

政府總部
民政事務局

香港灣仔
告士打道五號
稅務大樓
四十一樓



GOVERNMENT SECRETARIAT

HOME AFFAIRS BUREAU
41/F, REVENUE TOWER
5 GLOUCESTER ROAD
WAN CHAI
HONG KONG

本局檔號：SF(3) HAB/CS/CR 7/7/8 (C1) Pt.3
來函檔號：CB(3)/PAC/R54
電話：2594 6615
圖文傳真：2802 4893

香港中區
昃臣道8號
立法會大樓
政府帳目委員會秘書
(經辦人：伍美詩女士)

伍女士：

《審計署署長第五十四號報告書》衡工量值式審計結果
香港中樂團有限公司(第6章)

閣下於2010年4月27日的來信收悉。現謹提供信內所要求的資料如下：

- (a) 隨函附上民政事務局與香港中樂團有限公司(香港中樂團)訂立的2009-10年度及2010-11年度《資助及服務協議》(只有英文版本)。由於協議附件A的部分內容為商業敏感資料，因此我們已遮蓋該些內容，包括“(b)部—資助期指標”中涉及香港中樂團與第三方協商的部分節目詳情；以及“(c)部—議定編制”中有關香港中樂團員工薪酬福利的資料，敬請注意。

- (b) 至於政府一般會向海外藝術家/表演團體提供的機位等級，我們已就此徵詢康樂及文化事務署(康文署)。據了解，康文署既有的慣常做法是根據訪港藝人/表演團體在國際上的知名度，為有關藝人/團體提供包括機票安排在內的委聘條款。署方會通過協商方式落實有關安排。因此，協議條款因人而異，而較知名的藝術家獲安排商務機位的情況並非罕見。這項安排與國際演藝市場上沿用已久，並廣為主辦者所接受的做法一致。

民政事務局局長

(羅莘桉



代行)

副本送： 香港中樂團有限公司行政總監
財經事務及庫務局局長
審計署署長
康樂及文化事務署署長

二零一零年五月四日

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
AND
HONG KONG CHINESE ORCHESTRA LIMITED
FOR THE YEAR 2009-10**

THIS AGREEMENT is made on the 6th day of April 2009

PARTIES:

- (1) the Government of the Hong Kong Special Administrative Region as represented by the Secretary for Home Affairs whose principal office is at 31/F, Southorn Centre, Wanchai, Hong Kong ("the Government"); and
- (2) Hong Kong Chinese Orchestra Limited, a company with limited liability incorporated under the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) whose registered office is at 7/F, Sheung Wan Municipal Services Building, 345 Queen's Road Central, Hong Kong ("the COMPANY").

RECITALS:

The Government wishes to promote and develop Chinese music in Hong Kong and has agreed to grant to the COMPANY and the COMPANY has agreed to accept a maximum sum of HK\$53,143,963/(Hong Kong Dollars Fifty-three Million One Hundred Forty-three Thousand Nine Hundred and Sixty-three Only) ("the Subvention") for the period from 1 April 2009 to 31 March 2010 inclusive ("the Subvention Period") for the sole purpose of implementation of the programme of activities proposed by the COMPANY and as set out at Annex A ("the Activities") in accordance with the budget set out at Annex B ("the Budget") and subject to and upon the terms and conditions set out hereunder.

OPERATIVE PART:

1. Subject to the earlier termination as provided in Clause 12, this Agreement shall take effect on 1 April 2009 and shall continue until 31 March 2010.
2. The Subvention shall be made available to the COMPANY subject to the COMPANY's compliance with all provisions of this Agreement, and to the Government's overriding right to suspend, vary, reduce or cancel payment of all or any part of the Subvention or to demand immediate repayment of all or any part of the Subvention as may be determined by the Government in its sole discretion.
3. Subject to the COMPANY's compliance with all provisions of this Agreement and the Government's right provided in Clause 2, the Government will make available the Subvention to the COMPANY by quarterly instalments in advance during the Subvention Period.

FSA 2009-10 HKCO_26.3.2009

***委員會秘書附註：** 本文件只備英文本。

附件A、B、D、E及F並無在此隨附。

4. In consideration of the grant of the Subvention or any part thereof by the Government to the COMPANY, the COMPANY agrees -
- (a) to provide artistic leadership in the local Chinese music community and develop a distinctive local Chinese music culture;
 - (b) to establish community support and develop public interest in Chinese music;
 - (c) to establish regional and international reputation for the COMPANY;
 - (d) to implement the Activities in accordance with the Budget, and to use and account for the Subvention in accordance with the provisions of this Agreement;
 - (e) to use all experience, skill, care and diligence and attention in carrying out the Activities and discharge all its duties and obligations under this Agreement as may be expected from a person who is an expert in providing activities similar to the Activities; and
 - (f) to comply with the requests, instructions and/or directives as the Government may make or give relating to the Activities from time to time.
5. To enable the Government to ascertain whether the objectives of the Subvention to the COMPANY are achieved and the provisions of this Agreement are complied with by the COMPANY, the COMPANY agrees and undertakes -
- (a) to notify the Government in advance in writing of each of the COMPANY's public activities and events relating to the Activities or this Agreement including without limitation publicity and promotional events such as press conferences, to provide the Government with all related publicity and promotional materials produced for the Activities and any other activities funded by the Subvention, and to allow the Government to send representatives to such activities and events;
 - (b) to notify the Government in advance in writing of each meeting of the governing body of the COMPANY, to provide the Government with the relevant papers and minutes as soon as reasonably practicable, and to allow the Government to send representatives to attend such meetings as observers;
 - (c) to provide the Government upon request with up to six tickets to attend any ticketed scheduled activities relating to this Agreement;
 - (d) to provide the Government with the following reports covering the Subvention Period -
 - (i) a self-evaluation and assessment report and a year-end report on or before 30 June 2010. The Government reserves the right to specify the format of the self-evaluation and assessment report and the year-end report;
 - (ii) audited annual financial statements and annual financial report on or before 30 September 2010 in accordance with the requirements set out in Annex C; and

- (iii) thirty copies of the Annual Report on or before 31 October 2010 and to make it available/accessible to the public via the internet by uploading it to the COMPANY's website and through such other means as the Government may specify. The Annual Report shall include the report of the Chairman of the COMPANY, COMPANY's objectives, COMPANY's corporate structure, structure of the Board of Directors, committees and advisors (if any), a pro-forma balance sheet and income and expenditure account extracted from the COMPANY's audited annual financial statements and a report on the COMPANY's work and activities.
6. The COMPANY agrees and hereby warrants and undertakes (with continuing effect until the termination or expiry of this Agreement) -
- (a) to adopt proper internal controls to ensure that the Subvention is used in a cost-effective and accountable manner, and to notify the Government of any irregularities as soon as they are identified, and forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and prevent recurrence of the irregularities;
 - (b) that due efforts will be made to ensure value for money in using the Subvention it obtains from the Government in the implementation of its objectives set out in Clauses 4(a) to (f) of the Agreement and performance of its duties and obligations under this Agreement ;
 - (c) to ensure that due efforts will be made to ensure that overheads will be reduced and productivity enhanced in the course of performance of this Agreement;
 - (d) to comply with all applicable health and safety laws and regulations in the performance of this Agreement;
 - (e) to comply with all applicable employment and equal opportunities and data protection laws and regulations in the performance of this Agreement;
 - (f) to account to the Government its employment and remuneration of its senior executives, and to observe the principle of fairness and transparency in recruiting staff in the performance of this Agreement;
 - (g) to comply in all respects (including without limitation, the giving of all necessary notices, the paying of all necessary fees and the obtaining of all necessary licences, consents and approvals) with all enactments, laws, ordinances, rules and regulations for the time being and from time to time in force in Hong Kong which are applicable to the Activities or other activities funded by the Subvention;
 - (h) to procure its employees, agents and sub-contractors who are engaged to carry out the Activities to adopt and observe the 'Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organizations' at Annex D (as may be amended or supplemented by the Government from time to time) and adopt the pro-forma 'Declaration of Conflict of Interest' at Annex E;
 - (i) to follow the Code of Conduct at Annex D to set out the COMPANY's policy documents on restricting the COMPANY's staff to take part in outside work and to supply the Government with such policy documents whenever revised;

