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政府總部西翼二十二樓
商務及經濟發展局 旅遊事務署



Tourism Commission
Commerce and Economic Development
Bureau
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By post and fax

1 February 2016

Mr Anthony Chu
Clerk to Bills Committee
on Kai Tak Cruise Terminal Bill
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

Dear Mr Chu,

Bills Committee on Kai Tak Cruise Terminal Bill

**List of Follow-up Actions Arising from the Discussion
at the Meeting on 19 January 2016**

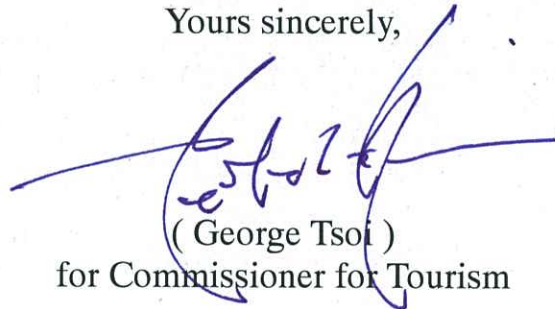
I refer to your letter of 26 January 2016 attaching a list of follow-up actions arising from the discussion at the meeting on 19 January 2016 (the List). Please find attached the following materials, using the numbering of the List, as requested in your letter –

- (a) examples in other legislation which confers statutory powers, including enforcement powers, to persons other than public officers at **Annex 1**;
- (d) a copy of the sample tenancy agreement (in English only) at **Annex 2**; and
- (e) an extract of the “Schedule of Uses” of the Kai Tak Cruise Terminal site under the Approved Kai Tak Outline Zoning Plan No. S/K22/4 at **Annex 3**.

Regarding item (c) of the List, Members may wish to note that the permanent restricted areas and non-permanent restricted areas to be designated by the Commissioner for Tourism under clause 9(1) of the Bill will be the same as the existing restricted areas under the Port Facility Security Plan.

I will get back to you again regarding items (b), (f) and (g) of the List in due course.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'George Tsoi', is written over the printed name and title.

(George Tsoi)

for Commissioner for Tourism

Encl.

**Examples in Other Legislation which Confers Statutory Powers
to Persons other than Public Officers**

(i) Smoking (Public Health) Ordinance (Cap. 371)

- ✧ Under **Smoking (Public Health) Ordinance**, enforcement powers, including power to order someone who is smoking to leave a no smoking area, the power to demand for proof of identity and the power to remove as provided under sections 3(3) and 4(2), are conferred on the **“manager”** of a no smoking area or a public transport carrier, i.e. a person who is responsible for the management or in charge of control of the no smoking area or public transport carrier.

(ii) Ocean Park Bylaw (Cap. 388B)

- ✧ Under **Ocean Park Bylaw**, some statutory powers, including the power to refuse someone to enter into the Park and the power to remove as provided under section 3, are conferred on the **“attendant”**, i.e. an officer, servant or employee of the Ocean Park Corporation who is on duty in the Park.

(iii) Discovery Bay Tunnel Link Ordinance (Cap. 520)

- ✧ Under **Discovery Bay Tunnel Link Ordinance**, powers to regulate traffic and to prevent commission of offence are conferred under section 29 on the **“tunnel officer”**, i.e. a person authorized by the Discovery Bay Road Tunnel Company Limited to act in connection with the control, restriction, prohibition and safety of traffic in the tunnel area. One example of such power is the power to detain, if necessary by using reasonable force, a driver and/or a vehicle until they are delivered into the custody of a police officer.

(iv) Mass Transit Railway By-Laws (Cap. 556B)

- ✧ Under **Mass Transit Railway By-Laws**, enforcement powers (e.g. power to remove under Bylaw 42(2)) are conferred on the **“official”**, i.e. any person authorized to act on behalf of the MTR Corporation.

Part III

(Details and Particulars contained in this Agreement will be refined based on Successful Tenderer's tender submission, clarification and other documents as appropriate)

Agreement

Dated _____

THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION

and

[name of the Tenant]

TENANCY AGREEMENT

of

CERTAIN PORTIONS OF
CRUISE TERMINAL AT KAI TAK

BAKER & McKENZIE
14th Floor, Hutchison House
Hong Kong

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Annex I

Plan showing the Premises within Cruise Terminal Building, Vehicular Access Points, HKTB Accommodation, On shore Power Supply Room and emergency vehicular access within apron area

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Location of the First Berth, Second Berth and Dredging Zone A, B and C , Berthing Constraint

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Form of Performance Guarantee

THIS AGREEMENT is made on

BETWEEN:

- (1) **The Government of the Hong Kong Special Administrative Region**("the **Landlord**"); and
- (2) [name and description of Tenant] ("the **Tenant**").

WHEREAS:

- (A) The Landlord is in the course of constructing a new cruise terminal at the former Kai Tak Runway, comprising the Apron Area and the Cruise Terminal Building.
- (B) The Landlord intends to let certain portions of the Cruise Terminal to the Tenant for operation and management of the same.
- (C) The Landlord and the Tenant have respectively agreed to grant and accept a tenancy of the Premises on the terms and subject to the conditions set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement:

- (a) "**AA&I**" shall have the meaning given in Clause 12.1(a);
- (b) "**Additional Area**" shall have the meaning given in Clause 34.3;
- (c) "**Advertising Display Systems**" shall have the meaning given in Annex XIX;
- (d) "**Air Conditioning Charges**" means the air conditioning charges payable by the Tenant in accordance with this Agreement;
- (e) "**Ancillary Commercial Area**" means the ancillary commercial areas of the Premises which are shown for identification purpose only (save and except use of the areas which is not intended for identification purpose) on the Layout Plan;

- (f) "**Ancillary Office Area**" means the ancillary office areas of the Premises which are shown for identification purpose only (save and except use of the areas which is not intended for identification purpose) on the Layout Plan;
- (g) "**Annual Gross Receipt**" means the aggregate Gross Receipt for each 12-month period during the Term commencing from the commencement date of the tenancy;
- (h) "**Annual Turnover Rent**" means the annual turnover rent as ascertained in accordance with Clause 5.4(a);
- (i) "**Approved Terminal Security Plan**" shall have the meaning given in Clause 17.1(b);
- (j) "**Approved Traffic Management Plan**" shall have the meaning given in Clause 19.1(b);
- (k) "**Apron Area**" means the apron area of the Cruise Terminal, comprising the First Berth and the Second Berth, which said apron area is shown for identification purpose only coloured pink and blue on the plan annexed hereto as Annex II;
- (l) "**Audited Accounts**" shall have the meaning given in Clause 5.5(d)(i);
- (m) "**Authorized Person**" shall have the meaning given in the Buildings Ordinance (Cap. 123);
- (n) "**Berth-Allocation Guidelines**" shall have the meaning given in Clause 11.3(a) as varied and modified from time to time;
- (o) "**Business Organization**" means a partnership or a joint venture (whether incorporated or unincorporated);
- (p) "**Common Parts**" means the areas, parts, facilities, equipment and systems (including fire services installation system, heating, ventilation and air conditioning (HVAC) system, water supply system, electrical supply system, emergency generator set, lightning protection system, plumbing and drainage system, building integrated photo voltaic, gondola, broadcast reception installation, building management control systems, patrol surveillance

system, lighting fitting and those elevators, escalators not forming part of the Premises) of the Cruise Terminal provided for the common use and benefit of different users, occupiers, licensees or invitees of the Premises and the other parts of the Cruise Terminal including those areas (including means of escape and staircases, external wall of the Cruise Terminal Building, emergency vehicular access between the Cruise Terminal Building and tourism node site (which is shown for identification purpose only on the plan annexed hereto as Annex II), plant rooms, meter rooms, fuel tanks, water tanks, telecommunication rooms, refuse collection chambers, public colonnade) which are subject to such modification by the Landlord in accordance with this Agreement, and shall include any other common parts as may be designated by the Landlord in accordance with this Agreement;

- (q) **"Company of a Related Director"** means a company (the "first mentioned company"), which a Related Director holds or controls directly (whether through one or more entities) not less than in aggregate 51 percent (51%) of the shareholder voting rights or controls the majority composition of the board of directors of the first mentioned company, and the Related Company of such first mentioned company;
- (r) **"Conduit"** means conduits, sewers, drains, pipes, wires, cables, ducts, risers, gutters, flues, watercourses, fibres and any medium for the passage or transmission of soil, sewage, water, gas, electricity, air, smoke, light, information or other matters, and associated meter, switches, apparatus, transmitters, equipment and structures;
- (s) **"Confidential Information"** shall have the meaning given in Clause 46.1(a);
- (t) **"Cruise Terminal"** means the Apron Area and Cruise Terminal Building;
- (u) **"Cruise Terminal Building"** means the cruise terminal building constructed in the Cruise Terminal, which is shown for identification purpose only coloured edged green on the plan annexed hereto as Annex II;

- (v) **"Deposit"** shall have the meaning given in Clause 40.1(c);
- (w) **"Discretionary Permission Period"** shall have the meaning given in Clause 4.2(a);
- (x) **"Dispute"** shall have the meaning given in Clause 45.2;
- (y) **"Dispute Notice"** shall have the meaning given in Clause 45.2;
- (z) **"E & M Facilities"** means electrical and mechanical facilities which shall include, but not limited to, electrical, lighting, mechanical, heating, ventilation, chilled water, air-conditioning, plumbing, fire services, security, electronic and communication systems, installations and equipment, etc;
- (aa) **"Electricity Consumption Units"** shall have the meaning given in Clause 8.2(a);
- (bb) **"Financial Information"** shall have the meaning given in Clause 5.6(a);
- (cc) **"First Berth"** means the berth in the Apron Area shown for identification purpose only coloured pink on the plan annexed hereto as Annex II;
- (dd) **"Floor Area"**, in respect of the Premises (excluding the Apron Area), the Terminal Operation Area, the Ancillary Commercial Area, the Ancillary Office Area, the Parking Area, the Transportation Area or the Government Accommodations shall be:
 - (i) the floor area measured from the exterior of the enclosing walls (ignoring any exterior finishes thereon) (and where such wall is a curtain wall, from the exterior of the curtain wall; or to the extent not enclosed by a solid wall, from the external boundary) of the Premises (excluding the Apron Area), the Terminal Operation Area, the Ancillary Commercial Area, the Ancillary Office Area, the Parking Area, the Transportation Area or (as the case may be) the Government Accommodations, except where an enclosing wall separates the same (other than the Government Accommodations)

