for the purposes of the Project are made on an open, unbiased, fair and competitive basis, and only from suppliers who are not Associates or Associated Persons of the Grantee, unless the Government agrees otherwise.

- 10.2 With the objectives of ensuring openness, fairness and value for money, the Grantee shall, and shall procure that the Project Co-ordinator, Deputy Project Co-ordinator, the Grantee's Directors, employees, contractors, sub-contractors, agents and other personnels who are in any way involved in the Project, shall exercise the utmost prudence in procurement of staff and shall ensure that the recruitment of staff for the purpose of the Project are carried out in an open, unbiased, fair and competitive manner.
- 10.3 The Grantee shall set up and operate a proper procurement/tendering and stores management system for the Project with sufficient checks and control and in accordance with the following principles:
- (a) Public accountability and value for money – the Funds provided under the MEF are public money. The Grantee shall be accountable to the public for the use of the Funds and shall, upon the Government request, account for any of their procurement decisions publicly. The Grantee is obliged to achieve the best value for money for its procurement; and
  - (b) Transparency, openness and fair competition – the Grantee shall make known all requirements and specifications of intended procurement to potential suppliers and contractors. It is essential to uphold the principles of fairness and competitiveness and maintain a level playing field in all procurement/tendering process. All tenderers and suppliers shall be treated, and shall be seen to be treated, on equal footing. The Grantee shall ensure that proper safeguards are put in place to avoid any actual, potential or perceived conflict of interest situations arising in the procurement/tendering process.
- 10.4 The Grantee shall obtain from the ICAC a copy of the ICAC's "**Strengthening Integrity and Accountability – Grantee's Guidebook**", accessible at [http://www.icac.org.hk/en/prevention\\_and\\_education/pt/index.html](http://www.icac.org.hk/en/prevention_and_education/pt/index.html). The Grantee shall seek ICAC Corruption Prevention Department's assistance in adopting the best practices stated in the Guidebook, draw up a Code of Conduct for compliance by its Directors and employees, and to ensure proper corruption prevention safeguards are incorporated into its procurement and staff recruitment procedures. The Grantee shall permit ICAC to examine his management and control procedures to provide corruption prevention advice.



- 10.5 The Grantee shall establish a two-tier approval system, as the ICAC may require or specify, for the recruitment of key personnel/staff and the award of major goods, services and Equipment contracts in procurement/tendering exercises conducted for the Project.
- 10.6 All quotations, tender documents, proposals and all procurement agreements with tenderers and/or suppliers in relation to or for the purposes of the Project, shall be kept by the Grantee during the continuance of this Agreement and a period of seven (7) years after the expiry or termination of this Agreement, and shall be made available without delay for inspection upon request by the Government, the Director of Audit or his representative(s).
- 10.7 The risk in the Equipment shall be borne by and remain with the Grantee as and when it passes upon procurement and/or leasing of the Equipment by the Grantee.
- 10.8 The title of the Equipment purchased by the Funds for the Project shall be held by the Grantee. The Grantee shall maintain a register to account for all Equipment with individual cost of HK\$5,000 or above whose purchase is funded by the Funds, and the Grantee shall seek prior written approval from the Government for the transfer, sale or disposal of the Equipment.
- 10.9 Notwithstanding anything provided in this Agreement, the Government may require the Grantee to dispose of the Equipment at any time at the prevailing market price by way of sales by public auction in accordance with such procedures as the Government may specify. The Grantee must comply with the Government's requirement and specification. The Grantee must also refrain from participating in the Government's public auction for the disposal of the Equipment directly by itself or indirectly through any of the Grantee's Associates or Associated Persons, or any of the Grantee's Directors, employees, agents, contractors or sub-contractors or any of their respective Associates or Associated Persons. The sale proceeds of the Equipment disposed of shall belong to Government and be paid to the Government in such manner and by such time as the Government may specify.

## **11. Project Account**

- 11.1 The Grantee shall open under its name and maintain an interest-bearing Hong Kong Dollar account with a licensed bank in Hong Kong within the meaning of the Banking Ordinance (Cap. 155) for the sole and exclusive purpose of keeping the Funds and the Reserved Fund (if any), processing and transacting all receipts and payments relating to the Project. Payments from that bank account shall be made by at least two authorized representatives of the Grantee approved by the Secretariat. The Grantee must obtain written consent from the Secretariat before any change to the authorized representatives of the Project Account takes effect.
- 11.2 The Grantee shall pay the Funds and all other receipts relating to the Project, including without limitation, contributions from the Grantee, contributions from the Sponsor, all Income and sale proceeds from the Equipment disposed of and the Reserved Fund into the Project Account.
- 11.3 All Interest shall be kept in the Project Account and shall not be taken out or used for any purpose. The Grantee is fully accountable to the Government for and make good any Interest which has accrued or should have accrued to the Project Account but has not been paid into or kept in the Project Account in accordance with the provisions of this Agreement. Such Interest will be calculated of a rate equivalent to the interest rate offered by the HSBC for savings account during the material time. Government reserves the right to claim the Grantee against any loss or damages incurred in connection with or as a result of the Grantee's failure to comply with the requirement under Clause 11.
- 11.4 All Interest shall be reflected in the financial statements and audited accounts of the Project referred to under Clauses 12.2 of this Agreement.
- 11.5 The Grantee shall make available without delay and produce all or any records in respect of the Project Account for inspection as and when required by the Assessment Committee, Secretariat, Director of Audit, PSCIT or any of their authorized representatives.