- (j) in case of any suspected breach of the Code referred to in Clause 6(h) above, to forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities;
- (k) to acknowledge with full awareness that neither the Government, nor its employees or agents shall in any way be or be held or be deemed to be responsible for the direction or conduct of the affairs of the COMPANY. In the absence of specific designation in writing as a directive of the Government, any advice, suggestions, comments or other indication given voluntarily by the Government or its employees or agents shall be deemed in all respects to be given on a purely personal basis and not as reflecting the view or position of the Government in any way and the COMPANY shall accept and respond to any such advice, suggestion, comments or other indications entirely at its own discretion and risk. Without prejudice to Clause 14 of this Agreement, the COMPANY shall keep the Government and their employees and agents indemnified against all claims, actions, demands, costs, expenses (including without limitation the fees and disbursement of lawyers, agents and expert witnesses) and liabilities of whatsoever nature incurred as a result of the COMPANY acting, accepting and responding to any such advice, suggestion, comments or other indications as well as to any specific directive of the Government;
- (l) to acknowledge and carry on its activities on the basis that the terms and conditions of service for those persons constituting the agreed establishment as set out at Annex A ("Agreed Establishment") shall not be more favourable than what in the absolute opinion of the Government are commensurate with the duties and experience of that particular post, and shall be in line with the terms and conditions of comparable posts in the trade;
- (m) if for the Subvention Period, the Subvention amounts to \$10 million or more and the Subvention accounts for 50% of the COMPANY's operating income, to review the number, ranking and remuneration of its staff as directed by the Government; to submit to the Government an annual report on the review findings for the Subvention Period in such a format as required by the Government on or before 30 June 2010; and to make public disclosure of the remuneration of staff of the top three tiers in its Annual Report in such a way as the Government may require;
- (n) for those staff referred to in Clause 6(m) above, to supply the Government with documents on procedures of recruitment, renewal and termination of appointment, and the terms and conditions of employment of such staff (including all amendments and supplements thereto) who are employed at any time during the Subvention Period;
- (o) to notify the Government in writing if the establishment of the COMPANY is significantly different from the level provided for in the Agreed Establishment, or if there are any proposed changes or renewal of employment in the highest level of artistic or management staff of the COMPANY, to seek the Government's prior approval in writing where approval will not be unreasonably withheld;
- (p) not to accept any donation, sponsorship or advertisement from or associated in any form or manner with tobacco or tobacco-related activities;

- (q) not to deviate from the Budget without the prior written approval of the governing body of the COMPANY and to as soon as practicable notify the Government accordingly;
- (r) to meet any copyright obligations on works which are not covered by the annual blanket licence held by the venues of the Leisure and Cultural Services Department;
- (s) to use best endeavours to maximize revenue from sources other than the Government including without limitation sponsorship and fundraising as estimated at Annex B and to charge full costs for services provided on a self-financing basis to other organizations;
- (t) to include in the COMPANY's revenue budget and audited financial statements referred to in Clause 5(d)(ii) all bank interest which has accrued;
- (u) to ensure that all procurement of goods and services pursuant to the provisions of this Agreement shall be conducted on a fair, unbiased and competitive bidding basis. The COMPANY shall review its existing procurement procedures making reference to the sample procurement policy and guidelines set out at Annex F and shall, if required by the Government, amend its existing procurement procedures to ensure compliance with Annex F. The Company shall provide the Government with a copy of its procurement procedures whenever revised;
- (v) to ensure that the COMPANY's governing body, officers and staff shall keep themselves informed of the financial and accounting procedures relating to procurement of goods and services regularly and whenever such procedures are amended;
- (w) not to alter the terms of its Memorandum and Articles of Association without first obtaining the written consent of the Government;
- (x) to procure that no member of the governing body of the COMPANY shall serve for a term in excess of six consecutive years;
- (y) to give due consideration to the inclusion in the governing body of the COMPANY an appropriate number of professionals such as accountant, lawyer, fund raising and marketing experts to give advice and business support to the COMPANY;
- (z) to ensure that the constitution of the governing body of the COMPANY as comprising no less than six (6) members and that the quorum for making decisions of the board shall be no less than 50% of the full membership of the board and being at least three (3) in number;
- (aa) to hold meetings of the governing body not less than three times a year during the Subvention Period;
- (bb) the performance of its obligations under this Agreement does not and will not conflict with or contravene any judicial order or obligations under any third party contracts to which the COMPANY is a party; and
- (cc) all information in relation to the Activities of this Agreement provided by the COMPANY is true, accurate and complete in all material respects.

7. The COMPANY agrees that -

- (a) the COMPANY shall keep proper and separate books and records of all receipts and payments (including receipts, counterfoils, vouchers and other supporting documents) and contracts, minutes and all information in connection with the Subvention in legible written form for at least seven (7) years after the expiry or termination of this Agreement or up to the date as otherwise specified by the Government within seven (7) years after the expiry or termination of this Agreement and shall make the same as well as general ledgers, sub-ledgers, cashbooks and bank statements available for conducting audit (including without limitation value for money audit), inspection, verification and copying by the Government, the Director of Audit and/or their respective authorized representatives at all reasonable times during the continuation of this Agreement and the said period after the expiry or termination of this Agreement. The COMPANY shall ensure that all receipts and payments in respect of the Subvention and the programmes funded by the Subvention are properly and timely recorded. The COMPANY shall also provide copies of such books and records to the Government, the Director of Audit and/or their respective authorized representatives forthwith on demand free of charge;**
- (b) the COMPANY shall, and shall procure its employees and agents to, explain to the Government, the Director of Audit and/or their respective authorized representatives any matters relating to the receipt, expenditure and/or custody in respect of the Subvention upon request;**
- (c) the Government, the Director of Audit and/or their respective authorized representatives is entitled to carry out value for money scrutinies on the COMPANY's accounts and records;**
- (d) upon the Government's request, the COMPANY shall allow the Commissioner of the Independent Commission Against Corruption or its authorized representatives to examine the management and control procedures of the COMPANY for the purpose of providing corruption prevention advice to the COMPANY, and the COMPANY shall heed the advice given and shall take remedial actions as are appropriate;**
- (e) the COMPANY shall not, and shall procure that its employees, agents and sub-contractors who are in any way involved in the performance of this Agreement shall not -**

 - (i) give or offer to give to any officer, employee or agent of the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other Government contracts or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Government contracts;**
 - (ii) enter into this Agreement or any other Government contracts in connection with which commission has been paid or agreed to be paid by the COMPANY or on its behalf, or to its knowledge; and**

- (f) if the COMPANY or its employees, agents or sub-contractors who are in any way involved in the performance of this Agreement shall be found to have breached Clause 7(e) of this Agreement (whether with or without the knowledge of the COMPANY) or committed any offence under the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government reserves the right to summarily terminate this Agreement immediately by giving written notice to the COMPANY pursuant to Clause 12.