- from the Government Accommodations or any other areas in the Cruise Terminal Building not being part of the Premises or separates the Government Accommodations from any other areas in the Cruise Terminal Building not being part of the Premises, the measurement shall be taken to the middle of that wall (in ascertaining the middle of that wall, finishes on the wall shall be ignored) Provided That if an enclosing wall separates the Premises (excluding the Apron Area), the Terminal Operation Area, the Ancillary Commercial Area, the Ancillary Office Area, the Parking Area, the Transportation Area or (as the case may be) the Government Accommodations from any Common Parts, the whole thickness of that enclosing wall shall be included; and
- (ii) shall include internal partitions and columns of the Premises (excluding the Apron Area), the Terminal Operation Area, the Ancillary Commercial Area, the Ancillary Office Area, the Parking Area, the Transportation Area or (as the case may be) the Government Accommodations;
- (ee) **"Forum"** has the meaning given in Clause 11.5(a);
- (ff) **"Government"** means the Government of the Hong Kong Special Administrative Region;
- (gg) **"Government Accommodations"** means the accommodations, parking spaces, loading and unloading spaces, pick up and drop off spaces in the Cruise Terminal for Customs and Excise Department, Immigration Department, Department of Health, Hong Kong Police Force, Marine Department, Civil Aviation Department, Leisure and Cultural Services Department and/or any other Government authorities concerned;
- (hh) **"Gross Receipt"** shall have the meaning given in Clause 5.4(b);
- (ii) **"Guarantor"** shall have the meaning given in Clause 41.1;

- (jj) **"Handover Area"** means (i) the First Berth and the Premises within the Cruise Terminal Building or (ii) (as the case may be) the Second Berth to be delivered to the Tenant on the respective possession dates in accordance with Clauses 4.1(a) to 4.1(l);
- (kk) **"HKIAC"** means Hong Kong International Arbitration Centre;
- (ll) **"HKICPA"** means Hong Kong Institute of Certified Public Accountant;
- (mm) **"HKTb"** means the Hong Kong Tourism Board, established under the Hong Kong Tourism Board Ordinance (Cap. 302) and shall include a reference to any other authority or organization or official from time to time substituting the aforesaid Hong Kong Tourism Board or performing (in whole or in part) such of the functions performed by the said Hong Kong Tourism Board on the date of this Agreement as are relevant for the purpose of this Agreement;
- (nn) **"HKTb Accommodation"** shall have the meaning given in Clause 28.1;
- (oo) **"Holding Company"** shall have the meaning given in Section 2(7) of the Companies Ordinance (Cap. 32);
- (pp) **"Hong Kong"** means Hong Kong Special Administrative Region;
- (qq) **"Installation Licence"** shall have the meaning given in Clause 4.2(a);
- (rr) **"Installation Works"** shall have the meaning given in Clause 4.2(a);
- (ss) **"Landlord's Contractor"** and **"Landlord's Contractors"** shall have the meaning given to it in Clause 4.2(f)(iii)(A);
- (tt) **"Landlord's Offer"** shall have the meaning given in Clause 2.2(f);
- (uu) **"Landlord's Provisions"** means the fixtures, fittings, facilities, furniture, systems, equipment, plant and machinery as listed out in Annex X;

- (vv) **"Layout Plan"** means the layout plan provided by the Landlord pursuant to Clause 9.1(a);
- (ww) **"Licence Period"** shall have the meaning given in Clause 4.2(f)(i);
- (xx) **"Licence Request Notice"** shall have the meaning given in Clause 4.2(a);
- (yy) **"Licensed Area"** shall have the meaning given in Clause 4.2(a);
- (zz) **"Management Expenses"** shall have the meaning given to it in Clause 6.1(d);
- (aaa) **"Management Fees"** means the management fees payable by the Tenant in accordance with this Agreement;
- (bbb) **"Management Team"** shall have the meaning given in Clause 11.11(a);
- (ccc) **"Monthly Fixed Rent"** means the monthly fixed rent referred to in Clause 5.3;
- (ddd) **"New Term"** shall have the meaning given in Clause 2.2(b);
- (eee) **"New Landlord"** shall have the meaning given in Clause 40.7;
- (fff) **"Notice of Intention to Commence Arbitration"** shall have the meaning given in Clause 45.2(b);
- (ggg) **"Offer Period"** shall have the meaning given in Clause 2.2(f)(i);
- (hhh) **"Parking Area"** means the parking areas of the Cruise Terminal which is shown for identification purpose only (save and except use of the areas which is not intended for identification purpose) on the Layout Plan;
- (iii) **"Passenger Services"** means provision of check-in counter services to the cruise passengers;
- (jjj) **"Payment Due Date"** shall have the meaning given in Clause 5.5(c)(iii);
- (kkk) **"Place of Ultimate Safety"** shall have the meaning given in paragraph 8.3(b) of the Code of Practice for the Provision of Means of Escape in case of Fire

issued by the Building Authority in 1996 subject to amendment and supplement from time to time;

(lll) **"Premises"** means

- (i) the Terminal Operation Area;
- (ii) the Ancillary Office Area;
- (iii) the Ancillary Commercial Area;
- (iv) the Parking Area;
- (v) the Transportation Area; and
- (vi) the Apron Area;

and also other areas, plant rooms, meter rooms and communication rooms exclusively serve the Premises, stairs, escalators, travelators and elevators coloured yellow and yellow hatched black on the plans annexed hereto as Annex I (subject to revision in accordance with Clause 3.2) but shall for the avoidance of doubt exclude the roof, landscaped decks, public colonnade, foundations, beams, roof slabs, ceiling slabs, floor slabs, structural elements and external walls and façade of the Cruise Terminal Building, the Government Accommodations and the Common Parts;

- (mmm) **"Premises Proportion"** shall have the meaning given in Clause 6.1(b);
- (nnn) **"Property Manager"** shall have the meaning given in Clause 31.2;
- (ooo) **"Provisional Payment for Reporting Period"** shall have the meaning given in Clause 5.5(c)(iv);
- (ppp) **"Related Company"** means, in relation to a company (the "first mentioned company"), any Subsidiary of the first mentioned company's Holding Company, and any company in which the first mentioned company or any such Holding Company holds or controls directly or indirectly (whether through one or more entities) not less than in aggregate 30 percent (30%) of the shareholder voting rights;
- (qqq) **"Related Director"** means, in relation to a company (the "first mentioned company"), a person who is acting from time to time as a director or shadow

director of the first mentioned company or the Holding Company of the first mentioned company or any Subsidiary of such Holding Company;

- (rrr) **“Related Party”** means a Related Company, a Related Director or a Company of a Related Director;
- (sss) **“Rent”** means the rent payable by the Tenant under this Agreement including the Monthly Fixed Rent and Annual Turnover Rent;
- (ttt) **“Rent Free Period”** shall have the meaning given in Clause 5.2(a);
- (uuu) **“Review Period”** shall have the meaning given in Clause 5.8(a);
- (vvv) **“Revised Fees”** shall have the meaning given in Clause 5.8(a)(i);
- (www) **“Revised Monthly Fixed Rents”** shall have the meaning given in Clause 5.8(a)(i);
- (xxx) **“Runway Park”** means the runway park which is marked for identification purpose only as “Proposed Runway Park” on the plans annexed hereto as Annex VIII (subject to revision);
- (yyy) **“Second Berth”** means the berth in the Apron Area shown for identification purpose only coloured blue on the plan annexed hereto as Annex II;
- (zzz) **“Service Pledges”** shall have the meaning given in Clause 11.2(a);
- (aaaa) **“Sublet Area”** shall have the meaning given in Clause 27.2(a);
- (bbbb) **“Submission Due Date”** shall have the meaning given in Clause 5.5(c)(i);
- (cccc) **“Subsidiary”** shall have the mean meaning given in Section 2(4) of the Companies Ordinance (Cap. 32);
- (dddd) **“Temporary Access Road”** shall have the meaning given in Clause 4.1(q)(i);
- (eeee) **“Term”** shall have the meaning given in Clause 2.2(a);

(ffff) **“Terminal Operation Area”** means the areas for the operation of the Cruise Terminal comprising, inter alia concourse, baggage lay-down areas, baggage through areas, passenger check-in areas and waiting areas which are shown for identification purpose only (save and except use of the areas which is not intended for identification purpose) on the Layout Plan;

(gggg) **“Terminal Security Plan”** shall have the meaning given in Clause 17.1(a);

(hhhh) **“Traffic Management Plan”** shall have the meaning given in Clause 19.1(a);

(iiii) **“Transportation Area”** means the transportation area of the Cruise Terminal comprising, inter alia, driveways, circulation area, queuing spaces, lay-bys and pick up and drop off spaces which said transportation area is shown for identification purpose only (save and except use of the areas which is not intended for identification purpose) on the Layout Plan;

(jjjj) **“Utility Consumption Units”** shall have the meaning given in Clause 8.1;

(kkkk) **“Water Consumption Units”** shall have the meaning given in Clause 8.3(a);

(llll) **“Website”** shall have the meaning given in Clause 11.7(a); and

(mmmm) **“working day”** means a day other than a general holiday (as defined and referred to in the General Holidays Ordinance (Cap.149)) or a Saturday and on which Typhoon Signal No.8 or above or the black rain storm warning signal is not hoisted in Hong Kong at any time between the hours of 9 a.m. and 5 p.m.

1.2 Interpretation. In this Agreement:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include every gender;
- (c) words importing persons include firms, companies, corporations and Business Organization and vice versa;

- (d) references to Clauses and Annexes are references to the relevant clause in or annex to this Agreement;
- (e) the index and headings shall not affect the interpretation of this Agreement;
- (f) references to any obligation on any person to do any act or thing include an obligation to procure that act or thing to be done by another person;
- (g) references to "losses" or "liabilities" include all liabilities, damage, loss, damages, compensation, injuries, costs, disbursements, expenses, claims and proceedings;
- (h) the expressions "including" or "includes" means including or includes without limitation;
- (i) references to any Government authority or official shall include a reference to any other Government authority or official from time to time substituting the first mentioned Government authority or official or performing (in whole or in part) such of the functions performed by the first mentioned Government authority or official on the date of this Agreement as are relevant for the purpose of this Agreement;
- (j) references to the Cruise Terminal, the Cruise Terminal Building, the Premises, the Apron Area, the First Berth, the Second Berth, the Terminal Operation Area, the Ancillary Commercial Area, the Ancillary Office Area, the Parking Area, the Transportation Area, the Government Accommodation and the Common Parts are references to each and every part thereof;
- (k) nothing in this Agreement is to be construed as imposing any obligation on the Landlord not to refuse any consent, approval, permission or authorization unreasonably or to give any consent, approval, permission, or authorization without delay, save where expressly provided in this Agreement. The Landlord may impose any conditions it deems appropriate to any consent, approval, permission or authorization it gives (if any);
- (l) for the purpose of this Agreement, any act, default, negligence or omission of any contractor, servant,

agent, licensee, sub-tenant, officer, employee, visitor or invitee of the Tenant shall be deemed to be the act, default, negligence or omission of the Tenant; and

- (m) where the Tenant comprises more than one person all covenants undertakings and agreements made by the Tenant herein shall be deemed to be made jointly and severally by all the persons comprising the Tenant.