## 12. Books and Records

- 12.1 The Grantee shall maintain, during the continuance of this Agreement and for a minimum period of seven (7) years after the expiry or termination of this Agreement, full and proper books of accounts and records in respect of the Project (including all matters in respect of the receipt, expenditure and custody of the Funds and any other public funds which may be provided for any purposes relating to the Project and all income (of whatsoever description) derived therefrom (“**Public Funds**” collectively). The Grantee shall procure that its Associates and Associated Persons to whom any Public Funds are passed or diverted, directly or indirectly (“**Relevant Third Parties**”) shall keep full and proper books of accounts and records in respect of such Public Funds. The Grantee shall ensure that the Government, PSCIT, the Director of Audit and any of their respective authorized representatives shall be allowed access to all or any of the aforesaid books and records for conducting audit (including value for money audit), inspection, verification and copying from time to time upon reasonable notice during the continuance of this Agreement and the seven-year period mentioned above. In this connection, the Grantee shall, and shall procure that each Relevant Third Parties, and each of the Relevant Third Parties’ and the Grantee’s respective employees and agents shall, explain to the Government, the Director of Audit and their respective authorized representatives any matters relating to the receipt, expenditure and custody of the Public Funds upon request.
- 12.2 The Grantee shall submit the following Audited Accounts to the Assessment Committee and PSCIT in the following manner:
- (a) if the Project is scheduled under the Approved Project Proposal to be completed in less than one year from the Commencement Date, within four (4) months after the Approved Date of Completion in respect of the Project or termination of this Agreement, an Audited Account which covers the period from the Commencement Date to the date of expiry or termination of this Agreement, and an account of the residual Funds covering the same period, including Interest and sale proceeds of the Equipment.
  - (b) if the Project is scheduled under the Approved Project Proposal to be completed in one year’s time or more from the Commencement Date:

- (i) within three (3) months for every 12-month period from the Commencement Date to date of expiry or termination of this Agreement, an Audited Account of the Project which covers each aforesaid 12-month period;
- (ii) in the event that the last audited period covers less than 12-month, the final Audited Account shall cover the period from the end of the preceding audited period to the date of expiry or termination of this Agreement; and
- (iii) the final Audited Account and an account of the residual Funds covering the same period, including Interest and sale proceeds of the Equipment, shall be submitted by the Grantee to the Assessment Committee and PSCIT within four (4) months after the Approved Date of Completion of the Project or termination of this Agreement.

12.3 The Audited Accounts shall cover all receipts and receivables including the Funds, all Income, and sale proceeds from any Equipment disposed of, and all payments made in respect of the Project. It shall include a Statement of Income and Expenditure, a Balance Sheet, Cash-flow Statement, Notes to the Accounts and an Auditor's Report.

12.4 The Auditor's Report shall include the auditor's opinion on whether the Grantee and the Project Account have complied with the terms and conditions of this Agreement, and includes an assurance that the Funds were spent in accordance with the terms and conditions of this Agreement, and that the Audited Accounts is prepared in accordance with the Accounting Standards, Accounting Guidelines and Statements of Auditing Standards issued and updated from time to time by the Hong Kong Institute of Certified Public Accountants as well as the requirements relating to the Project as may from time to time be prescribed by the Assessment Committee or the Government. The Grantee shall also instruct the auditor to make full disclosure of any non-compliance by the Grantee of any terms and conditions of this Agreement in the Auditor's Report.

12.5 The Government reserves the right to claim against the Grantee for any loss, damages, costs and expenses and liabilities suffered or incurred by the Government in connection with or by reason of the Grantee's failure (including failure of the Project Co-ordinator, Deputy Project Co-ordinator, any of the

Directors, employees, contractors, sub-contractors or agents of the Grantee) to handle and account for the Funds, Income, Equipment or the sale proceeds from the Equipment disposed of properly and in accordance with this Agreement.

**13. Assignment and sub-contracting**

13.1 Save as provided in Clause 13.2 below, the Grantee shall not assign, transfer, sub-contract or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement or the ownership and/or rights of the Project to a third party without the written approval of the Assessment Committee and PSCIT.

13.2 The Grantee may, subject to the approval of the Secretariat, engage the services of independent contractors or agents of its own to assist it with its duties under this Agreement, provided that the Grantee:

- (a) shall not be relieved from any of its obligations and duties under this Agreement by engaging any such independent contractor or agent and shall remain fully liable to the Government for the performance of such obligations and duties;
- (b) shall remain liable for any act or omission of any such independent contractor or agent as if such act or omission were its own; and
- (c) shall secure binding obligations from all such independent contractors or agents so as to ensure that the Grantee can comply with its obligations under this Agreement.