8.1 The COMPANY agrees -

- (a) to use the Subvention solely and exclusively for carrying out the Activities. The COMPANY shall not use or divert the Subvention to support any items/activities for which the Government has already expressed difficulties in giving policy or funding supports. The COMPANY shall account for and make good any payments or expenditure made in contravention of this Agreement;
- (b) to seek the Government's written approval before the COMPANY uses the Subvention for carrying out an activity which falls outside the scope of the Activities and if such approval is given, to acknowledge the Government for funding that activity in the same manner as provided at Clause 8.2 (a);
- (c) not to use the funds earmarked for outbound cultural exchange activities in the Subvention for any other purpose. The COMPANY undertakes to inform the Government in advance on each occasion of outbound cultural exchange the details of such exchange activity including the host party, the full budget, expected audience etc should funds earmarked for the purpose in the Subvention be used for such activity. The COMPANY also undertakes to provide reports on its outbound cultural exchange activities to be annexed to the year-end report of the COMPANY referred to in Clause 5(d)(i). The COMPANY shall keep a separate account of their outbound cultural exchange under their audited annual financial report referred to in Clause 5(d)(ii) on or before 30 September 2010. Any unspent portion of the outbound cultural exchange earmarked grant shall be carried forward to the COMPANY's Subvention of 2010-11 to be used exclusively for outbound cultural exchange activity unless the COMPANY is no longer receiving Subvention from the Government in 2010-11 in which case the unspent portion of the earmarked funds of 2009-10 will have to be repaid to the Government on demand;
- (d) to keep a separate set of accounts for self-financing activities which are funded by sources other than the Subvention in the forms of sponsorship, donations etc and ensure that all receipts and payments in this account are properly and timely recorded and there is no cross-subsidization of self-financing activities by the Activities and any other activities funded by the Subvention (whether in money or in kind);
- (e) to provide the Government with copies of all publicity and promotional materials produced for the Activities and any other activities funded by the Subvention with the consent of the Government at least one month before the start of the activities; and
- (f) to allow the Government to use the publicity and promotional materials produced

by the COMPANY in arts promotion or other promotion activities.

8.2 The COMPANY -

- (a) acknowledges that the Subvention is being provided by the Government and shall, in all publicity and promotional materials produced relating to the Activities of the COMPANY, include a statement that "The COMPANY is financially supported by the Government of the Hong Kong Special Administrative Region". The acknowledgement shall be placed in a prominent position in the publicity and promotional materials and shall be of a size not smaller than other type print acknowledging support or of such other size or sizes as shall be required by the Government from time to time. The COMPANY further agrees that the acknowledgement and any other reference to the Government or its employees shall carry no implications whatsoever that the Government or its employees undertake or accept any responsibility or assume any liability to any third parties for the COMPANY's liabilities or obligations; and
 - (b) acknowledges and agrees that there is no obligation on the part of the Government to provide any additional funding should the COMPANY run into financial deficit at any time during the Subvention Period. The Government shall not reimburse the COMPANY for any amount incurred by the COMPANY that exceeds the amount of the Subvention or any amount incurred by the COMPANY before the commencement date of this Agreement or after the expiry or termination of this Agreement. The Government accepts no liabilities for any deficits arising from the carrying out of the Activities.
9. To enable the Government to take any remedial action if the financial position of the COMPANY changes to the point where in the opinion of the Government the Subvention may no longer be appropriate or necessary, the COMPANY agrees -
- (a) to accept any donation or sponsorship from any third parties on the understanding that the Government is not obliged to provide any funds to meet any financial commitment (whether recurrent or otherwise) arising from the COMPANY's acceptance of the donation or sponsorship;
 - (b) to bear any and all financial consequences resulting from the acceptance of donations or sponsorship for providing any services/undertaking any capital projects which may have recurrent/time-limited financial implications unless the Government's written agreement in providing additional funding for the purpose has been obtained before the COMPANY's acceptance of donations or sponsorship. In the event that the COMPANY accepts a donation or sponsorship which creates a financial commitment on the COMPANY beyond the Subvention Period without the prior written agreement of the Government, the COMPANY agrees that this will not preempt or commit the Government to provide any subvention to the COMPANY beyond the Subvention Period;
 - (c) to obtain the prior approval of the governing body of the COMPANY as to the manner in which the donation is to be used and to notify the Government of any donation made to the COMPANY which the donor does not require to be used for a specific purpose;
 - (d) that upon request of the Government, the COMPANY shall immediately provide

the Government with copies of all or any of the sponsorship agreements entered into by the COMPANY;

- (e) to notify the Government as soon as practicable of any proposed change to the scope and/or level of Activities. The Government reserves the right to vary the amount of Subvention if there is any change to the scope and/or level of Activities; and
 - (f) to accept a revision of the amount of Subvention if the Government, without prejudice to its right to terminate under Clause 12, considers such a revision appropriate, having regard to the resources and circumstances of the COMPANY, and to refund and to repay to the Government immediately on demand by the Government the amount of any reduction in the Subvention as may be determined by the Government.
10. In this clause, "Reserve" means the surplus (if any) as revealed in the audited annual financial statements referred to in Clause 5(d)(ii) net of sponsorship, donations and income and expenditure of self-financing activities. If at the end of the Subvention Period, there is a Reserve, the COMPANY may keep and carry forward a Reserve of not more than twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period to serve as a buffer against contingencies in the subsequent year and as an incentive to economise its spending in the current year. All amounts exceeding twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period shall either be returned by the COMPANY to the Government or netted off against the amount of the following year's Government subvention, if any, in the sole discretion of the Government. The COMPANY may apply for written approval of the Government to vary the aforesaid ceiling of the Reserve, which may be considered and decided by the Government in its sole discretion. The COMPANY agrees -
- (a) to plough back the Reserve into Activities funded by the Subvention;
 - (b) to seek the prior approval of the governing body of the COMPANY for using the Reserve;
 - (c) to seek the prior written approval of the Government if the use of the Reserve will generate additional financial consequences for the Government; and
 - (d) for accounting purpose as set out in Clause 8.1(d), the COMPANY shall keep a separate account to record sponsorship, donations and income and expenditure of the COMPANY's self-financing activities.