2. LETTING

- 2.1 Grant of tenancy. In consideration of the Tenant paying to the Landlord the Rent and other payments due or payable under this Agreement, the Landlord LETS the Premises to the Tenant for the Term SUBJECT TO all rights, privileges, restrictions, covenants, agreements and stipulations of whatever nature affecting the Premises (where provided in this Agreement or otherwise) and TOGETHER WITH (insofar as the Landlord is entitled to grant the same) the use in common with the Landlord and others having the like right of those Common Parts which are reasonably necessary for the use and enjoyment of the Premises EXCEPT AND RESERVED unto the Landlord and all persons authorised by it or otherwise entitled all rights reserved by the Landlord under this Agreement.

2.2 Term.

- (a) The term of the letting under this Agreement is fixed for ten (10) years commencing from the date on which vacant possession of the First Berth and the Premises within the Cruise Terminal Building (excluding the Licence Period granted under Clause 4.2 (if any)) is delivered to the Tenant in accordance with this Agreement (the "Term"). For the avoidance of doubt, vacant possession of the First Berth and the Premises within the Cruise Terminal Building shall not be delivered to the Tenant until the expiration of the Licence Period in respect of the Installation Licence granted to the Tenant under Clause 4.2 (if any).
- (b) If the Tenant shall be desirous of taking a tenancy of the Premises for a further term of five (5) years (the "New Term") from the expiration of the Term

hereby granted at the rent and on the covenants terms and conditions hereinafter mentioned in this Clause 2.2 it shall, not more than thirty-six (36) months and not less than thirty-three (33) months before the expiration of the Term hereby granted give to the Landlord a notice in writing of such desire.

- (c) If the Tenant shall not have expressed its desire to take a tenancy as aforesaid, this Agreement shall be terminated upon the expiration of the Term and the Tenant shall upon such expiration forthwith yield up vacant possession of the Premises in the manner herein provided.
- (d) If the Tenant shall have performed observed and complied with all terms conditions and stipulations herein contained on its part to be performed observed and complied up to the expiration of the Term and the Tenant's performance during the Term is to the Landlord's complete satisfaction (at the Landlord's sole discretion), then the Landlord may (but not obliged to) consider letting the Premises to the Tenant for the New Term from the expiration of the Term subject to the terms and conditions of the New Term to be determined herein provided in Clause 2.2(f):

For the avoidance of doubt, the Landlord shall have the full and unfettered right to grant tenancy of the Premises or any part thereof to any person(s) at such rent(s) and upon such terms and conditions as the Landlord shall in its sole discretion think fit after the expiration of the Term hereby granted without giving the Tenant any offer to let the Premises for the New Term despite the Tenant's full compliance of the above terms and conditions.

- (e) In the event that the Landlord decides not to enter into a new tenancy agreement or a supplementary agreement for the New Term with the Tenant, the Landlord shall notify the Tenant and the Tenant shall continue to operate the Cruise Terminal in full compliance with the requirements as stipulated herein until the expiry of the Term.
- (f) If the Landlord is prepared to consider entering into a new tenancy agreement or a supplementary

agreement for the New Term with the Tenant, it shall set out the terms and conditions of the new tenancy agreement or (as the case may be) the supplementary agreement (including the new rent for the New Term) (the "**Landlord's Offer**") within three (3) months after the Landlord's receipt of the Tenant's notice of desire to take a tenancy of the Premises for a further term.

- (i) The Tenant shall within fourteen (14) days of the date of the Landlord's Offer lodge with the Landlord a written notice accepting or rejecting the Landlord's Offer (the "**Offer Period**").
- (ii) If the Tenant lodges a written notice with the Landlord unconditionally accepting the Landlord's offer within the Offer Period, then the parties are bound by the terms and conditions set out in the Landlord's Offer and a new tenancy agreement or a supplementary agreement shall be entered into by the parties in respect of the New Term within one (1) month from the Tenant's acceptance of the Landlord's Offer. The new tenancy agreement or (as the case may be) the supplementary agreement shall be in the standard form adopted by the Landlord.
- (iii) For the avoidance of doubt, any acceptance of the Landlord's Offer which is subject to conditions and/or which contains a counter-proposal will not constitute a valid acceptance of the Landlord's Offer.
- (iv) If the Tenant shall not validly accept the Landlord's Offer within the Offer Period, then the Landlord's Offer shall lapse and be deemed to have been withdrawn and the Landlord shall be at liberty to let the Premises or any part thereof to any person(s) at such rent(s) and upon such terms and conditions as the Landlord shall in its sole discretion think fit.
- (v) Neither party shall be bound by the terms and conditions offered unless and until the

party receiving the offer validly and unconditionally accepts all the terms and conditions presented.

- (g) If the Tenant shall not have expressed its desire to take a tenancy under Clause 2.2(b) or no new tenancy agreement nor supplementary agreement for the New Term has been entered into within the prescribed timeframe in Clause 2.2(f)(ii), this Agreement shall be terminated upon the expiration of the Term and the Tenant shall upon such expiration forthwith yield up vacant possession of the Premises in the manner herein provided.
- (h) The grant of new tenancy is at the sole discretion of the Landlord. The Tenant shall have no claim for any loss, compensation, damages, costs or expenses arising from the non-grant of the new tenancy. The Landlord's decision shall be final, binding and conclusive on the Tenant.

3. CONSTRUCTION OF CRUISE TERMINAL

3.1 Construction of Cruise Terminal. Subject to Clauses 3.2, 3.3 and 3.4, the Landlord shall at its own cost and expense build the Cruise Terminal in accordance with Annex III, and the Landlord shall also at its own cost and expense carry out and complete the works to different parts of the Premises as listed out in Annex IV (subject to revision in accordance with Clause 3.2) prior to the delivery of vacant possession of the part of Premises concerned to the Tenant.

3.2 Amendments to design.

- (a) The Landlord shall have the right to amend, vary, alter or modify Annex I, Annex IV, Annex V, Annex VI and/or Annex VII as it shall in its sole discretion deem fit.
- (b) The Landlord shall give a written notice to the Tenant informing the Tenant of any amendment, variation, alteration or modification made as contemplated in Clause 3.2(a) as soon as practicable.
- (c) The Tenant shall not be entitled to terminate this Agreement and shall have no claim against the Landlord for any loss, damage inconvenience or

compensation of whatsoever nature that it may suffer or incur as a result of or in connection with the amendment, variation, alteration or modification of Annex I, Annex IV, Annex V, Annex VI and/or Annex VII nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or ceased to be payable.

3.3 Landlord's right to modify the design and layout plan.

- (a) Without prejudice to the generality of Clause 3.2(a), the Tenant acknowledges that before the vacant possession of any part of the Premises is delivered to it, the design and layout plan relating to that part will be subject to amendment, variation, alteration or modification. The Tenant hereby agrees that the Landlord has the absolute right and discretion to change the design and layout plans for or relating to the construction of the Cruise Terminal or any part thereof and/or the configuration, composition, layout or area of the Cruise Terminal or any part thereof.
- (b) The Landlord shall inform the Tenant of the amendment, variation, alteration or modification to the design and layout plans of any part of the Premises in writing as soon as practicable.
- (c) The Tenant further acknowledges and agrees that it shall not be entitled to terminate this Agreement or claim against the Landlord for any loss, damage, inconvenience or compensation of whatsoever nature that it may suffer or incur as a result of or in connection with the amendment, variation, alteration or modification of Annex I, Annex IV, Annex V, Annex VI and/or Annex VII nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

3.4 Landlord's right to adjust the Floor Area and number of parking spaces, loading spaces, picking up and dropping off spaces, and queuing spaces.

- (a) The Landlord shall have the right to adjust (i) the Floor Area of the Premises or any part thereof (except the Ancillary Commercial Area) and (ii) the

number of parking spaces, loading spaces, picking up and dropping off spaces, and queuing spaces at its sole discretion prior to the commencement date of the tenancy.

- (b) When notification of actual possession date of the First Berth and Premises within the Cruise Terminal Building is given to the Tenant pursuant to Clauses 4.1(f) or 4.1(j), the Landlord shall inform the Tenant of the final Floor Area of the Premises and the number of parking spaces, loading spaces, picking up and dropping off spaces, and queuing spaces. The Tenant shall not make any objection thereto or make any claim in respect of any loss and damage which the Tenant may suffer as a result of or on account of such adjustment.
- (c) In the event that there is any change in (i) Floor Area of the Premises as stated in Annex V; and/or (ii) number of parking spaces, loading spaces and picking up and dropping off spaces, and queuing spaces as stated in Annex VI and Annex VII, there shall be no adjustment in the Rent and Air Conditioning Charges (as the case may be). For the avoidance of any doubt, the Floor Area of the Ancillary Commercial Area as stated in Annex V will be kept unchanged.
- (d) The Tenant further acknowledges and agrees that it shall not be entitled to terminate this Agreement or claim against the Landlord for any loss or inconvenience of whatsoever nature that it may suffer or incur as a result of or in connection with any such changes.

4. POSSESSION AND PRE-POSSESSION MATTERS

4.1 Possession of Premises

- (a) The Landlord shall use its best endeavours to deliver vacant possession of (i) the First Berth and the Premises within the Cruise Terminal Building; and (ii) the Second Berth, to the Tenant, on 1 June 2013 and 1 July 2014 respectively.

EARLY POSSESSION DATE

- (b) In the event that vacant possession of (i) the First Berth and the Premises within the Cruise Terminal Building; or (ii) the Second Berth can be delivered before the respective dates stated in Clause 4.1(a), the Landlord may (but not obliged to) give an option to the Tenant to take up the vacant possession of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth at an earlier estimated possession date as the Landlord may specify in a not less than six (6) months' prior written notice to the Tenant.
- (c) If the Tenant intends to take up the vacant possession of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth at the earlier estimated possession date, it shall give a written notice to the Landlord of that intention within two (2) weeks from the date of the written notice stated in Clause 4.1(b), and the said written notice shall be irrevocable unless otherwise agreed by the Landlord. The Landlord shall use its best endeavours to deliver vacant possession of the relevant part of the Premises on the earlier estimated possession date.
- (d) If the Tenant confirms its intention not to take up the vacant possession of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth on the earlier estimated possession date or fails to confirm its intention within the prescribed timeframe in Clause 4.1(c), the Landlord shall use its best endeavours to deliver vacant possession of the Premises in accordance with Clause 4.1(a).
- (e) If the Tenant confirms its intention to take up the vacant possession of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth on the earlier estimated possession date, the Landlord shall review the progress of works and provide an update to the Tenant on the feasibility of the earlier estimated possession date approximately three (3) months after the written notice stated in Clause 4.1(b).