**14. Return of Surplus to the Government and the Reserved Fund**

14.1 The Grantee shall account for all Income and apply all such Income to offset the actual expenses of the Project.

14.2 Subject to Clauses 14.3 to 14.4 below, the Grantee shall, within one (1) month following submission of the final Audited Account under Clause 12.2, return to the Government all or any Operating Surplus and residual Funds in respect of the Project (as the Government may determine in its sole discretion according to

information required to be provided by the Grantee under this Agreement and available information related to this Project) (including Interest and the sale proceeds from all or any Equipment disposed of), up to the maximum amount specified in **Schedule 1** plus Interest generated or which should have been accrued thereon. Failing which, the Government reserves the right to seek legal remedy in case of unreasonable delay in the return of the Operating Surplus and residual Funds by the Grantee.

14.3 When the Grantee submit the final Audited Account under Clause 12.2, the Grantee may submit an application to the Assessment Committee for approval for retaining the Operating Surplus as “Reserved Fund” in the Project Account for the sole purpose of organizing the same Project in the following year in Hong Kong (“New Project”), subject to the following conditions –

- (a) the Grantee shall undertake in writing to the Assessment Committee that it shall organize the New Project in Hong Kong in the following year and that the Reserved Fund shall not be used for any other purposes;
- (b) the Project in question is considered by the Assessment Committee worthy of support under the MEF Tier-two scheme for hosting in Hong Kong on a recurrent basis so as to enlarge the pool of local mega events with tourism appeal in the long run;
- (c) the past performances of the Grantee and the Project are considered satisfactory by the Assessment Committee and PSCIT; and
- (d) any other conditions as may be imposed by the Assessment Committee and PSCIT.

The Grantee shall submit a fresh MEF application for organizing the New Project. The approval for retaining the Reserved Fund in the Project Account and the approval for organizing the New Project are subject to the Government’s total contribution for the New Project (including the MEF Funds payable by the Government and any Reserved Fund from the MEF approved to be used for the New Project or from other government funding sources, plus Interest) shall not exceed 50% of the cost of the New Project. Where the amount of the Reserved Fund exceeds 50% of the New Project’s Cost, the Grantee may be required to return part of the Reserved Fund to the Government immediately.

14.4 Where approval is granted to the application under Clause 14.3, the Grantee:

(a) shall warrant and undertake in writing to the Government that it shall immediately return the Reserved Fund in full, plus all Interest generated in the Project Account, to the Government if –

(i) the Grantee discontinues with organizing the New Project in the following year for whatever reason (whether or not beyond the control of the Grantee); or

(ii) the Grantee does not apply for the MEF for the New Project or decline to receive any fund from the MEF for the purpose of organizing the New Project; or the Grantee does not apply to use the Reserved Fund or decline to use the Reserved Fund to organize the New Project; or

(iii) the Reserved Fund has been left idle in the Project Account for more than 24 months;

whichever is earlier; and

(b) shall, upon the Government's request, enter into an agreement with the Government to the effect that the Grantee shall be bound by terms and conditions as may be imposed by the Assessment Committee and PSCIT in its performance of the New Project.

14.5 When the Reserved Fund is used to organize the New Project, the Grantee shall, following completion of the New Project, submit a Final Audited Accounts of the completed Project (showing separately the position of the Reserved Fund in the Project Account) to the Secretariat and Government within the time period specified by the Government. The Grantee shall also submit to the Secretariat and Government a certified statement of the Project Account (showing separately the position of the Reserved Fund) at the end of each accounting period as and when required by the Government, or at a frequency to be determined by the Secretariat.

14.6 Under no circumstances shall the Government and the Assessment Committee accept liabilities for any deficits arising from the New Project. The Grantee shall

accept the full liabilities for all deficits arising from the New Project and for meeting the shortfall to complete the New Project. The Grantee shall immediately notify the Secretariat if it is foreseen that the total New Project's cost will exceed the Approved Budget of the New Project by whatever amount.

- 14.7 Without prejudice to Clause 14.4(b), where approval has been given under Clause 14.3 for the Grantee to retain the Operating Surplus as Reserved Fund, the Grantee shall keep all books of accounts, statements and records in respect of the Project Account (in which the Reserved Fund shall be kept) in accordance with Clause 12.1 above, and produce such books of accounts for inspection without delay as and when required by the Assessment Committee, Secretariat, Director of Audit, PSCIT and any of their authorized representatives. The Grantee may only dispose of such books of accounts and records seven years after the completion or termination of the New Project.
- 14.8 Clauses 14.2 to 14.7 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **15. Reports**

- 15.1 Unless otherwise agreed by the Government, the Grantee shall submit the following reports (in such form as the Government may specify from time to time) in respect of the Project to the Assessment Committee and PSCIT:
- (a) within one (1) month for every 6-month period from the Commencement Date to the date of expiry or termination of this Agreement, a Progress Report which content is to be determined by the Secretariat (together with updated budget forecast) which covers each aforementioned 6-month period;
  - (b) in the event that the last Progress report covers less than 6 months, the last Progress Report shall cover the period from the end of the preceding reporting period to the date of expiry or termination of this Agreement;
  - (c) at least one (1) month before any applicable due date of instalment payment as specified in **Schedule 3**, an updated Progress Report in respect of the Project, together with certified statements of account and updated budget forecast of the Project;



(d) within four (4) months after the Approved Date of Completion of the Project or termination of this Agreement, an Evaluation Report, a Publicity Report and a Survey Report.