11. Personal Data

- (a) The COMPANY hereby consents, agrees and authorizes that without further notification to the COMPANY, the Government may disclose, verify and/or exchange all and any information and data ("the Data") related to its constituent committees and/or other third parties -
 - (i) for and in relation to consideration, review and evaluation of the COMPANY's application for Government subvention and the Subvention hereby granted or for the maintenance of the Subvention

made or in respect of the continuation of the Subvention made or to be made; or

- (ii) in relation to the use of the Data in its discretion in the general policies, requirements, decisions and related activities and matters of the Government in administration of and for publicity as part of the general transparency of the Government in the discharge of its functions and duties.
- (b) The COMPANY confirms that it shall comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) before disclosing or transferring the Data obtained from data subjects to the Government.
- (c) The COMPANY hereby confirms that it is fully aware and acknowledges and authorizes that all Data are supplied to the Government in connection with the application for the Subvention and in connection firstly with the making, maintaining, reviewing, assessing, recovering and publicizing the Data for the direct primary purpose of the Subvention and secondly the objectives of the Government for the wider but equal secondary purpose of recording, storing, identifying and making available the Data for public access in implementing the fully transparent policies of conduct, operation, performance, reporting, analyzing and fully informing the public of the results of the Government from time to time and at all times in the necessary discharge of its statutory responsibilities and that failure so to treat and deal with the Data may result in the Government being unable to discharge its functions properly and efficiently and that such treatment of and dealing with the Data are accordingly hereby fully and irrevocably authorized by the COMPANY. The COMPANY shall indemnify the Government against all third party claims in this regard including without limitation employees of or consultants to and any other direct or indirect providers of services or benefits to the COMPANY.
- (d) The indemnity clause in Clause 11(c) shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

12. Termination and Consequences of Termination

- (a) The Government may, at any time, terminate this Agreement forthwith by giving notice to the COMPANY without entitling the COMPANY to any compensation whatsoever -
 - (i) if the COMPANY is -
 - in breach of any terms, conditions or undertakings of this Agreement; or
 - persistently or wrongfully neglecting to carry out the Activities or its duties or obligations under this Agreement;

and (in case of any of the abovementioned failure or breach capable of being remedied) has failed to remedy the same to the satisfaction of the Government within seven (7) days (or such longer period as the Government may, in its sole discretion, allow) after

the issue by the Government to the COMPANY of a written notice requiring the COMPANY to rectify the failure or breach;

- (ii) if the Government becomes entitled to terminate this Agreement pursuant to Clause 7(f);
 - (iii) if the COMPANY assigns, transfers, sub-contract, license or otherwise dispose of any interest, right, benefit or obligation under this Agreement or purports to do so otherwise than in accordance with Clause 13;
 - (iv) if the COMPANY engages in any conduct which can be considered to be prejudicial to the Activities in the Government's sole opinion;
 - (v) upon the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up or dissolution of the COMPANY (other than a voluntary liquidation for the purpose of a bona fide amalgamation or reconstruction whilst the COMPANY is solvent) or if a receiver, provisional liquidator, liquidator or administrator has been appointed over all or any of its assets or if the COMPANY makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any judgment is made against the COMPANY or any similar occurrence under any jurisdiction that affects the COMPANY;
 - (vi) if the COMPANY fails to submit any reports or financial accounts pursuant to this Agreement, or any of the data, facts or information represented to and/or provided by the COMPANY to the Government about the Activities or this Agreement or any part thereof is incomplete, incorrect, untrue or is misleading; or
 - (vii) if the COMPANY abandons this Agreement in whole or in part.
- (b) On the expiry or other termination of this Agreement -
- (i) 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 expiration or termination);
 - (ii) subject to negotiation with and subsequent approval of the Government, the COMPANY shall not use the Reserve of the Subvention and shall forthwith return all such balance to the Government; and
 - (iii) the COMPANY shall within six (6) months after such expiry or termination submit to the Government a final Audited Account in respect of the Activities and the Subvention made up to such expiry or termination.
- (c) If this Agreement is terminated by the Government pursuant to this Clause, without prejudice to any of the Government's other rights and remedies, the Government may require the COMPANY to repay immediately all or any monies provided by the Government pursuant to this Agreement which have not been defrayed, applied or used, or whose application or use has not been controlled, monitored or supervised by the COMPANY, strictly in accordance with the terms of this Agreement together with

all administrative, legal and other costs and interest accrued up to the date of repayment.

13. Assignment

- (a) The COMPANY shall not assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement without the prior written consent of the Government.
- (b) The Government may at any time assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement.

14. Indemnity

- (a) The COMPANY shall indemnify the Government and keep the Government fully and effectively indemnified against all loss, actions, claims, demands, damages, interest, costs, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by/on behalf of the COMPANY) and liabilities of whatsoever nature which the Government may sustain or incur or which may be brought or established against the Government by any person as a result of or relating to -
 - (i) the negligence, recklessness or willful misconduct of the COMPANY, its officers, employees, agents or sub-contractors in carrying out the Activities or performing this Agreement;
 - (ii) the breach by the COMPANY of any provisions of this Agreement; or
 - (iii) any unauthorized act or omission of the COMPANY or its officers, employees, agents or sub-contractors.
- (b) The provisions of this Clause 14 shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

15. Amendments

Subject to the provisions of this Agreement, no waiver, cancellation, addition, alteration or amendment of or to the provisions of this Agreement shall be valid unless made in writing and duly signed by both parties.

16. Entire Agreement

This Agreement sets out the entire agreement between the parties hereto and supersedes all prior written or oral agreements, understandings or arrangements between them in relation to the subject matter hereof, and 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.

17. Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, such provision shall, to that extent, be deemed not to form part of this Agreement without affecting the interpretation, legality, validity and enforceability of the remaining provisions of this Agreement.

18. No Waiver

No failure or delay by either party to exercise any right, power or remedy available to it under this Agreement, at law, or in equity shall operate as a waiver thereof, nor will any single, partial or defective exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

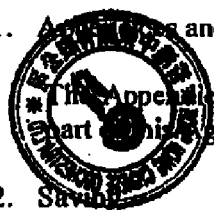
19. Relationship of the Parties

Nothing in this Agreement or in the arrangements contemplated by it shall create a partnership or joint venture 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 in this Agreement shall be so construed as to constitute either party to be the agent of the other.

20. Governing Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

21. Appendices and Annexes



The Appendices and Annexes to this Agreement shall form and be read as an integral part of this Agreement.

22. Saving

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.

In witness whereof the parties have executed this Agreement the day and year first above written.

SIGNED for and on behalf of the Government of
the Hong Kong Special Administrative Region

By : Miss Winnie So
Signature : [Signature]
Title : Principal Assistant Secretary
for Home Affairs (Culture)
Witness : [Signature]
(Ms Rebecca Yu)
Senior Manager
for Home Affairs (Culture)

SIGNED for and on behalf of
Hong Kong Chinese Orchestra Limited

By : MR HENRY LAI
Signature : [Signature]
Title : CHAIRMAN OF THE COUNCIL
Witness : [Signature]
MS. CELINA CHIN
EXECUTIVE DIRECTOR)



Company chop

Submission of Audited Annual Financial Statements and Financial Report

The audited annual financial statements of the COMPANY shall include balance sheet, income statement, cash flow statement, and accounting policies and explanatory notes, and the audited annual financial report shall show –

- (a) the income and expenditure in respect of the Subvention and the Activities; and
- (b) the movements in the Reserve and assets acquired which are funded by the Subvention.

The annual financial statements and annual financial report mentioned at Clause 5(d)(ii) shall be certified by the Chairman of the COMPANY and prepared in accordance with the relevant laws of Hong Kong and the international accounting standard as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards and Accounting Guidelines as may be issued and updated from the time to time by the Hong Kong Institute of Certified Public Accountants) and duly audited, dated and signed by a certified public accountant registered under section 22 of the Professional Accountants Ordinance (Cap. 50 of the Laws of Hong Kong) who are not in any way connected with the Activities.