- (f) After giving the written notice stated in Clause 4.1(e), the Landlord shall notify the Tenant of the actual possession date of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth by giving at least two (2) months' written notice to the Tenant prior to such date. The Tenant shall take up vacant possession of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth in accordance with the Landlord's written notice.
- (g) Other than the additional rent free period granted to the Tenant pursuant to Clause 4.1(m) (if any), no allowance, incentive, compensation or rent concession in whatsoever form shall be given to the Tenant and the Tenant shall not be entitled to early terminate this Agreement for any reason in connection with the change in the date specified in the Landlord's notice in Clause 4.1(b) or to make any claims against the Landlord.

SCHEDULED POSSESSION DATE OR LATE POSSESSION DATE

- (h) In the event that vacant possession of (i) the First Berth and the Premises within the Cruise Terminal Building; or (ii) the Second Berth is scheduled to be delivered on or after the respective dates stated in Clause 4.1(a), the Landlord shall provide an update to the Tenant on the estimated possession date by giving a written notice of at least six (6) months prior to the respective dates stated in Clause 4.1(a).
- (i) After approximately three (3) months of issuing the written notice under Clause 4.1(h), the Landlord shall review the progress of works and provide an update to the Tenant on the feasibility of the estimated possession date.
- (j) After giving the written notice stated in Clause 4.1(i), the Landlord shall notify the Tenant of the actual possession date of the First Berth and the Premises within the Cruise Terminal Building or (as the case may be) the Second Berth by giving at least two (2) months' written notice to the Tenant prior to such date. The Tenant shall take up vacant possession of the First Berth and the Premises

within the Cruise Terminal Building or (as the case may be) the Second Berth in accordance with the Landlord's notice.

- (k) Other than the additional rent free period granted to the Tenant pursuant to Clause 4.1(m) (if any), no allowance, incentive, compensation or rent concession in whatsoever form shall be given to the Tenant and the Tenant shall not be entitled to early terminate this Agreement for any reason in connection with the change in the respective date stated in Clause 4.1(a) or to make any claims against the Landlord.

ESTIMATED POSSESSION DATE

- (l) The Tenant hereby acknowledges that the estimated possession dates specified in the written notices stated in Clause 4.1(b), (e), (h) and (i) are for reference purposes only and do not form part of any agreement. The estimated possession dates do not constitute warranty or representation of any kind and do not entitle the Tenant to determine this Agreement or claim for any loss, damage or compensation in whatsoever nature nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

ADDITIONAL RENT FREE PERIOD

- (m) In the event that Landlord cannot deliver vacant possession of the First Berth and the Premises within the Cruise Terminal Building on the actual possession date stated in Clause 4.1(f) or Clause 4.1(j), the Tenant shall be entitled to an additional rent free period. The additional rent free period shall be equal to the actual length of the delay period which shall be counted from the date after the actual possession date stated in Clause 4.1(f) or (as the case may be) Clause 4.1(j) until the date when the Landlord is in a position to deliver vacant possession of the First Berth and the Premises within the Cruise Terminal Building. The additional rent free period shall commence immediately after the expiry of the Rent Free Period stated in Clause 5.2.

- (n) Other than the additional rent free period granted to the Tenant under Clause 4.1(m) (if any), no allowance, incentive, compensation or rent concession in whatsoever form shall be given to the Tenant and the Tenant shall not be entitled to early terminate this Agreement for any reason in connection therewith or to make any claims against the Landlord. During the additional rent free period, the Tenant shall not be required to pay Monthly Fixed Rent but the Tenant shall remain liable for the payment of the Annual Turnover Rent, Management Fees, Air Conditioning Charges, rates, other charges and outgoings payable by the Tenant during the additional rent free period and shall perform and observe all terms and conditions contained in this Agreement.

JOINT SITE INSPECTION

- (o) Prior to not less than one (1) month before the respective actual possession dates specified in the written notice stated in Clause 4.1(f) and Clause 4.1(j), the Landlord and the Tenant shall conduct a joint site inspection of the Handover Area to check the handover condition of the same. The Tenant may within three (3) days after the joint site inspection provide a written list of items which are non-compliant with Annex IV (subject to revision in accordance with Clause 3.2) in the Tenant's view for the Landlord's consideration. The Landlord shall have the sole discretion to determine and agree that an item is compliant or non-compliant with Annex IV (subject to revision in accordance with Clause 3.2) as set out in the list from the Tenant (such determination and agreement shall be final, binding and conclusive on the Tenant). Where the Landlord determines and agrees that any of the items are non-compliant with Annex IV (subject to revision in accordance with Clause 3.2) as set out in the list from the Tenant, the Landlord shall take all reasonable steps to rectify such non-compliant items as soon as practicable.
- (p) The Tenant agrees and acknowledges that in the event that the rectification work has not been completed by the Landlord prior to the actual date of delivering possession of any part(s) of the Premises, the Tenant shall accept the condition of

the same and take up the vacant possession of the same at such time as provided in Clause 4.1(f) or (as the case may be) Clause 4.1(j). Neither the actual dates of delivering any part(s) of the Premises nor the Licence Period or the Rent Free Period or the additional rent free period (if any) will be extended or postponed due to the incompleteness of the rectification work, the presence of the officers, agents, workmen, contractors or other person or persons authorized by the Landlord in any part(s) of the Premises taken up by the Tenant, or the carrying out of works therein.

The Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature in respect thereof nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable. The Tenant hereby authorizes the Landlord and/or its agents, contractors and authorized persons to enter into any part(s) of the Premises taken up by the Tenant at the relevant time for the purposes of completing the rectification work and any ancillary work incidental thereto.

TEMPORARY ACCESS ROAD

- (q) The following provisions shall apply where vacant possession of the First Berth is delivered to the Tenant before vacant possession of the Second Berth is delivered to the Tenant:
- (i) The Landlord shall at its own cost and expense provide a temporary access road over government land as shown coloured orange hatched black on the plan at Annex VIII (subject to revision) or such other alignment as the Landlord may from time to time designate (the "**Temporary Access Road**") so there would be vehicular access between the First Berth and a public road through the Temporary Access Road.
- (ii) The Temporary Access Road shall be delivered to the Tenant on the date on which vacant possession of the First Berth is

delivered to the Tenant in accordance with this Agreement, and from and inclusive of that date:

- (A) the Tenant (and its visitors and invitees) shall have a free and non-exclusive right of way over the Temporary Access Road and such access shall be restricted to Government vehicles, emergency vehicles, services vehicles for provision of supplies and goods for the operation of the Cruise Terminal and such other vehicles as authorised by the Landlord ;
- (B) the Tenant shall at its own cost and expense manage and maintain the Temporary Access Road to the satisfaction of the Landlord; and
- (C) the Tenant shall at its own cost and expense provide, manage and maintain a pedestrian access passing through the Temporary Access Road to the Runway Park for the use of the public without payment of any rent or fee whatsoever during the opening hours of the Runway Park to the satisfaction of the Landlord

until such right of way terminates in accordance with Clause 4.1(q)(v).

- (iii) The Landlord shall be entitled to modify the routing of the Temporary Access Road from time to time.
- (iv) For the proper discharge and facilitation of the Tenant's obligations in relation to the Temporary Access Road, the Tenant has the right to enter the adjoining government land (shown for identification purpose only coloured orange on the plan annexed hereto as Annex VIII (subject to revision)) until the right of way over the Temporary Access Road terminates in accordance with Clause 4.1(q)(v). The Tenant shall manage and maintain such adjoining government land to the satisfaction of the Landlord and shall obey and comply with the Landlord's instructions and directions in connection

with the management and maintenance of such adjoining government land.

- (v) The right of way over the Temporary Access Road as provided under Clause 4.1(q)(ii)(A) shall terminate upon the delivery of vacant possession of the Second Berth to the Tenant in accordance with this Agreement. The Temporary Access Road shall be delivered by the Tenant to the Landlord simultaneously with the said delivery of the Second Berth. Starting from the said delivery of the Second Berth, vehicular access of the Tenant (or its visitors or invitees) to and from the First Berth shall only be made through the Second Berth.

DELIVERY OF THE PREMISES IN STAGES

- (r) The Tenant acknowledges and accepts delivery of vacant possession of the Premises in stages as mentioned in this Clause 4.1 and shall have no claim against the Landlord for any loss arising from delivery of vacant possession of the Premises in stages.
- (s) The Tenant further acknowledges and accepts that whilst the First Berth and the Premises within the Cruise Terminal Building are in operation, construction works of the Second Berth and dredging works are in progress. The Tenant hereby agrees that it and its sub-tenants and licensees shall not be entitled to claim against the Landlord and/or any other person for any loss, disturbance, annoyance, inconvenience in any form whatsoever suffered or may have sustained by the Tenant or its sub-tenants or licensees as a result of or in connection with the carrying out of the said works or the operation of the said works.

4.2

Entry and licence before the delivery of the Premises within Cruise Terminal Building and Apron Area.

- (a) After receiving the Landlord's written notice advising the estimated possession date of (i) the First Berth and the Premises within the Cruise Terminal Building; or (ii) the Second Berth (each a "Licensed Area") stated in Clause 4.1(b) and (h) , if the Tenant shall be desirous of receiving the

Landlord's license (an "**Installation Licence**") to enter the Licensed Area during the three (3) months immediately before the estimated possession date of the same stated in Clauses 4.1(b) and (h) (the "**Discretionary Permission Period**") for the purpose of carrying out installation works or other works that have been approved by the Landlord (which approval the Landlord may give or withhold at its sole discretion) to the Licensed Area (collectively referred to as "**Installation Works**"), the Tenant shall not less than five (5) months before the estimated date of delivery of the Licensed Area give to the Landlord notice in writing of its desire, which notice shall contain the following particulars:

- (i) the access required for the execution of the Installation Works;
- (ii) the time schedule, works programme; and
- (iii) method statement, the details and particulars of the Installation Works with drawings, including the design drawing prepared and endorsed by an Authorized Person for works that involve change in building layout.

(such notice and all accompanying information are collectively referred to as the "**Licence Request Notice**").

- (b) The Tenant acknowledges and agrees that there is no defined timeframe for the Landlord to process the Tenant's application made under Clause 4.2 and there is no guarantee as to whether the Installation Licence in respect of the said application will be granted or not.
- (c) The Landlord shall have sole discretion in approving or withholding the Tenant's application to a Installation Licence and the Landlord shall not be obliged to disclose the reason for withholding its approval.
- (d) In the event such application is approved, it shall be subject to such conditions precedent as the Landlord thinks fit in its sole discretion which may include the amendment of any particulars in the Licence Request Notice to the satisfaction of the

Landlord. In such a case, the Installation Licence shall only become effective upon the fulfilment of such conditions precedent to the satisfaction of the Landlord.