15.2 The Grantee shall account for the Project Result as reported in the aforementioned reports and provide clarification and/or additional information on the contents of the aforementioned reports upon request by the Assessment Committee, Secretariat, PSCIT or the Government, and shall make available for inspection by the Government all documents and records relating to the Project.

15.3 The Government reserves the right not to pay all or any outstanding Funds to the Grantee or the right to adjust or reduce the amount of outstanding Funds to be paid or the right not to consider any other applications by the Grantee for MEF, if the Grantee fails to deliver or carry out the Project (unless the failure is attributable to an event of Force Majeure), or the Project Result is unsatisfactory, or the Grantee fails to comply with any terms and condition under this Agreement, or that the Grantee fails to achieve any of the approved and/or additional funding conditions and approved and/or additional key performance indicators, deliverables, targets and key milestones of the Project as specified in **Schedules 1 and 2** to the satisfaction of the Assessment Committee, PSCIT and the Government.

## **16. IPRs**

16.1 The Grantee shall ensure that it is, or shall become upon creation, and shall remain for any purposes contemplated by this Agreement the absolute legal and beneficial owner of all IPRs in the Project Materials (other than the Third Party Materials). To that end, the Grantee shall make it a condition of its contracts with the Project Co-ordinator, the Deputy Project Co-ordinator, the Sponsor, any of the Grantee's Directors, employees, contractors, sub-contractors, agents or other personnels who have in any way contributed towards or are in any way involved in the Project that the Grantee shall be, or shall become upon creation, and shall remain the absolute legal and beneficial owner of all IPRs created as aforesaid for any purposes contemplated by this Agreement to the exclusion of such Project Co-ordinator, Deputy Project Co-ordinator, Sponsor, Directors, employees, contractors, sub-contractors, agents or other personnels.

- 16.2 The Grantee hereby grants for the benefit of the Government, its authorized users, assigns and successors-in-title an unconditional, irrevocable, non-exclusive, perpetual, royalty-free and world-wide licence to Use the Project Materials (and in relation to any Third Party Materials in respect of which the Grantee is not empowered to grant licence(s), the Grantee hereby undertakes to procure the grant of such licence(s) (on similar terms as those being granted by the Grantee under this Clause 16.2) for the benefit of the Government, its authorized users, assigns and successors-in-title in respect of such Third Party Materials prior to their Use by the Grantee) for any purposes and by any means and in any manner. The Grantee shall deliver the Project Materials to the Government.
- 16.3 The Grantee shall keep the Government informed in writing of any Third Party Materials which the Grantee is not empowered to grant any licence(s) pursuant to Clause 16.2 above and any restrictions whatsoever affecting the Use thereof. The Grantee shall produce to the Government for inspection within two (2) days upon the Government's request all proper licences in writing obtained or procured pursuant to Clause 16.2 in respect of the Third Party Materials.
- 16.4 The Grantee hereby irrevocably waives, and undertakes to procure all relevant authors of the Project Materials to irrevocably waive all moral rights (whether past, present or future) in the Project Materials. Such waiver shall operate in favour of the Government, its authorized users, assigns and successors-in-title as from the date the relevant licence takes effect.
- 16.5 The Grantee shall at all times during the validity of this Agreement exercise due diligence in software asset management and, as and when required by the Government, furnish to the Government satisfactory evidence that this sub-clause has been complied with.
- 16.6 (a) The Grantee shall, at its own cost and expense and before the fixation and/or recording of any [competitions / performance(s)] in relation to the Project, obtain all the consent and clearance from the [sportsmen / performer(s)] as may be necessary for such fixation and/or recording of the [competitions/ performance(s)] and for any Uses and exploitation of such fixation or recording, or copies thereof, as contemplated by this Agreement. For the purpose of this Clause, the terms "performance", "performer" and "fixation" shall have the same meanings as those assigned to them in section 200 of the Copyright Ordinance (Cap. 528).

- (b) The Grantee shall procure the [sportsmen / performers] referred to in Clause 16.6(a) to waive their moral rights over their [competitions / performances] in relation to the Project, such waiver to operate in favour of the Government, its licensees, assigns and successors-in-title and to have effect immediately upon each of the relevant [competitions / performance] is given.