The auditors' report accompanying the annual financial statements and annual financial report submitted shall contain an expression of opinion as to –

On the annual financial statements of the COMPANY –

whether they give a true and fair view of the state of affairs of the COMPANY as at the balance sheet date and of its financial result and cash flows for the year then ended.

On the annual financial report of the Activities being audited –

whether the COMPANY has complied with, in all material respects, the requirements as may be set by the Government (including the requirements to keep proper books and records and to prepare annual financial report of the Activities in accordance with the books and records) and all the terms and conditions of this Agreement and other relevant documents as may be specified by the Government such as the Accounting Standards and Accounting Guidelines.

The COMPANY shall agree with the auditors the terms of the audit engagement, such as the objectives, scope and form of report, etc. To avoid misunderstanding, the agreed terms shall be recorded in an engagement letter.

The COMPANY shall provide the auditors with a copy of this Agreement and other relevant documents.

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
AND
HONG KONG CHINESE ORCHESTRA LIMITED
FOR THE YEAR 2010-11**

THIS AGREEMENT is made on the 9th day of April 2010

PARTIES:

- (1) the Government of the Hong Kong Special Administrative Region as represented by the Secretary for Home Affairs whose principal office is at 31/F, Southorn Centre, Wanchai, Hong Kong ("the Government"); and
- (2) Hong Kong Chinese Orchestra Limited, a company with limited liability incorporated under the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) whose registered office is at 7/F, Sheung Wan Municipal Services Building, 345 Queen's Road Central, Hong Kong ("the COMPANY").

RECITALS:

The Government wishes to promote and develop Chinese music in Hong Kong and has agreed to grant to the COMPANY and the COMPANY has agreed to accept a maximum sum of HK\$53,143,963 (Hong Kong Dollars Fifty-three Million One Hundred Forty-three Thousand Nine Hundred and Sixty-three Only) ("the Subvention") for the period from 1 April 2010 to 31 March 2011 inclusive ("the Subvention Period") for the sole purpose of implementation of the programme of activities proposed by the COMPANY and as set out at Annex A ("the Activities") in accordance with the budget set out at Annex B ("the Budget") and subject to and upon the terms and conditions set out hereunder.

OPERATIVE PART:

1. Subject to the earlier termination as provided in Clause 12, this Agreement shall take effect on 1 April 2010 and shall continue until 31 March 2011.
2. The Subvention shall be made subject to the satisfactory performance by the COMPANY of the terms and conditions of this Agreement, and to the Government's overriding right to suspend, vary, reduce or cancel payment of all or any part of the Subvention or to demand immediate repayment of all or any part of the Subvention as shall be determined by the Government at its sole and absolute discretion.
3. Subject to the observance and performance by the COMPANY of all terms and all its obligations under this Agreement, the Government will make available the Subvention to the COMPANY by quarterly instalments in advance during the Subvention Period.

FSA 2010-11 HKCO_10.3.2010

***委員會秘書附註：** 本文件只備英文本。
附件A、B、D、E及F並無在此隨附。

4. In consideration of the grant of the Subvention or any part thereof by the Government to the COMPANY, the COMPANY agrees -
 - (a) to provide artistic leadership in the local Chinese music community and develop a distinctive local Chinese music culture;
 - (b) to establish community support and develop public interest in Chinese music;
 - (c) to establish regional and international reputation for the COMPANY;
 - (d) to implement the Activities in accordance with the Budget, and to use and account for the Subvention in accordance with the provisions of this Agreement;
 - (e) to use all experience, skill, care and diligence and attention in carrying out the Activities and discharge all its duties and obligations under this Agreement as may be expected from a person who is an expert in providing activities similar to the Activities; and
 - (f) to comply with the reasonable requests of the Government relating to the Activities.
5. To enable the Government to ascertain whether the objectives of the Subvention to the COMPANY are achieved and the provisions of this Agreement are complied with by the COMPANY, the COMPANY agrees and undertakes -
 - (a) to notify the Government in advance in writing of each of the COMPANY's public activities and events relating to the Activities or this Agreement including without limitation publicity and promotional events such as press conferences, to provide the Government with all related publicity and promotional materials produced for the Activities and any other activities funded by the Subvention, and to allow the Government to send representatives to such activities and events;
 - (b) to notify the Government in advance in writing of each meeting of the governing body of the COMPANY, to provide the Government with the relevant papers and minutes as soon as reasonably practicable, and to allow the Government to send representatives to attend such meetings as observers;
 - (c) to provide the Government upon request with up to six tickets to attend any ticketed scheduled activities relating to this Agreement;
 - (d) to provide the Government with the following reports covering the Subvention Period -
 - (i) a self-evaluation and assessment report and a year-end report on or before 30 June 2011. The Government reserves the right to specify the format of the self-evaluation and assessment report and the year-end report;
 - (ii) audited annual financial statements and annual financial report on or before 30 September 2011 in accordance with the requirements set out in Annex C; and
 - (iii) thirty copies of the Annual Report on or before 31 October 2011 and to make it available/accessible to the public via the internet by uploading it to

the COMPANY's website and through such other means as the Government may specify. The Annual Report shall include the report of the Chairman of the COMPANY, COMPANY's objectives, COMPANY's corporate structure, structure of the Board of Directors, committees and advisors (if any), a pro-forma balance sheet and income and expenditure account extracted from the COMPANY's audited annual financial statements and a report on the COMPANY's work and activities.

The COMPANY agrees and hereby warrants and undertakes (with continuing effect until the termination or expiry of this Agreement) -

- (a) to adopt proper internal controls to ensure that the Subvention is used in a cost-effective and accountable manner, and to notify the Government of any irregularities as soon as they are identified, and forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and prevent recurrence of the irregularities;
- (b) that due efforts will be made to ensure value for money in using the Subvention it obtains from the Government in the implementation of its objectives set out in Clauses 4(a) to (f) of the Agreement and performance of its duties and obligations under this Agreement;
- (c) to ensure that due efforts will be made to ensure that overheads will be reduced and productivity enhanced in the course of performance of this Agreement;
- (d) to comply with all applicable health and safety laws and regulations in the performance of this Agreement;
- (e) to comply with all applicable employment and equal opportunities and data protection laws and regulations in the performance of this Agreement;
- (f) to account to the Government its employment and remuneration of its senior executives, and to observe the principle of fairness and transparency in recruiting staff in the performance of this Agreement;
- (g) to comply in all respects (including without limitation, the giving of all necessary notices, the paying of all necessary fees and the obtaining of all necessary licences, consents and approvals) with all enactments, laws, ordinances, rules and regulations for the time being and from time to time in force in Hong Kong which are applicable to the Activities or other activities funded by the Subvention;
- (h) to procure its employees, agents and sub-contractors who are engaged to carry out the Activities to adopt and observe the 'Code of Conduct for Members of the Governing Board and Staff of Performing Arts Organizations' at Annex D (as may be amended or supplemented by the Government from time to time) and adopt the pro-forma 'Declaration of Conflict of Interest' at Annex E;
- (i) to follow the Code of Conduct at Annex D to set out the COMPANY's policy documents on allowing the COMPANY's staff to take part in outside work and to supply the Government with such policy documents whenever revised;
- (j) in case of any suspected breach of the Code referred to in Clause 6(h) above, to

forward a full report subsequently covering results of the investigations and actions taken to rectify the situation and to prevent recurrence of the irregularities;