- (e) The Tenant hereby waives any claim whatsoever it may have against the Landlord as a result of or in connection with the Landlord's withholding any Installation Licence or granting any Installation Licence subject to terms and conditions or for any delay or time taken for considering whether to grant an Installation Licence or whether to grant it subject to terms and conditions.
- (f) Without prejudice to Clause 4.2(d), an Installation Licence shall be on the following terms and conditions and such other terms and conditions as the Landlord may stipulate before the commencement of the Licence Period:
 - (i) the duration of the Installation Licence (the "**Licence Period**") and its commencement date shall be determined by the Landlord in its full and absolute discretion;
 - (ii) during the Licence Period:
 - (A) the Tenant shall only have access to the Licensed Area to carry out Installation Works in accordance with this Clause 4.2 and the Tenant shall not have possession (whether exclusive or non-exclusive) of the Licensed Area;
 - (B) the Tenant shall not be required to pay any licence fee but the Tenant shall pay rates, electricity charges and other utility charges and the cost of connection and disconnection of utility services during the Licence Period. The Tenant shall indemnify the Landlord for any non-payment thereof and any associated expenses incurred as a result of delay or non-payment;

(iii) the Installation Licence shall be subject to the following:

(A) priority shall be given to the works to be carried out by the contractors of the Landlord (each, a "**Landlord's Contractor**" and, collectively, the "**Landlord's Contractors**"); and

(B) the Tenant shall cooperate and coordinate its activities and the activities of its officers, employees, agents, consultants and contractors in the Licensed Area with other activities carried out in the Licensed Area in the manner stipulated by the Landlord from time to time;

(iv) without prejudice to the generality of any other provision in this Clause 4.2, the Tenant shall not and shall ensure that its officers, employees, agents, consultants and contractors shall not do or omit anything which may interfere with or impede any works or activities to be carried out by the Landlord or its officers, employees, agents, consultants, utility undertakers or Landlord's Contractors or which may reasonably be expected to cause delay to the same;

(v) the Tenant shall comply with the insurance requirements set by the Landlord;

(vi) all installation and works shall be carried out in accordance with the particulars set out in the Licence Request Notice;

(vii) any change to the particulars set out in the Licence Request Notice requires the prior written approval of the Landlord;

(viii) the Tenant acknowledges that the Landlord and its authorized representatives shall have free access to and possession of the Licensed Area. The Tenant shall co-ordinate with the Landlord and enable the Landlord and persons authorized by the Landlord

from time to time to monitor and inspect the Installation Works;

(ix) the Tenant shall protect works carried out by the Landlord's Contractors and the properties of the Landlord and third parties from loss, damage, or destruction from whatever cause arising out of the Tenant's entry into the Licensed Area and the execution of the Installation Works. Without prejudice to the generality of the foregoing, the Tenant shall follow restrictions on working methods or protective measures from time to time stipulated by the Landlord in order to protect any works carried out by the Landlord's Contractors or properties of the Landlord or third parties from loss, damage or destruction;

(x) the Tenant shall and shall procure its officers, employees, agents, consultants and contractors to obey and comply with all instructions and directions which may be given by the Landlord from time to time in connection with the carrying out of the Installation Works and any rules, regulations or procedures as the Landlord may make or implement from time to time for the Installation Works;

(xi) the Tenant shall not occupy or use the Licensed Area or permit the same or any part thereof to be occupied or used for any purpose other than for the sole purpose of carrying out Installation Works;

(xii) subject to the Tenant complying with Clause 4.2(f)(xiii), until a separately metered supply is installed for the Licensed Area, the Landlord shall at the Tenant's request arrange for temporary electrical power supply to the Licensed Area and the Tenant shall be responsible to pay for all connection charges (if any);

- (xiii) where temporary electricity power supply has been arranged by the Landlord as contemplated in Clause 4.2(f)(xii), the Tenant shall pay to the Landlord in such manner as the Landlord may direct the cost of electrical power at such rate as the Landlord shall determine in its sole discretion and such cost shall be payable on demand by the Landlord;
- (xiv) all the trash, rubbish, debris and surplus building material produced from the Tenant's works shall not be stored outside the Licensed Area or any designated rubbish area (if allocated) and the Tenant shall, at its own cost and expense, remove the same from the Premises and the Cruise Terminal at regular intervals or upon the instructions of the Landlord. All costs associated thereof (including without limitation costs relating to generation and removal of waste which is payable to the Government and other competent authorities) shall be borne and paid by the Tenant solely and the Tenant shall indemnify the Landlord from and against all actions proceedings demands liability costs claims and expenses in respect of any loss, damage, injury or death as a result of the existence of the trash, rubbish, debris and surplus building material produced from the Tenant's works and whether or not the storage or disposal of the same has been approved by the Landlord;
- (xv) without prejudice to any other provision of this Clause 4.2, the Tenant hereby acknowledges that:
 - (A) the Landlord's right to carry out works in the Licensed Area;
 - (B) the Tenant shall use the Licensed Area solely at its own risks;
 - (C) the Tenant shall have no claim demand and/or action whatsoever against the Landlord, the Landlord's officers,

employees, agents, consultants and the Landlord's Contractors in respect thereof including without limitation any delay or damage to the Tenant's installation works;

- (xvi) the Tenant shall release and discharge the Landlord, the Landlord's officers, employees, agents, consultants and the Landlord's Contractors from all claims for death or personal injury caused to the Tenant or any person involved in the access of the Licensed Area and execution of works therein however caused (excluding negligence of the Landlord resulting in death or personal injury) or for loss, destruction or damage however caused to any property of the Tenant or such person during the course of the access of the Licensed Area and execution of works therein. The Tenant acknowledges that all its activities in connection with the access of the Licensed Area and execution of works therein are carried out entirely at its own risk;
- (xvii) the Tenant shall indemnify the Landlord and keep indemnified the Landlord from and against all actions, proceedings, claims, demands, losses, liabilities and expenses whatsoever arising out of or in any way connected with the Tenant's access of the Licensed Area or any activities or works carried out by the Tenant in or in relation to the Licensed Area, whether in respect of death or injury sustained by any person or persons in connection with such access activities works or whether in respect of loss, damage or destruction to works carried out by the Landlord or the Landlord's Contractors or any property of any person or other entity and against all other damage or expenses (including legal expenses) which may be incurred or sustained by the Tenant by reason of such access, or activities or works;

- (xviii) the Tenant is liable to the Landlord for all costs, claims, expenses, loss, damages, charges and demand whatsoever arising from the damage caused to the Cruise Terminal, the Premises and the fixtures, fittings and installations therein and the cost of any loss or damage howsoever caused which the Landlord may sustain as a result of the Tenant's access of the Licensed Area or any activities or works carried out by the Tenant or any of the Tenant's officers, employees, agents, consultants and contractors;
- (xix) if the Landlord's Contractor causes any loss or destruction of or damage to the Tenant's Installation Works or any part thereof or to the property of the Tenant or cause delay or interference with the Tenant's Installation Works, the Tenant shall notify the Landlord's Contractor immediately upon such damages occur and present to the Landlord's Contractor the details of any claim it may have as a result of such loss, destruction, damage, delay or interference (with a copy for information to the Landlord) and shall use its best endeavours to settle its claim against the Landlord's Contractor. The Landlord shall not be liable whatsoever as a result of or in connection with any loss or destruction of or damage to the Tenant's works or property of the Tenant caused or allegedly caused by the Landlord's Contractor, and shall not be involved or responsible for any disagreement or disputes between the Tenant and the Landlord's Contractor. The Tenant waives all and any rights to make any claim against the Landlord;
- (xx) the Tenant shall during the Licence Period comply, observe, perform and be bound by all other agreements, stipulations, terms, conditions and obligations on the Tenant's part to be observed and performed under this Agreement (unless they are varied or modified by this Clause 4.2) as if the same

are applicable and in full force herein save for the obligation to pay Monthly Fixed Rent in respect of the Licensed Area during the Licence Period;

- (xxi) where there is any breach of the terms of the Installation Licence or this Clause 4.2, the Landlord shall have the right to suspend the licence for a period to be determined by the Landlord at its sole discretion subject to conditions imposed by the Landlord or revoke the Installation Licence whereupon the Installation Licence shall absolutely determine and the Tenant shall forthwith, and shall ensure its officers, employees, agents, consultants and contractors to forthwith vacate the Licensed Area;
- (xxii) the Tenant shall have no claim against the Landlord for any loss, compensation, damage, costs or expenses arising from the suspension or revocation of the Installation Licence; and
- (xxiii) the Tenant shall and/or shall procure that the Tenant's contractors for the Tenant's Installation Works take out contractors' all risks (including property all risks and third party liability) and employee's compensation insurance in respect of the Installation Works in such amount and on such terms as required by the Landlord before they are started and of a term consistent with the Licence Period.
- (g) No Installation Licence shall become operative before the start of the Licence Period and no Installation Licence shall extend beyond the expiry of the Licence Period.
- (h) Nothing contained in this Clause 4.2 shall be construed or regarded as creating any tenancy of the Licensed Area or any part thereof to the Tenant and/or to create or imply any landlord and tenant relationship in respect of the Licensed Area during the Licence Period.

5. RENT

5.1 Rental Structure. During the Term, the Tenant shall pay the Monthly Fixed Rent and Annual Turnover Rent in accordance with the manner provided in this Agreement. The Rent is exclusive of rates, Management Fees, Air Conditioning Charges, utility charges and other outgoings whatsoever.

5.2 Rent Free Period.

- (a) Notwithstanding Clause 5.1, the Tenant shall be granted a rent free period (the "**Rent Free Period**") to the intent that no Monthly Fixed Rent shall be payable for two (2) month from the date when vacant possession of the First Berth and the Premises within the Cruise Terminal Building is delivered to the Tenant.
- (b) The Tenant shall be liable to pay the Annual Turnover Rent, Management Fees, Air Conditioning Charges, rates, other charges and outgoings payable by the Tenant under this Agreement during the Rent Free Period and shall perform and observe all terms and conditions contained in this Agreement.
- (c) In the event the Tenant shall fail to comply with observe or perform any terms or conditions of this Agreement, the Tenant's right to the Rent Free Period shall immediately become null and void and the Rent otherwise payable for such period shall, even if having been utilised, be recoverable by the Landlord from the Tenant thereafter without prejudice to the Landlord's other rights or remedies reserved hereunder.

5.3 Monthly Fixed Rent.

The Tenant shall pay the Monthly Fixed Rent in advance free and clear of all deductions and without set-off as specified in Paragraph A in Annex IX.