16.7 The Grantee further warrants and undertakes to the Government that:

- (a) it is or shall become upon creation and shall remain for any purposes contemplated by this Agreement the absolute legal and beneficial owner of all IPRs in the Project Materials (other than the Third Party Materials);
- (b) it has or shall have the full capacity, power and authority to grant the licences referred to in Clauses 16.2 upon the terms and conditions of, and for any purposes contemplated by, this Agreement;
- (c) the provision of the Project Materials (including the Third Party Materials) or any of the services by the Grantee under this Agreement, the Use, operation or possession by the Government, its authorized users, assigns and successors-in-title of the Project Materials (including the Third Party Materials) pursuant to this Agreement do not and shall not infringe any IPRs of any persons;
- (d) the Use of any software by the Grantee for the purpose of or otherwise in connection with the performance of this Agreement does not and shall not infringe any IPRs of any persons;
- (e) the exercise of any of the rights granted under or pursuant to this Agreement by the Government, its authorized users, assigns and successors-in-title shall not infringe any IPRs of any persons;
- (f) in respect of any Third Party Materials:
  - (i) the Grantee has or shall have a valid and continuing licence under which it is entitled to sub-license the relevant Third Party Materials and the third party IPRs for itself and for the benefit of Government,

its authorized users, assigns and successors-in-title to Use such Third Party Materials for any purposes contemplated by this Agreement; or

(ii) prior to the Use and incorporation of such Third Party Materials in performing this Agreement, the Grantee shall have obtained the grant of all necessary clearances for itself and for the benefit of Government, its authorized users, assigns and successors-in-title authorizing the Use of such Third Party Materials for any purposes contemplated by this Agreement; and

(g) it shall take all reasonable steps to recognize and protect all IPRs in the Project Materials and all other works created in respect of or during the course of the Project and shall promptly inform the Government of all allegations, claims, actions and proceedings in respect of infringement of any such IPRs and any progress thereof from time to time.

16.8 The provisions of Clause 16.7 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **17. Insurance**

17.1 The Grantee shall take out and maintain and, renew upon expiry, insurance policies in accordance with relevant Ordinances in respect of the following during the continuance of this Agreement and subject to such terms and conditions to the satisfaction of the Government, and any other insurance policies as deemed necessary by the Grantee:

(a) **Public Liability:** an indemnity amount of a minimum of HK\$[amount] million per incident and unlimited indemnity amount in respect of all claims (including any claims which may be made by any spectators, players, participants, reporters, guests or officials in respect of any events organized under the Project) arising during the continuance of this Agreement. The coverage shall be extended to cover occupier's liability.

(b) **Employee Compensation:** in accordance with Employees' Compensation Ordinance (Cap. 282) to cover all Grantee's employees hired for the Project.

- (c) Insurance for Equipment: an all-risks insurance in respect of each Equipment purchased by the Funds with an individual cost of HK\$5,000 or above to its total value at replacement cost.
- 17.2 The Public Liability referred to in Clause 17.1(a) shall be for the benefit and in the joint names of the Grantee and the Government, and contain a cross liability clause indemnifying the Grantee and the Government (as if a separate policy had been issued to each of them) against legal liabilities for accidental injury to persons or accidental loss of or damage to property arising out of or in consequence of the Project.
- 17.3 All Insurance Policies shall be issued by one or more insurance companies authorized to carry on the relevant insurance business under the Insurance Companies Ordinance (Cap. 41). All Insurance Policies shall contain a clause whereby the insurer shall irrevocably and unconditionally waive any right of subrogation or any other right or claim against the Government.
- 17.4 Upon expiry of any of the Insurance Policies during the continuance of this Agreement, the Grantee shall renew the same on and subject to the original terms and conditions or otherwise such revised terms and conditions as the Government may stipulate. The Grantee shall produce to the Government receipts issued by the relevant insurer evidencing payment of the premium payable under the Insurance Policy to be renewed no later than 14 days prior to the expiry of the Insurance Policy; and upon issuance of the renewed Insurance Policy, the Grantee shall forthwith furnish a copy of the same to the Government.
- 17.5 Under no circumstances whatsoever shall the Government be responsible for the premium payable under the Insurance Policies or the premium payable for the renewal thereof.
- 17.6 The Grantee shall conform to the terms and conditions of all Insurance Policies and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accident. The Grantee shall not do or permit or suffer to be done any act or omission whereby any of the Insurance Policies shall be rendered void or voidable, or which would otherwise amount to a breach of any of the Policies. The Grantee shall bear the

consequences of, and indemnify the Government in full from and against any loss and liability which may arise from, any failure of the Grantee to do so.

17.7 The Grantee shall when required, deposit with the Government for safe keeping during the continuance of this Agreement such policy of insurance together with the receipt of payment of the current premium.

17.8 Under no circumstances shall the Government or the Assessment Committee be held liable for any third-party claims for loss or damages arising from the Project.

## **18. Confidentiality**

18.1 The Grantee shall treat as confidential all information, drawings, specifications, documents, contracts, design materials and all other data (including any personal particulars, records and personal data (as defined in the PDPO) and materials of any nature (in or on whatever media)) accessible by the Grantee under this Agreement or which the Government has for the purposes of or in the course of performing this Agreement disclosed, supplied, made available or communicated to the Grantee, provided that this Clause 18.1 shall not extend to any information which was rightfully in the possession of the Grantee prior to the commencement of the negotiations leading to this Agreement or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).

18.2 The Grantee hereby agrees that it shall use the confidential information described in Clause 18.1 solely for carrying out the Project in accordance with this Agreement, and that it shall not, at any time whether during or after the completion, expiry or termination of this Agreement, use or allow to be used the same for any other purposes without the Government's prior written consent.

18.3 The Grantee undertakes to take all necessary security measures to protect the information, documentation and materials which it is obliged by Clause 18.1 to treat as confidential.