- (k) to acknowledge with full awareness that neither the Government, nor its employees or agents shall in any way be or be held or be deemed to be responsible for the direction or conduct of the affairs of the COMPANY. In the absence of specific designation in writing as a directive of the Government, any advice, suggestions, comments or other indication given voluntarily by the Government or its employees or agents shall be deemed in all respects to be given on a purely personal basis and not as reflecting the view or position of the Government in any way and the COMPANY shall accept and respond to any such advice, suggestion, comments or other indications entirely at its own discretion and risk. Without prejudice to Clause 14 of this Agreement, the COMPANY shall keep the Government and their employees and agents indemnified against all claims, actions, demands, costs, expenses (including without limitation the fees and disbursement of lawyers, agents and expert witnesses) and liabilities of whatsoever nature incurred as a result of the COMPANY acting, accepting and responding to any such advice, suggestion, comments or other indications as well as to any specific directive of the Government;
- (l) to acknowledge and carry on its activities on the basis that the terms and conditions of service for those persons constituting the agreed establishment as set out at Annex A ("Agreed Establishment") shall not be more favourable than what in the absolute opinion of the Government are commensurate with the duties and experience of that particular post, and shall be in line with the terms and conditions of comparable posts in the trade;
- (m) if for the Subvention Period, the Subvention amounts to \$10 million or more and the Subvention accounts for 50% of the COMPANY's operating income, to review the number, ranking and remuneration of its staff as directed by the Government; to submit to the Government an annual report on the review findings for the Subvention Period in such a format as required by the Government on or before 30 June 2011; and to make public disclosure of the remuneration of staff of the top three tiers in its Annual Report in such a way as agreed by the Government;
- (n) for those staff referred to in Clause 6(m) above, to supply the Government with documents on procedures of recruitment, renewal and termination of appointment, and the terms and conditions of employment of such staff (including all amendments and supplements thereto) who are employed at any time during the Subvention Period;
- (o) to notify the Government in writing if the establishment of the COMPANY is significantly different from the level provided for in the Agreed Establishment, or if there are any proposed changes or renewal of employment in the highest level of artistic or management staff of the COMPANY, to seek the Government's prior approval in writing where approval will not be unreasonably withheld;
- (p) not to accept any donation, sponsorship or advertisement from or associated in any form or manner with tobacco or tobacco-related activities;
- (q) not to deviate from the Budget without the prior written approval of the governing body of the COMPANY and to as soon as practicable notify the Government

accordingly;

- (r) to meet any copyright obligations on works which are not covered by the annual blanket licence held by the venues of the Leisure and Cultural Services Department;
- (s) to use best endeavours to maximize revenue from sources other than the Government including without limitation sponsorship and fundraising as estimated at Annex B and to charge full costs for services provided on a self-financing basis to other organizations;
- (t) to include in the COMPANY's revenue budget and audited financial statements referred to in Clause 5(d)(ii) all bank interest which has accrued;
- (u) to ensure that all procurement of goods and services pursuant to the provisions of this Agreement shall be conducted on a fair, unbiased and competitive bidding basis. The COMPANY shall review its existing procurement procedures making reference to the sample procurement policy and guidelines set out at Annex F and shall, if required by the Government, amend its existing procurement procedures to ensure compliance with Annex F. The Company shall provide the Government with a copy of its procurement procedures whenever revised;
- (v) to ensure that the COMPANY's governing body, officers and staff shall keep themselves informed of the financial and accounting procedures relating to procurement of goods and services regularly and whenever such procedures are amended;
- (w) not to alter the terms of its Memorandum and Articles of Association without first obtaining the written consent of the Government;
- (x) to procure that no member of the governing body of the COMPANY shall serve for a term in excess of six consecutive years, save for the member's appointment as Chairman, Vice-chairman or Treasurer whose six-year count will start afresh;
- (y) to give due consideration to the inclusion in the governing body of the COMPANY an appropriate number of professionals such as accountant, lawyer, fund raising and marketing experts to give advice and business support to the COMPANY;
- (z) to ensure that the constitution of the governing body of the COMPANY as comprising no less than six (6) members and that the quorum for making decisions of the board shall be no less than 50% of the full membership of the board and being at least three (3) in number;
- (aa) to hold meetings of the governing body not less than three times a year during the Subvention Period;
- (bb) the performance of its obligations under this Agreement does not and will not conflict with or contravene any judicial order or obligations under any third party contracts to which the COMPANY is a party; and
- (cc) all information in relation to the Activities of this Agreement provided by the COMPANY is true, accurate and complete in all material respects.

7. The COMPANY agrees that -

- (a) the COMPANY shall keep proper and separate books and records of all receipts and payments (including receipts, counterfoils, vouchers and other supporting documents) and contracts, minutes and all information in connection with the Subvention in legible written form for at least seven (7) years after the expiry or termination of this Agreement or up to the date as otherwise specified by the Government within seven (7) years after the expiry or termination of this Agreement and shall make the same as well as general ledgers, sub-ledgers, cashbooks and bank statements available for conducting audit (including without limitation value for money audit), inspection, verification and copying by the Government, the Director of Audit and/or their respective authorized representatives at all reasonable times during the continuation of this Agreement and the said period after the expiry or termination of this Agreement. The COMPANY shall ensure that all receipts and payments in respect of the Subvention and the programmes funded by the Subvention are properly and timely recorded. The COMPANY shall also provide copies of such books and records to the Government, the Director of Audit and/or their respective authorized representatives forthwith on demand free of charge;
- (b) the COMPANY shall, and shall procure its employees and agents to, explain to the Government, the Director of Audit and/or their respective authorized representatives any matters relating to the receipt, expenditure and/or custody in respect of the Subvention upon request;
- (c) the Government, the Director of Audit and/or their respective authorized representatives is entitled to carry out value for money scrutinies on the COMPANY's accounts and records;
- (d) upon the Government's request, the COMPANY shall allow the Commissioner of the Independent Commission Against Corruption or its authorized representatives to examine the management and control procedures of the COMPANY for the purpose of providing corruption prevention advice to the COMPANY, and the COMPANY shall heed the advice given and shall take remedial actions as are appropriate;
- (e) the COMPANY shall not, and shall procure that its employees, agents and sub-contractors who are in any way involved in the performance of this Agreement shall not -
 - (i) give or offer to give to any officer, employee or agent of the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other Government contracts or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Government contracts;
 - (ii) enter into this Agreement or any other Government contracts in connection with which commission has been paid or agreed to be paid by the COMPANY or on its behalf, or to its knowledge; and
- (f) if the COMPANY or its employees, agents or sub-contractors who are in any way

involved in the performance of this Agreement shall be found to have breached Clause 7(e) of this Agreement (whether with or without the knowledge of the COMPANY) or committed any offence under the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government reserves the right to summarily terminate this Agreement immediately by giving written notice to the COMPANY pursuant to Clause 12.