5.4 Annual Turnover Rent. The Annual Turnover Rent shall be determined in the following manner:

- (a) The Annual Turnover Rent shall be the aggregate amount of the numbers derived from multiplying the relevant part of the Annual Gross Receipt by the relevant percentage stipulated in Paragraph B in Annex IX for each 12-month period during the Term

commencing from the commencement date of the tenancy.

(b) "**Gross Receipt**" means the aggregate amount or consideration received or to be received from all trades and businesses carried on, in or from the Premises by the Tenant and all other incomes, fees and charges derived or to be derived from the Premises, the charging facilities and the video wall (if any) by the Tenant and shall include but not be limited to:

- (i) the amount received or to be received from the sale of goods and the performance of services provided at, in, through or out of the Premises, the charging facilities and the video wall (if any) including without limitation:
 - (A) orders for goods or services or facilities (including 10% levied by way of service charge for food and beverage trade) originated, received or accepted at or from the Premises;
 - (B) orders solicited off the Premises by persons operating from or reporting to the Premises;
 - (C) sales made and services performed by machines and other devices in or annexed to the Premises;
 - (D) such charges levied by way of service charge or rebate for making booking or order at or from the Premises for goods and services or facilities executed or performed or provided elsewhere;
 - (E) transactions where:
 - (1) a server on the Premises is used in connection with hosting a website at or through which a part of such sale or performance may be transacted, or
 - (2) any other electronic or computer facility or equipment on the

Premises is used in connection with such sale or performance,

Provided That the sale or performance actually takes place or occurs in, at, through or out of the Premises;

- (ii) the amount or consideration expressed to be paid to the Tenant for goods sold or services or facilities performed or provided by the Tenant under any credit arrangement of whatsoever nature including but without limitation credit card facilities and other deferred payment arrangements before deducting commission discounting administration and other charges payable by the Tenant under the credit arrangement and irrespective of whether the Tenant can recover the said amount or consideration from the customers or some other persons, firms or corporation of which have assumed the liabilities of the customers in relation to the goods sold and service and facilities performed or provided by the Tenant under the said credit arrangement;
- (iii) the amount received in respect of any hire purchase or hiring arrangement made at or in the Premises;
- (iv) the amount received or receivable from sale and services which the Tenant in the normal and customary course of the Tenant's operations would or should be credited or attributed to the business of the Tenant at the Premises;
- (v) the amount of any service charge levied or imposed by the Tenant on goods sold services performed or otherwise disposed of goods or and paid by a customer;
- (vi) if the business includes or involves (inter alia) selling cash, gift, festive product or other coupons AND redemption of cash, gift, festive product or other coupons (irrespective of where such coupons are sold and purchased or given and obtained at the Premises for goods, service or money) the

total proceeds of the sale of the said coupons in the Premises OR the total value of the goods, service or money redeemed in the Premises as aforesaid, shall be included in the Gross Receipt notwithstanding anything mentioned as aforesaid; and

- (vii) any other income or fees derived from the Premises, the charging facilities and the video wall (if any).

Provided that:

- (viii) every sale on credit terms or on an instalment basis shall be deemed to be a sale for the full cash price at the date when the same is made irrespective of the time or times at which the Tenant receives payment;
- (ix) every hiring of goods to a customer with an option to purchase shall be deemed to be a sale of the goods for the full cash price at the date when the hiring is made (irrespective of the time or times at which the Tenant receives payment);
- (x) every deposit by a customer shall be included in the Gross Receipt at the time of receipt and shall only be deducted from the Gross Receipt if and when repaid;
- (xi) every deposit by a cruise line operator shall be included in the Gross Receipt at the time of receipt and shall only be deducted from the Gross Receipt if and when repaid and in the event that such deposit is received prior to the commencement date of the tenancy, it shall be included in the Gross Receipt of the first calendar month of the Term;
- (xii) every deposit paid by a sub-tenant or a licensee under (in the case of the sub-tenant) the sub-tenancy agreement or (in the case of the licensee) the licence agreement shall not be included in the Gross Receipt unless it is forfeited by the Tenant. In the event of forfeiture, the deposit forfeited shall be included in the Gross Receipt at the time when the same is forfeited to the Tenant;

- (xiii) the value of any goods, service or money redeemed in the Premises as aforesaid shall be included in the Gross Receipt only if the value of the relevant coupon so redeemed has not been included as Gross Receipt under Clause 5.4(b)(vi); and
 - (xiv) in calculating the amount of the Gross Receipt no deduction shall be made for bad or doubtful debts or (in the case of transactions paid by credit card) discounts or commissions payable by the Tenant to the provider of the credit.
- (c) For the avoidance of doubt, the Gross Receipt includes not only incomes, fees and charges received from all trades and businesses carried on, in or from the Premises by the Tenant and all other incomes, fees and charges derived from the Premises, the charging facilities and the video wall (if any) by the Tenant during the Term but also covers incomes, fees and charges derived by the Tenant from the Premises, the video wall (if any) and the business carried on, in or from the Premises (including without limitation advance booking) prior to the commencement date of the tenancy which shall be deemed to be the Gross Receipt of the first calendar month of the Term.
 - (d) All rents, licence fees, income, fees and charges received or to be received by the Tenant from all sub-tenants, licensees and users (including the Related Parties) will form part of the Gross Receipt. For the avoidance of doubt, all management fees, air conditioning charges, and other outgoings payable by the sub-tenants, licensees and users to the Tenant form part of the Gross Receipt.
 - (e) For the purpose of calculating Gross Receipt, if the Tenant or any of the Related Parties occupies part or parts of the Ancillary Commercial Area for operation of commercial business (other than operation of a cruise terminal), the Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) the deemed rental income for such part or parts of the Ancillary Commercial Area or (2) the business income of the Tenant or (as

the case may be) the Related Parties in such part or parts of the Ancillary Commercial Area.

- (i) For the determination of the deemed rental income, the Tenant shall at its own cost and expense engage an independent valuer to assess full market rent of such part or parts of the Ancillary Commercial Area. The independent valuer may be appointed by agreement between the Landlord and the Tenant, or in default of such agreement within one (1) month after the date of the Landlord's demand of an independent valuer's report from the Tenant, appointed by the President for the time being of the Hong Kong Institute of Surveyors on the application of either party hereto. The Landlord may take into account the report prepared by the independent valuer and other considerations which the Landlord may deem appropriate when determining the deemed rental income for such part or parts of the Ancillary Commercial Area. The Landlord's decision on the deemed rental income in respect of such part or parts of the Ancillary Commercial Area shall be final, binding and conclusive on the Tenant.
- (ii) The incomes of the business of the Tenant and the Related Parties in such part or parts of the Ancillary Commercial Area is determined in accordance with Clause 5.4(b) above. If the business income of the Related Parties shall be included in the Gross Receipt, any reference to the "Tenant" in Clause 5.4(b) and (c) shall include both the Tenant and the Related Parties. The statements and accounts submitted by the Tenant pursuant to Clause 5.5 shall include the Gross Receipt of the Related Parties.

5.5 Payment method.

- (a) The Tenant shall pay to the Landlord the Monthly Fixed Rent of each calendar month on or before the first day of that calendar month during the Term the first of such payment to be apportioned according to the number of days then unexpired in the month in

respect of which such payment is due and the last of such payment to be apportioned according to the number of days of the Term remaining in the month in respect of which such payment is due.

(b) Monthly income statement

- (i) The Tenant shall within the first fourteen (14) days of each calendar month provide the Landlord with a statement in a form to be approved from time to time by the Landlord.
- (ii) The statement shall be prepared and certified as being accurate and complete by the director or chief accountant of Tenant and shall show the monthly Gross Receipt for the immediately preceding calendar month.

(c) Audited income statement

- (i) The Tenant shall, within thirty (30) days of the end of each successive period of twelve (12) calendar months or such other reporting period as required and specified at any time in a Landlord's written notice which elapses during the currency of the tenancy and within thirty (30) days after expiration or early termination of this Agreement (each, a "**Submission Due Date**"), submit to the Landlord an audited income statement in a form to be approved by the Landlord, which shall be audited by an independent Certified Public Accountant of HKICPA. The first audited income statement shall be produced within thirty (30) days after twelve (12) calendar months from the commencement date of the tenancy.
- (ii) The audited income statement shall show the precise amount of the Gross Receipt for each month in the immediate preceding twelve (12) months, the Annual Turnover Rent payable to the Landlord and such other information as the Landlord may require for such period of twelve (12) calendar months referred to in Clause 5.5(c)(i) or for such

month(s) as stipulated in the Landlord's written notice.

- (iii) The Tenant shall pay without demand to the Landlord the Annual Turnover Rent upon the submission of the statement as required in Clause 5.5(c)(i) (the "**Payment Due Date**"). The Tenant acknowledges and accepts that the payment of Annual Turnover Rent shall only be accepted by the Landlord when it is accompanied by the statement as required in Clause 5.5(c)(i). For the avoidance of doubt, if the Tenant does not submit the statement as required in Clause 5.5(c)(i), the Payment Due Date shall fall on the same date as the Submission Due Date.
- (iv) If the audited income statement is not submitted by the Tenant within the time set out in Clause 5.5(c)(i), the Tenant shall pay without demand to the Landlord by way of a provisional payment equivalent to 20% of total Monthly Fixed Rent of the reporting period ("**Provisional Payment for Reporting Period**") on the Payment Due Date.
- (v) When the belated audited income statement is submitted:
 - (A) if the statement shows that the amount of Annual Turnover Rent payable for the reporting period is greater than the Provisional Payment for Reporting Period, the Tenant shall without demand pay to the Landlord forthwith the difference between the Annual Turnover Rent payable for the reporting period and the Provisional Payment for Reporting Period plus the interest at the rate as stipulated in Clause 5.7 on the amount owed from the day immediately after the Payment Due Date until the date of payment (both dates inclusive) less the Provisional Payment for Reporting Period; or

- (B) if the statement shows that the amount of Annual Turnover Rent payable for the reporting period is less than the Provisional Payment for the Reporting Period held by the Landlord, the Landlord shall refund an amount equal to the difference between the Provisional Payment for the Reporting Period and the Annual Turnover Rent payable for the reporting period to the Tenant by not later than thirty (30) days after receipt of the Tenant's demand in writing. The Landlord shall not be liable to pay interest to the Tenant on the refund amount.
- (vi) The Tenant's failure to provide the audited income statement for one (1) month or above after the Submission Due Date shall constitute a material breach of this Agreement entitling the Landlord to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions contained in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.
- (vii) Without prejudice to the rights stated in Clause 5.5(c)(vi), if the audited income statement is not submitted by the Tenant within one (1) month after the Submission Due Date, the calculation of the Annual Turnover Rent shall be based upon

statement prepared by the Landlord or its authorised person following an inspection of the Tenant's records made under Clause 5.5(d)(v). The Tenant shall bear all costs and expenses incurred by the Landlord in connection with the inspection of the Tenant's records and the preparation of statement.