18.4 The Grantee shall ensure that each of its Associates and Associated Persons, each of the Project Co-ordinator and Deputy Project Co-ordinator and each of the Grantee's Directors, employees, agents, contractors, sub-contractors, consultants and their respective Associates and Associated Persons, and any other persons

engaged in any work in connection with this Agreement are aware of and comply with the provisions of this Clause 18 and the OSO.

- 18.5 The Grantee shall ensure that each of its Associates and Associated Persons, each of the Project Co-ordinator and Deputy Project Co-ordinator and each of the Grantee's Directors, employees, agents, contractors, sub-contractors, consultants and their respective Associates and Associated Persons and any other person engaged in any work in connection with this Agreement to whom any confidential information is to be disclosed will sign without delay a separate, legally binding, confidentiality agreement (in a form prescribed by the Government) if so requested by the Government.
- 18.6 The Grantee shall promptly notify the Government in writing of any breach of confidence, the PDPO or the OSO by any of the persons referred to in this Clause 18 and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such person for any such breach.

**19. Termination of Agreement and Late interest**

- 19.1 Without prejudice to any other rights or remedies which the Government may have, the Government may at any time on the occurrence of any of the following events terminate immediately this Agreement by giving written notice to the Grantee with immediate effect:
- (a) the Grantee is in breach of any terms, conditions, warranties or undertakings in this Agreement and (in the case of a breach capable of being remedied) the Grantee fails to remedy the breach to the satisfaction of the Government within seven (7) days after receipt of a notice in writing from the Government requiring it to do so or within such period as the Government may in its sole discretion allow;
  - (b) without reasonable explanation acceptable to the Assessment Committee, PSCIT and Government, the Grantee persistently or flagrantly fails to fully and punctually comply with its obligations under this Agreement;
  - (c) the Grantee has abandoned this Agreement;

- (d) without prior notification to and agreement of the Government, the Grantee assigns or transfers any interest, right, benefit or obligation under this Agreement to any third party;
- (e) without prior notification to and agreement of the Government, the Grantee fails to carry out the Project on or before the Approved Date of Completion of the Project as specified in **Schedule 1** or suspend the Project for any reasons whatsoever unless in accordance with Clause 20;
- (f) in the opinion of the Government, the Funds or any parts thereof were abused, used for any purpose other than the specified or approved purposes of the Project or other than the Project generally;
- (g) in the opinion of the Government, the Grantee is unlikely to be able to deliver or carry out the Project in accordance with any terms or conditions of this Agreement;
- (h) in the opinion of the Government, the Grantee has failed to perform satisfactorily in the progress of implementing the Project;
- (i) in the opinion of the Government, it is in the public interest to cease to support the Project;
- (j) the Grantee fails to provide any reports, financial accounts or other documents in accordance with this Agreement, or any of the data, facts or information represented or provided by the Grantee in relation to the Project (including information relating to the Grantee's registration status or not-for-profit nature) or any information contained or attached to the Application Form to the Assessment Committee, PSCIT or the Government is incomplete, incorrect, untrue, inaccurate or misleading, or the Grantee withholds any material data, facts or information in relation to the Project;
- (k) the Government becomes entitled to terminate this Agreement pursuant to Clause 8;
- (l) a Director or shareholder of the Grantee has petitioned for bankruptcy or a bankruptcy petition is filed against a Director or shareholder of the Grantee;



- (m) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up, dissolution, insolvency, administration, reorganization or reconstruction of the Grantee (otherwise than a solvent reorganization or reconstruction which the Government has approved in advance prior to its implementation) or the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Grantee or of any or all of the Grantee's assets or revenues or the Grantee makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any event occurs under the laws of any jurisdiction that has a similar or analogous effect;
- (n) there shall be any material change of the objects, registration status, not-for-profit operation, business, nature, ownership, management or control of the Grantee or change of Directors or shareholders or other key personnels of the Grantee or the Project Team which, in the opinion of the Government, substantially prejudices any of the Government's rights or powers under this Agreement or the Grantee's ability to carry out the Project or its obligations under this Agreement;
- (o) the Grantee fails to secure and deliver contribution from the Grantee itself and/or from Sponsor and/or other sources which shall amount to not less than 50% of the Project Cost or fails to apply any such contribution to offset the expenditures of the Project, or fails to produce documentary evidence in respect of securing, or payment of, any such contribution to the satisfaction of the Assessment Committee, PSCIT and Government;
- (p) the Grantee, Project Co-ordinator, Deputy Project Co-ordinator, a Sponsor, Director, employee, contractor, sub-contractor, agent or other personnels of the Grantee who is in any way involved in the Project engages in any conduct which is reasonably considered by the Government to be prejudicial to the Project; or
- (q) the Grantee's Use of any IPRs for the purpose of or otherwise in connection with the performance of this Agreement is held by a court to constitute an infringement of a third party's IPRs.