8.1 The COMPANY agrees -

- (a) to use the Subvention solely and exclusively for carrying out the Activities. The COMPANY shall not use or divert the Subvention to support any items/activities for which the Government has already expressed difficulties in giving policy or funding supports. The COMPANY shall account for and make good any payments or expenditure made in contravention of this Agreement;
- (b) to seek the Government's written approval before the COMPANY uses the Subvention for carrying out an activity which falls outside the scope of the Activities and if such approval is given, to acknowledge the Government for funding that activity in the same manner as provided at Clause 8.2 (a);
- (c) not to use the funds earmarked for outbound cultural exchange activities in the Subvention for any other purpose. The COMPANY undertakes to inform the Government in advance on each occasion of outbound cultural exchange the details of such exchange activity including the host party, the full budget, expected audience etc should funds earmarked for the purpose in the Subvention be used for such activity. The COMPANY also undertakes to provide reports on its outbound cultural exchange activities to be annexed to the year-end report of the COMPANY referred to in Clause 5(d)(i). The COMPANY shall keep a separate account of their outbound cultural exchange under their audited annual financial report referred to in Clause 5(d)(ii) on or before 30 September 2011. Any unspent portion of the outbound cultural exchange earmarked grant shall be carried forward to the COMPANY's Subvention of 2011-12 to be used exclusively for outbound cultural exchange activity unless the COMPANY is no longer receiving Subvention from the Government in 2011-12 in which case the unspent portion of the earmarked funds of 2010-11 will have to be repaid to the Government on demand;
- (d) to keep a separate set of accounts for self-financing activities which are funded by sources other than the Subvention in the forms of sponsorship, donations etc and ensure that all receipts and payments in this account are properly and timely recorded and there is no cross-subsidization of self-financing activities by the Activities and any other activities funded by the Subvention (whether in money or in kind);
- (e) to provide the Government with copies of all publicity and promotional materials produced for the Activities and any other activities funded by the Subvention at least one month before the start of the activities; and
- (f) to allow the Government to use the publicity and promotional materials produced by the COMPANY in arts promotion or other promotion activities.

8.2 The COMPANY -

- (a) acknowledges that the Subvention is being provided by the Government and shall, in all publicity and promotional materials produced relating to the Activities of the COMPANY, include a statement that "The COMPANY is financially supported by the Government of the Hong Kong Special Administrative Region". The acknowledgement shall be placed in a prominent position in the publicity and promotional materials and shall be of a size not smaller than other type print acknowledging support or of such other size or sizes as shall be required by the Government from time to time. The COMPANY further agrees that the acknowledgement and any other reference to the Government or its employees shall carry no implications whatsoever that the Government or its employees undertake or accept any responsibility or assume any liability to any third parties for the COMPANY's liabilities or obligations; and
 - (b) acknowledges and agrees that there is no obligation on the part of the Government to provide any additional funding should the COMPANY run into financial deficit at any time during the Subvention Period. The Government shall not reimburse the COMPANY for any amount incurred by the COMPANY that exceeds the amount of the Subvention or any amount incurred by the COMPANY before the commencement date of this Agreement or after the expiry or termination of this Agreement. The Government accepts no liabilities for any deficits arising from the carrying out of the Activities.
9. To enable the Government to take any remedial action if the financial position of the COMPANY changes to the point where in the opinion of the Government the Subvention may no longer be appropriate or necessary, the COMPANY agrees -
- (a) to accept any donation or sponsorship from any third parties on the understanding that the Government is not obliged to provide any funds to meet any financial commitment (whether recurrent or otherwise) arising from the COMPANY's acceptance of the donation or sponsorship;
 - (b) to bear any and all financial consequences resulting from the acceptance of donations or sponsorship for providing any services/undertaking any capital projects which may have recurrent/time-limited financial implications unless the Government's written agreement in providing additional funding for the purpose has been obtained before the COMPANY's acceptance of donations or sponsorship. In the event that the COMPANY accepts a donation or sponsorship which creates a financial commitment on the COMPANY beyond the Subvention Period without the prior written agreement of the Government, the COMPANY agrees that this will not preempt or commit the Government to provide any subvention to the COMPANY beyond the Subvention Period;
 - (c) to obtain the prior approval of the governing body of the COMPANY as to the manner in which the donation is to be used and to notify the Government of any donation made to the COMPANY which the donor does not require to be used for a specific purpose;
 - (d) that upon request of the Government, the COMPANY shall immediately provide the Government with copies of all or any of the sponsorship agreements entered into by the COMPANY;

- (c) to notify the Government as soon as practicable of any proposed change to the scope and/or level of Activities. The Government reserves the right to vary the amount of Subvention if there is any change to the scope and/or level of Activities; and
 - (f) to accept a revision of the amount of Subvention if the Government, without prejudice to its right to terminate under Clause 12, considers such a revision appropriate, having regard to the resources and circumstances of the COMPANY, and to refund and to repay to the Government immediately on demand by the Government the amount of any reduction in the Subvention as may be determined by the Government.
10. In this clause, "Reserve" means the surplus (if any) as revealed in the audited annual financial statements referred to in Clause 5(d)(ii) net of sponsorship, donations and income and expenditure of self-financing activities. If at the end of the Subvention Period, there is a Reserve, the COMPANY may keep and carry forward a Reserve of not more than twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period to serve as a buffer against contingencies in the subsequent year and as an incentive to economise its spending in the current year. Any excess of the Reserve over twenty-five percent (25%) of the total expenditure as revealed in the audited annual financial statements for the Subvention Period shall either be returned by the COMPANY to the Government or netted off against the amount of the following year's Government subvention, if any, in the sole discretion of the Government. The COMPANY may apply for written approval of the Government to vary the aforesaid ceiling of the Reserve, which may be considered and decided by the Government in its sole discretion. The COMPANY agrees -
- (a) to plough back the Reserve into Activities funded by the Subvention;
 - (b) to seek the prior approval of the governing body of the COMPANY for using the Reserve;
 - (c) to seek the prior written approval of the Government if the use of the Reserve will generate additional financial consequences for the Government; and
 - (d) for accounting purpose as set out in Clause 8.1(d), the COMPANY shall keep a separate account to record sponsorship, donations and income and expenditure of the COMPANY's self-financing activities.

11. Personal Data

- (a) The COMPANY hereby consents, agrees and authorizes that without further notification to the COMPANY, the Government may disclose, verify and/or exchange all and any information and data ("the Data") related to its constituent committees and/or other third parties -
 - (i) for and in relation to consideration, review and evaluation of the COMPANY's application for Government subvention and the Subvention hereby granted or for the maintenance of the Subvention made or in respect of the continuation of the Subvention made or to be made; or

- (ii) in relation to the use of the Data in its discretion in the general policies, requirements, decisions and related activities and matters of the Government in administration of and for publicity as part of the general transparency of the Government in the discharge of its functions and duties.
- (b) The COMPANY confirms that it shall comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) before disclosing or transferring the Data obtained from data subjects to the Government.
- (c) The COMPANY hereby confirms that it is fully aware and acknowledges and authorizes that all Data are supplied to the Government in connection with the application for the Subvention and in connection firstly with the making, maintaining, reviewing, assessing, recovering and publicizing the Data for the direct primary purpose of the Subvention and secondly the objectives of the Government for the wider but equal secondary purpose of recording, storing, identifying and making available the Data for public access in implementing the fully transparent policies of conduct, operation, performance, reporting, analyzing and fully informing the public of the results of the Government from time to time and at all times in the necessary discharge of its statutory responsibilities and that failure so to treat and deal with the Data may result in the Government being unable to discharge its functions properly and efficiently and that such treatment of and dealing with the Data are accordingly hereby fully and irrevocably authorized by the COMPANY. The COMPANY shall indemnify the Government against all third party claims in this regard including without limitation employees of or consultants to and any other direct or indirect providers of services or benefits to the COMPANY.
- (d) The indemnity clause in Clause 11(c) shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