(d) Auditing

- (i) The Tenant shall, within four (4) calendar months after the end of each financial year of the Tenant's business at the Premises and within four (4) calendar months after the expiration or early termination of this Agreement, prepare and submit to the Landlord a profit and loss account and an operating account (showing the monthly Gross Receipt and cost of operation of the business at the Premises) for that financial year, in a form to be approved by the Landlord, which shall be audited by an independent certified public accountant of the HKICPA ("**Audited Accounts**").
- (ii) The Tenant's failure to provide the Audited Accounts within five (5) calendar months after the end of the financial year shall constitute a material breach of this Agreement entitling the Landlord to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions in this Agreement. The Tenant shall quit and deliver vacant possession of

the Premises in accordance with the terms and conditions of this Agreement.

- (iii) Without prejudice to the Landlord's rights stated in Clause 5.5(d)(ii), if the Audited Accounts are not submitted by the Tenant within the timeframe set out in Clause 5.5(d)(ii), the calculation of the Annual Turnover Rent shall be based upon statement prepared by the Landlord or its authorised person following an inspection of the Tenant's records made under Clause 5.5(d)(v). If the statement prepared by the Landlord or its authorised person is at variance with the audited income statement resulting in a deficiency in the Annual Turnover Rent paid by the Tenant, the Tenant shall pay to the Landlord by way of a provisional payment the deficiency within ten (10) days upon demand by the Landlord and Clause 5.5(c)(v) shall apply mutatis mutandis when the Audited Accounts are submitted by the Tenant subject to:
 - (A) any reference to "audited income statement" and "statement" in Clause 5.5(c)(v) shall mean statement prepared based on the Audited Accounts; and
 - (B) any reference to "Provisional Payment for Reporting Period" in Clause 5.5(c)(v) shall mean the Annual Turnover Rent already paid by the Tenant to the Landlord for the reporting period and the provisional payment paid under Clause 5.5(d)(iii).
- (iv) The Tenant hereby certifies that its financial year starts on [date] and expires on [date].
- (v) The Tenant shall, during the Term and for at least one (1) year after determination or expiry of the Term, keep and maintain or caused to be kept and maintained proper complete accurate and true records, accounts and all the receipts and appropriate vouchers for all transactions in the business

conducted on the Premises. Such records and accounts including the supporting receipts and vouchers shall be made available for inspection and making copy at all times by the Landlord or its authorized person.

- (vi) The Tenant shall bear the cost of inspection and all costs and expenses incurred by the Landlord in respect of Clause 5.5(c)(vii) and 5.5(d)(iii) in the event that any material discrepancy is discovered or if that inspection follows a failure by the Tenant to provide any statement or account required in accordance with the terms of this Agreement.
- (vii) The Landlord reserves the right at any time to require the statements to be audited at the cost and expense of the Tenant by an independent certified public accountant of the HKICPA of the Landlord's choice. If the said audit shall show that any of the Tenant's statements is at variance with the actual Gross Receipt resulting in a deficiency in the Annual Turnover Rent paid by the Tenant for the relevant period, the Tenant shall pay to the Landlord within ten (10) days after demand the costs of the said audit in addition to the deficiency plus the interest at the rate as stipulated in Clause 5.7 on the amount owed from the day immediately after the Payment Due Date of the relevant period until the date of payment (both dates inclusive). On the other hand, any surplus thereof shall be refunded by the Landlord to the Tenant within thirty (30) days after completion of the said audit. The Landlord shall not be liable to pay interest to the Tenant on the refund amount.
- (e) In the event of any dispute between the parties hereto as to the amount of Annual Turnover Rent, such dispute shall be determined by an independent certified public accountant of the HKICPA. The certified public accountant may be appointed by agreement between the Landlord and the Tenant or, failing such agreement within two (2) weeks from

the day when the first proposal on the appointment of accountant is made, by the Chairman for the time being of the HKICPA, on the application of either party hereto. Such accountant shall act as an expert whose decision shall be final, binding and conclusive on both parties. The cost of the appointment of the accountant and any professional charges shall be borne by the parties in equal shares.

- (f) Acceptance by the Landlord of any statements or accounts submitted or any money paid by the Tenant in accordance with this Agreement shall not in any way bar or preclude the Landlord from subsequently disputing the accuracy of any such statement of accounts or the correctness of any such sum and that in the event that any further sum whatsoever be found due from the Tenant to the Landlord.
- (g) The Landlord shall be entitled to treat non-payment of any sum payable pursuant to this Clause 5.5, or any part thereof, as non-payment of Rent under this Agreement, and the Landlord shall be entitled to exercise its right of re-entry in the event of breach by the Tenant of its obligations under this Clause 5.5.

5.6 Disclosure of financial information.

- (a) Unless with the Tenant's prior written approval (such approval not to be unreasonably withheld or delayed), the Landlord agrees that it will not disclose financial information provided to it by the Tenant concerning the Gross Receipt (the "Financial Information") to a third party except for the following:
 - (i) Financial Information provided for the purposes of rental collection and property management.
 - (ii) Financial Information that is made to a person who must know for the purpose of this Agreement on the basis that the person keeps the Financial Information confidential.
 - (iii) Financial Information that is required to be disclosed by any law, regulation or standing

requirement binding on the Landlord or any order of any court or other binding authority.

- (iv) The Monthly Fixed Rent, monthly and annual Gross Receipt including the detailed breakdown, percentages of Annual Gross Receipt and Annual Turnover Rent may be released by the Landlord at its sole discretion.
 - (v) Disclosure to legal advisers, accountants, auditors, financial advisers or other advisers under a duty of confidentiality.
 - (vi) The information that is public knowledge (but not because of a breach of this Agreement).
 - (vii) Disclosure in connection with the fulfilment of any rules, regulations or other requirements of any relevant regulatory authority;
 - (viii) Disclosure to a court of law in Hong Kong or elsewhere or otherwise in any legal proceeding.
- (b) For the purpose of this Clause 5.6, Financial Information shall not include any information which is generally known by the public and any competitors of the Tenant. The agreement contained in this clause shall not extend to or prohibit disclosure of any Financial Information to any employees of the Landlord who must have such information for the performance of the Landlord's obligations under this Agreement or for the Landlord's normal internal financial reporting and who agree to be bound by the covenant contained in this clause. This Clause 5.6 shall survive the expiration or early termination of this Agreement.

5.7 Charge of interest on late payment of Rent and/or other monies. Notwithstanding anything herein contained in the event of default in payment of Rent and/or other monies (including Management Fees, Air Conditioning Charges, rates and Deposit) payable by the Tenant on the date on which the same falls due for payment (whether formally demanded or not) the Tenant shall pay to the Landlord daily interest on all such amount in arrears at

the rate equivalent to the prevailing average best lending rate of the note-issuing banks in Hong Kong plus 2 % per annum calculated from the date on which the same becomes due for payment until the date of payment as liquidated damages and not as penalty provided that the demand and/or receipt by the Landlord of interest pursuant to this provision shall be without prejudice to and shall not affect the right of the Landlord to exercise any other right or remedy hereof (including but without prejudice to the generality of the foregoing the right of re-entry) exercisable under the terms of this Agreement.

5.8 Mid Term Review.

- (a) The Landlord shall conduct a mid term review on the maximum fees set out in Schedule at Annex XV and the Monthly Fixed Rents stipulated in Paragraph A in Annex IX for the period from the first day of the 6th year of the Term to the last day of the 10th year of the Term ("**Review Period**") and such review shall be conducted in the following manner:-
 - (i) The Tenant shall submit a proposal on (a) change to maximum fees (as the case may be) set out in Schedule at Annex XV ("**Revised Fees**"); and/or (b) amount of the revised monthly fixed rent ("**Revised Monthly Fixed Rents**") for the Premises for the Review Period to the Landlord for consideration not more than seven (7) calendar months and not less than six (6) calendar months prior to the expiration of the 5th year of the Term.
 - (ii) If no proposal is received by the Landlord within the prescribed timeframe in Clause 5.8(a), the Landlord's determination of the Revised Fees and the Revised Monthly Fixed Rents for the Review Period shall be final, binding and conclusive on the Tenant.
 - (iii) The Tenant shall provide financial and other relevant information to justify the Revised Fees and the Revised Monthly Fixed Rents (as the case may be) in all respects to the satisfaction of the Landlord.

- (iv) In considering the proposal on Revised Fees submitted under Clause 5.8(a)(i), the Landlord may take into account relevant considerations including not limited to inflation rate, fees and charges for other cruise terminals, forecasts of changes in operating cost, revenue and return, past performance of the Tenant in the provision of services, acceptability of cruise industry, measures implemented by the Tenant to save cost and generate additional revenue, and such other considerations as the Landlord in its sole discretion deem appropriate.
 - (v) The Landlord shall within two (2) months of receipt by it of the Tenant's proposal notify the Tenant in writing of its acceptance or rejection of the proposal. In the event that the Landlord rejects the proposal, the Landlord will make a counter-proposal to the Tenant.
 - (vi) The Tenant shall within a period of one (1) month of receipt by it of the Landlord's counter-proposal notify the Landlord in writing of its acceptance or rejection of the counter-proposal.
 - (vii) In the event that the Tenant shall accept the Landlord's counter-proposal or fail to lodge notice of acceptance or rejection within the period stipulated in Clause 5.8(a)(vi), the Landlord's counter-proposal shall be deemed conclusively to be the Revised Fees and Revised Monthly Fixed Rents (as the case may be) for the Review Period.
 - (viii) In the event that the Tenant shall reject the Landlord's counter-proposal or any part thereof within the timeframe prescribed in Clause 5.8(a)(vi), the parties shall endeavour to agree on the Revised Fees and the Revised Monthly Fixed Rents (as the case may be).
- If the parties shall fail or otherwise be unable to so agree on all or any of the Revised Fees and the Revised Monthly Fixed

Rents (as the case may be) for the Review Period within two (2) months prior to the commencement of the Review Period, either party may serve a notice upon the other calling for an independent expert to be appointed to determine the Revised Fees and/or the Revised Monthly Fixed Rents (as the case may be). The independent expert shall be appointed by agreement between the Landlord and the Tenant. The parties shall act in good faith and use their best endeavours to reach agreement on the appointment of the independent expert. Without limiting the generality of the foregoing, the parties shall not unreasonably withhold their agreement.