19.2 On the expiry or termination of this Agreement:

- (a) this Agreement shall be of no further force and effect (but without prejudice to all accrued rights, liabilities and remedies and any provisions of this Agreement which expressly or by implication are intended to come into or continue in force on or after such expiry or termination);
- (b) all outstanding Funds under this Agreement shall immediately cease to be payable by the Government to the Grantee;
- (c) the Grantee shall, within four (4) months from the expiry or termination of this Agreement, deliver to the Government the Audited Accounts and an account of residual amount in accordance with Clause 12.2, and the Progress and other Reports as required under Clause 15.1;
- (d) the Grantee shall immediately return to the Government all amount paid by the Government in respect of such part of the Project which has not been performed by the Grantee at the date of expiry or termination of this Agreement, all sale proceeds from all Equipment disposed of, all Operating Surplus and/or Reserved Fund maintained in the Project Account and all Interest, together with all administrative, legal and other costs and interest accrued up to the date of repayment; and the Government reserves the right to claim back all or part of the Funds that have been expended; and
- (e) the Grantee shall, upon the Government's request, immediately assemble or compile (as the case may be) in an intelligible and orderly manner and deliver all or any materials relating to the Project Materials to the Government.

19.3 If this Agreement is terminated by the Government pursuant to Clause 19.1, without prejudice to any of the Government's other rights and remedies, the Government may require the Grantee:

- (a) to repay immediately all or any sums provided by the Government pursuant to this Agreement together with all administrative, legal and other costs and Interest accrued up to the date of repayment;

- (b) to, upon the Government's request, (i) provide the Government with information relating to all or any contracts entered into by the Grantee in relation to the Project so as to enable the Government (or its nominees) to take over the Project; (ii) assign to, or as the case may be, procure the assignment to, the Government (or its nominees) of the rights of the Grantee in all or any such contracts entered into by the Grantee in relation to the Project; and (iii) do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Government to give full effect to sub-clause (ii) and provide all such documents and materials to the Government within the timeframe as the Government may specify; and
- (c) to, at the Government election, dispose of the Equipment at the prevailing market price by way of sales by public auction in accordance with such procedures as the Government may specify or make other arrangements for disposal in accordance with the direction of the Government. The Grantee must comply with the Government's requirement and specification. The sale proceeds of the Equipment disposed of shall belong to the Government and be paid to the Government in such manner and such time as the Government may specify.

19.4 If the Grantee fails to pay any sum pursuant to any provision of this Agreement when due (whether legally or formally demanded or not and both before and after judgment), the Grantee shall, without prejudice to any rights or remedies of the Government under this Agreement or otherwise, pay interest at the rate as the Government may specify to accrue on a daily basis in a year of 365 days from the date immediately following the due date until the date of actual payment in full.

## **20. Force Majeure**

20.1 A party prevented by an event of Force Majeure may be excused from performance of the obligations under this Agreement for so long as such event shall continue. The party so prevented shall as soon as possible give notice in writing to the other party of the occurrence of the event of Force Majeure.

20.2 Should the performance by the Grantee of its obligations under this Agreement be prevented by Force Majeure for 14 days (either consecutive or in the aggregate) or longer, the Government shall be entitled, at the expiration of such period, to

terminate this Agreement by not less than seven (7) days' notice in writing to the Grantee and in which case, Clause 19 shall apply.

- 20.3 Subject to Clause 20.2, in the event that performance of obligations under this Agreement is delayed by Force Majeure, the parties shall diligently endeavour to achieve expeditiously the normal pursuit of this Agreement and to make up for the time lost.

**21. No Double Emoluments**

21.1 Unless otherwise agreed by the Government:-

- (a) no additional emoluments shall be paid out of the Funds to any person working on or otherwise involved in the Project who is or becomes remunerated or rewarded on a full-time basis by the Government or any person who receives any grant, subvention or financial subsidy, assistance or support from the Government; and
- (b) the Grantee shall not be entitled to make any claims against the Funds in respect of remuneration or reward payable to any person other than remuneration or reward wholly, exclusively and necessarily attributable to that person's service or services in carrying out the Project.

**22. Notice**

22.1 Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or facsimile number or email address set out below:

To the Government: Assistant Commissioner for Tourism cum  
Secretary, Mega Events Fund Assessment Committee  
c/o Tourism Commission  
22/F, West Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong  
Email: [mefsecretariat@cedb.gov.hk](mailto:mefsecretariat@cedb.gov.hk)  
Facsimile Number: 2121 8791

To the Grantee:            *[Full Name,*  
                                  *Post, Name of Grantee,*  
                                  *Address*  
                                  Email : *Email address*  
                                  Facsimile Number: *Fax no*    ]

22.2 Such notices, demands or other communications shall be addressed as provided in Clause 22.1 and, if so addressed, shall be deemed to have been duly given or made as follows, whichever is earlier:

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by post, two (2) business days for local post and five (5) business days for overseas post after the date of posting; and
- (c) if sent by facsimile or email, when dispatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile or email by the facsimile machine or the computer used for such transmission.

**23. Relationship of the Parties**

23.1 Nothing contained or implied in this Agreement or in the arrangements contemplated by it is intended or shall create a partnership, joint venture or association of any kind between the parties hereto and, save as expressly provided in this Agreement, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of, or pledge the credit of or otherwise bind or oblige the other party hereto. Nothing contained or implied in this Agreement shall be so construed as to constitute either party to be the agent of the other.