12. Termination and Consequences of Termination

- (a) The Government may, at any time, terminate this Agreement forthwith by giving notice to the COMPANY without entitling the COMPANY to any compensation whatsoever -
 - (i) if the COMPANY is -
 - in breach of any terms, conditions or undertakings of this Agreement; or
 - persistently or wrongfully neglecting to carry out the Activities or its duties or obligations under this Agreement;

and (in case of any of the abovementioned failure or breach capable of being remedied) has failed to remedy the same to the satisfaction of the Government within seven (7) days (or such longer period as the Government may, in its sole discretion, allow) after the issue by the Government to the COMPANY of a written notice requiring the COMPANY to rectify the failure or breach;

- (ii) if the Government becomes entitled to terminate this Agreement pursuant to Clause 7(f);
 - (iii) if the COMPANY assigns, transfers, sub-contract, license or otherwise dispose of any interest, right, benefit or obligation under this Agreement or purports to do so otherwise than in accordance with Clause 13;
 - (iv) if the COMPANY engages in any conduct which can reasonably be considered to be prejudicial to the Activities;
 - (v) upon the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up or dissolution of the COMPANY (other than a voluntary liquidation for the purpose of a bona fide amalgamation or reconstruction whilst the COMPANY is solvent) or if a receiver, provisional liquidator, liquidator or administrator has been appointed over all or any of its assets or if the COMPANY makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any judgment is made against the COMPANY or any similar occurrence under any jurisdiction that affects the COMPANY;
 - (vi) if the COMPANY fails to submit any reports or financial accounts pursuant to this Agreement, or any of the data, facts or information represented to and/or provided by the COMPANY to the Government about the Activities or this Agreement or any part thereof is incomplete, incorrect, untrue or is misleading; or
 - (vii) if the COMPANY abandons this Agreement in whole or in part.
- (b) On the expiry or other termination of this Agreement -
- (i) 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 expiration or termination);
 - (ii) subject to negotiation with and subsequent approval of the Government, the COMPANY shall not use the Reserve of the Subvention and shall forthwith return all such balance to the Government; and
 - (iii) the COMPANY shall within six (6) months after such expiry or termination submit to the Government a final Audited Account in respect of the Activities and the Subvention made up to such expiry or termination.
- (c) If this Agreement is terminated by the Government pursuant to this Clause, without prejudice to any of the Government's other rights and remedies, the Government may require the COMPANY to repay immediately all or any monies provided by the Government pursuant to this Agreement which have not been defrayed, applied or used, or whose application or use has not been controlled, monitored or supervised by the COMPANY, strictly in accordance with the terms of this Agreement together with all administrative, legal and other costs and interest accrued up to the date of repayment.

13. Assignment

- (a) The COMPANY shall not assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement without the prior written consent of the Government.**
- (b) The Government may at any time assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement.**

14. Indemnity

- (a) The COMPANY shall indemnify the Government and keep the Government fully and effectively indemnified against all loss, actions, claims, demands, damages, interest, costs, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by/on behalf of the COMPANY) and liabilities of whatsoever nature which the Government may sustain or incur or which may be brought or established against the Government by any person as a result of or relating to -**
 - (i) the negligence, recklessness or willful misconduct of the COMPANY, its officers, employees, agents or sub-contractors in carrying out the Activities or performing this Agreement;**
 - (ii) the breach by the COMPANY of any provisions of this Agreement; or**
 - (iii) any unauthorized act or omission of the COMPANY or its officers, employees, agents or sub-contractors.**
- (b) The provisions of this Clause 14 shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.**

15. Amendments

Subject to the provisions of this Agreement, no waiver, cancellation, addition, alteration or amendment of or to the provisions of this Agreement shall be valid unless made in writing and duly signed by both parties.

16. Entire Agreement

This Agreement sets out the entire agreement between the parties hereto and supersedes all prior written or oral agreements, understandings or arrangements between them in relation to the subject matter hereof, and 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.

17. Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, such provision shall, to that extent, be deemed not to form part of this Agreement

without affecting the interpretation, legality, validity and enforceability of the remaining provisions of this Agreement.

18. No Waiver

No failure or delay by either party to exercise any right, power or remedy available to it under this Agreement, at law, or in equity shall operate as a waiver thereof, nor will any single, partial or defective exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

19. Relationship of the Parties

Nothing in this Agreement or in the arrangements contemplated by it shall create a partnership or joint venture 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 in this Agreement shall be so construed as to constitute either party to be the agent of the other.

20. Governing Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

21. Appendices and Annexes

The Appendices and Annexes to this Agreement shall form and be read as an integral part of this Agreement.

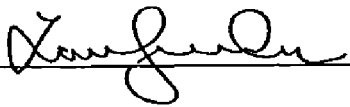

22. Saving





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.

In witness whereof the parties have executed this Agreement the day and year first above written.

SIGNED for and on behalf of the Government of
the Hong Kong Special Administrative Region

By : LAW Sun-on
Signature : 
Title : Principal Assistant Secretary for Home Affairs (Culture)
Witness : 
(WAN Hoi-ling)
Senior Manager for Home Affairs (Culture)

SIGNED for and on behalf of
Hong Kong Chinese Orchestra Limited

By : Dr. Carlye Tsoi
Signature : 
Title : Council Chairman
Witness : 
(Mrs. Celine Chiu)



Company chop

Submission of Audited Annual Financial Statements and Financial Report

The audited annual financial statements of the COMPANY shall include balance sheet, income statement, cash flow statement, and accounting policies and explanatory notes, and the audited annual financial report shall show –

- (a) the income and expenditure in respect of the Subvention and the Activities; and
- (b) the movements in the Reserve and assets acquired which are funded by the Subvention.

The annual financial statements and annual financial report mentioned at Clause 5(d)(ii) shall be certified by the Chairman of the COMPANY and prepared in accordance with the relevant laws of Hong Kong and the international accounting standard as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards and Accounting Guidelines as may be issued and updated from the time to time by the Hong Kong Institute of Certified Public Accountants) and duly audited, dated and signed by a certified public accountant registered under section 22 of the Professional Accountants Ordinance (Cap. 50 of the Laws of Hong Kong) who are not in any way connected with the Activities.

The auditors' report accompanying the annual financial statements and annual financial report submitted shall contain an expression of opinion as to –

On the annual financial statements of the COMPANY –

whether they give a true and fair view of the state of affairs of the COMPANY as at the balance sheet date and of its financial result and cash flows for the year then ended.

On the annual financial report of the Activities being audited –

whether the COMPANY has complied with, in all material respects, the requirements as may be set by the Government to keep proper books and records and to prepare annual financial report of the Activities in accordance with the books and records, as well as all the accounting requirements in this Agreement¹ and other relevant documents such as the Accounting Standards and Accounting Guidelines.

The COMPANY shall agree with the auditors the terms of the audit engagement, such as the objectives, scope and form of report, etc. To avoid misunderstanding, the agreed terms shall be recorded in an engagement letter.

The COMPANY shall provide the auditors with a copy of this Agreement and other relevant documents.

¹ The accounting requirements in this Agreement refer to Clause 6(e), 8.1(d) and 10(d).