**24. Time of Essence and Waiver**

24.1 Time shall be of the essence for the purpose of performance of the Grantee's obligations under this Agreement, but no waiver failure by either party to exercise and no delay by either party in exercising any right or remedy available to it under

this Agreement or in law or in equity shall operate as a waiver of such right or remedy, nor shall any single or partial exercises of any such right or remedy preclude any other or further exercise thereof nor shall any such failure to exercise, or delay in exercising, or single or partial exercise of, any such right or remedy preclude the exercise of any other right or remedy. The rights and remedies of each party herein contained shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity.

**25. Modifications**

25.1 Subject to the provisions of this Agreement, no modification, amendment or addition to this Agreement shall be valid unless it is made in writing and with prior agreement by the Government.

**26. Entire Agreement**

26.1 This Agreement constitutes the entire agreement between the parties in relation to the provision of the Funds by the Government to the Grantee and supersedes all prior agreements (whether oral or in writing), letters and other documents in whatever form concerning the same. The parties confirm that they have not entered into this Agreement upon the basis of any statements, undertakings, warranties or representations that are not expressly stated in this Agreement.

**27. Severability**

27.1 If any provision of this Agreement or its application to any circumstances shall, to any extent, be invalid, illegal or unenforceable, the remainder of this Agreement and the application of that provision to other circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**28. Execution of Further Documents**

28.1 The Grantee shall do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Government to give full

effect to Clauses 16 and 18 and shall provide all such documents and materials to the Government within the timeframe as stipulated by the Government.

**29. Governing Law and Jurisdiction**

29.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each party agrees to submit to the exclusive jurisdiction of Hong Kong courts.

**30. Saving**

30.1 Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any powers, discretions or duties, or the exercise or performance of any powers, discretions or duties, conferred or imposed by or under any law upon the Government, any Government bureau or department or any public officer or other person in the employ of the Government.





**SIGNED BY** .....} \_\_\_\_\_  
[Name, Post, Name of Grantee] (Signature)

for and on behalf of  
[Name of Grantee]

\_\_\_\_\_  
(Grantee's Chop)

**in the presence of** .....} \_\_\_\_\_  
[Name, Post, Name of Grantee] (Signature)

## SCHEDULE 1

1. **Grantee's Name:** [Name of Grantee]

**Address of Grantee's Registered Office / principal place of business:**

[Address

Registration's description of the Grantee]

2. **Date of Submission of Application (including all its appendices, attachments and supplements):** On [Date], the Grantee submitted an application form in respect of the Project (including all its appendices, attachments and supplements) to the Assessment Committee and Government. On [Date(s)], the Grantee submitted revisions and supplements to the Assessment Committee and Government. A copy of such application form (including all the appendices, attachments, supplements and revisions in relation to the application submitted by the Grantee on or after [Date] to the Assessment Committee and Government) approved and accepted by the Government is annexed at the **Appendix**.

3. **Approved Funds:**

A maximum sum of Hong Kong Dollars (HK\$)[MEF maximum amount] only;

Provided that:

- (a) the total Government's contribution (including the Funds payable by the Government) shall not exceed **50%** of the Project's Cost; and
  - (b) the Funds payable by the Government is subject to the additional funding conditions stipulated in **Schedule 2**, and that the Grantee shall deliver the Project Result under this Agreement in accordance with and achieve the approved deliverables, targets and key performance indicators of the Project as stipulated in **Schedule 2**.
4. **Approved Date of Completion of the Project:** [Date]
  5. **Commencement Date of this Agreement:** [Date]

## **SCHEDULE 2**

### **Additional Funding Conditions and Approved Deliverables, Targets and Key Performance Indicators of the Project**

#### Additional Funding Conditions

(a) ...

#### Deliverables and Targets of the Project

The Grantee agrees, undertakes and warrants to –

(a) ...

#### Key Performance Indicators of the Project

(a) ...

### **SCHEDULE 3**

#### **Payment of Funds**

##### **Payment Schedule:**

- (a) **50%** of the Approved Funds payable (**HK\$[Amount]** only) will be provided upon the entering into an Agreement between the Grantee and the Government in relation to the provision of the Funds by the Government for the Project.
  
- (b) The Government will only release the remaining Funds to the Grantee in accordance with the terms and conditions of the Agreement and after the Project has been satisfactorily completed and that the Assessment Committee, PSCIT and Government have received and accepted the final Audited Accounts, Evaluation Report, Publicity Report and Survey Report from the Grantee referred to in Clauses 12 and 15 of this Agreement, and is further subject to the Grantee's full compliance with all its obligations under this Agreement.

## SCHEDULE 4

### Brand Hong Kong Signature and Tourism Commission's Logo

#### *Brand HongKong Signature (English and Chinese):*

English Version



Chinese Version



#### *Tourism Commission's Logo:*

**Sponsored by Mega Events Fund**  
**盛事基金贊助**



## **SCHEDULE 5**

### **Project Co-ordinator and Deputy Project Co-ordinator**

1. Project Co-ordinator: [*Name, Post, Name of Grantee*]
2. Deputy Project Co-ordinator: [*Name, Post, Name of Grantee*]