(ix) The decision of the independent expert shall be final and binding on the parties hereto provided that in determining the Revised Monthly Fixed Rents, it is hereby agreed that the following assumptions shall be made:

(A) that the Premises are fully fitted out and equipped and fit for immediate occupation and use and that no work which has been carried out thereon by the Tenant or its subtenant or licensees has diminished the rent value of the Premises and that in case the Premises have been destroyed or damaged, they have been fully reinstated and restored;

(B) the Premises are available for letting a willing landlord to a willing tenant without a premium with vacant possession (but fully fitted and equipped) and subject to the provision of this Agreement (other than the amount of the Monthly Fixed Rent, and any licence period and rent free period and phased delivery of the Premises on different dates) for a term which is the same in length as that of the full Term originally granted hereby and not any lesser

period such as unexpired portion of the Term;

(C) that the agreements and stipulations herein contained on the part of the Landlord and the Tenant have been fully performed and observed;

(D) that the value of any fixtures or fittings made by the Tenant shall not be taken into account.

(x) Prior to the agreement or (as the case may be) the determination of the Revised Fees, the maximum fees set out in the Schedule at Annex XV are still applicable for the Review Period.

In the event of the Revised Fees being agreed or (as the case may be) determined after the date of commencement of the Review Period, the earliest date when the Revised Fees takes effect shall be the date of agreement or (as the case may be) determination and not retrospectively from the date of commencement of the Review Period.

(xi) Prior to the agreement or (as the case may be) the determination of the Revised Monthly Fixed Rents for the Review Period, the Tenant shall continue to pay monthly on account of the rent to be decided in accordance with this Agreement, the same rent as last payable hereunder and adjustments on the rent (if applicable) shall be made upon the Revised Monthly Fixed Rents having been determined as aforesaid so that the Tenant shall forthwith pay to the Landlord any excess of the aggregate of final Revised Monthly Fixed Rents and Annual Turnover Rent (if any) over the rent already paid by the Tenant, in respect of the period between the date of commencement of the Review Period and the date of determination of the Revised Monthly Fixed Rent together with interest on such difference charged at rate stipulated in

Clause 5.7 from the commencement of the Review Period until the actual date of payment.

- (xii) In the event that there is any excess of rent already by the Tenant over the aggregate of final Revised Monthly Fixed Rents and Annual Turnover Rent (if any) in respect of the period between the date of commencement of the Review Period and date of determination of the Revised Monthly Fixed Rent, the Landlord shall treat the excess as part payment of the Monthly Fixed Rent for the subsequent month. The Landlord shall not be liable to pay interest to the Tenant on the excess of rent (if any).
 - (xiii) The Tenant shall deliver to the Landlord such deposit in the form of cash or bank guarantee as shall be required pursuant to the provision of Clause 40.1(b) of this Agreement.
 - (xiv) The cost of independent expert shall be borne by the parties in equal shares on an interim basis unless the independent expert shall order otherwise. Final disposition of costs shall be subject to the independent expert's discretion. In the absence of independent expert's discretion on the final disposition of costs, the parties shall share the cost of independent expert equally.
- (b) The parties acknowledge that the final Revised Fees and the final Revised Monthly Fixed Rents may remain unchanged after the review.

6. MANAGEMENT FEES, AIR CONDITIONING CHARGES AND OTHER CHARGES

6.1 Management Fees.

- (a) The Tenant shall pay the monthly Management Fees in advance free and clear of all deductions and without set-off on or before the first day of each calendar month during the Term starting from the commencement date of the tenancy the first of such

payment to be apportioned according to the number of days then unexpired in the month in respect of which such payment is due and the last of such payment to be apportioned according to the number of days of the Term remaining in the month in respect of which such payment is due.

- (b) The Management Fees that the Tenant shall pay in each year shall be the proportion of the actual Management Expenses of that year which the total Floor Area of the Premises (excluding the Apron Area) bears to the total Floor Area of the Government Accommodations and the Premises (excluding the Apron Area) ("**Premises Proportion**").
- (c) The monthly Management Fees payable by the Tenant for each year are provisional management fees based on the budget for Management Expenses prepared by the Landlord for that year. The monthly Management Fees shall be the Premises Proportion of the Management Expenses of that year budgeted by the Landlord (which is final, binding and conclusive on the Tenant) divided by twelve (12). The first budget shall cover the 12-month period commencing from the commencement date of the tenancy.

The Management Fees are subject to annual review every year and the Landlord has the right to adjust the amount of the Management Fees by an appropriate amount to reflect any surplus or deficit in the actual Management Expenses for that year in accordance with Clause 6.1(e) when the actual Management Expenses are available.

- (d) "**Management Expenses**" means the management expenses of the Common Parts as ascertained by the Landlord (which is final, binding and conclusive on the Tenant) and shall include expenditure on security, cleaning, third party insurance/legal liability insurance, supervising and operating cost (such as remuneration of the Property Manager, water charge, electricity charge, air conditioning charges, fee for district cooling services, supervisory cost associated with repair and maintenance of the Common Parts, staff cost) for the Common Parts but shall exclude repair and

maintenance costs of Common Parts, capital outgoings, and improvement expenditures on the Common Parts provided that the Landlord shall be entitled to be fully indemnified by the Tenant for the cost incurred due to the act, omission, negligence or omission of the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees.

- (e) At the end of each year upon the Landlord producing to the Tenant a statement certified by the Landlord of the actual Management Expenses for that year showing any deficit of Management Expenses of that year budgeted by the Landlord, the Tenant shall pay to the Landlord the Premises Proportion of such deficit amount within fourteen (14) days from its receipt of written demand from the Landlord. If the said statement shows any surplus of Management Expenses of that year budgeted by the Landlord, the Premises Proportion of such surplus amount shall be carried forward to the next year. The Landlord shall not be liable to pay interest to the Tenant on the said surplus amount. The Landlord's adjustment in the Management Fees shall be final, binding and conclusive on the Tenant.
- (f) When notification of actual possession date of the First Berth and Premises within the Cruise Terminal Building is given to the Tenant pursuant to Clauses 4.1(f) or 4.1(j), the Landlord shall inform the Tenant of the monthly Management Fees of the first year of the Term.

For the subsequent years of the Term, the Landlord shall inform the Tenant of the Management Fees for each year at least three (3) months before the first day of each year.

6.2 Air Conditioning Charges.

- (a) The Landlord shall provide (i) chilled water supply to the Ancillary Commercial Area (excluding plant rooms, meter rooms, communication rooms and any outdoor area therein); and (ii) air conditioning to the Premises (excluding Ancillary Commercial Area, Transportation Area, Parking Area, plant rooms,

meter rooms, communication rooms and outdoor area).

- (b) The Tenant acknowledges and accepts that the Landlord will subscribe district cooling services from the operator of district cooling system in Kai Tak and the Landlord shall pay fees to the operator of district cooling system in Kai Tak for district cooling services.
- (c) The Tenant shall pay Air Conditioning Charges to cover the cost to the Landlord for provision of chilled water supply and air conditioning stated in Clauses 6.2(a) and 6.2(b).

The Air Conditioning Charges shall include (i) the electricity cost of the air conditioning system (including the chilled water system) and district cooling system substation that commonly serve the Premises and other part(s) of the Cruise Terminal Building, which is apportioned to the Premises; (ii) the fee for district cooling services in respect of the air conditioning system (including the chilled water system) and district cooling substation(s) that are installed within or exclusively serve the Premises; and (iii) the fee for district cooling services in respect of the air conditioning system (including the chilled water system) and district cooling system substation that commonly serve the Premises and other part(s) of the Cruise Terminal Building, which is apportioned to the Premises, but shall exclude the repair and maintenance costs of the air conditioning system provided that the Landlord shall be entitled to be fully indemnified by the Tenant for the cost incurred due to the act, omission, negligence or omission of the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees.

- (d) The Landlord shall connect the power cable and conduits of the air conditioning system (including the chilled water system) and district cooling substation(s) that are installed within or exclusively serve the Premises to the Tenant's electricity supply meters installed in accordance with Clause 8.2(a). The Tenant shall pay direct to the supply authority for the electric power consumed by the air conditioning system (including the chilled water

system) and district cooling substation(s) that are installed within or exclusively serve the Premises.

The fee for district cooling services in respect of the air conditioning system (including the chilled water system) and district cooling substation(s) that are installed within or exclusively serve the Premises shall be based on the prevailing tariff for district cooling services and the readings of meter for district cooling system substation(s) that exclusively serves the Premises.

- (e) For the air conditioning system (including the chilled water system) and district cooling system substation(s) that commonly serve the Premises and other part(s) of the Cruise Terminal Building, the Landlord shall use separate metres of the different areas that are served by that air conditioning system (including the chilled water system) and district cooling system substation(s) to apportion (i) the electricity costs of that air conditioning system (including the chilled water system) and district cooling substation(s) between the Premises and other part(s) of the Cruise Terminal Building; and (ii) fee for district cooling services between the Premises and other part(s) of the Cruise Terminal Building. The apportionment determined by the Landlord shall be final, binding and conclusive on the Tenant. The aforesaid electricity costs and fee for district cooling services apportioned to the Premises shall be included in the Air Conditioning Charges.
- (f) The Tenant shall pay monthly Air Conditioning Charges in advance free and clear of all deductions and without set-off on the first day of each calendar month during the Term starting from the commencement date of the tenancy the first of such payment to be apportioned according to the number of days then unexpired in the month in respect of which such payment is due and the last of such payment to be apportioned according to the number of days of the Term remaining in the month in respect of which such payment is due.
- (g) The Tenant shall submit to the Landlord the required operating schedules of air conditioning for the Premises (excluding Ancillary Commercial Area,

Transportation Area, Parking Area, plant rooms, meter rooms, communication rooms and outdoor area) and chilled water supply to the Ancillary Commercial Area (excluding plant rooms, meter rooms, communication rooms and any outdoor area therein) in the next six (6) months for the Landlord's consideration on 1st January and 1st June each year during the Term.

The first required operating schedules which covers the period from the commencement date of the tenancy to either 30th May or 31st December of the same year shall be submitted by the Tenant within twelve (12) months after the execution of this Agreement for the Landlord's consideration.

Once the Tenant's proposed operating hours are agreed to by the Landlord, the Landlord shall provide (i) chilled water supply for the Ancillary Commercial Area (excluding plant rooms, meter rooms, communication rooms and any outdoor area therein); and (ii) air conditioning to the Premises (excluding Ancillary Commercial Area, Transportation Area, Parking Area, plant rooms, meter rooms, communication rooms and outdoor area) at such hours.

- (h) The Air-Conditioning Charges shall be calculated by the Landlord based on the required operating schedules approved by the Landlord in Clause 6.2(g). The Landlord shall issue demand note to the Tenant which may be rendered monthly or at such other intervals as the Landlord may decide. The Landlord's demand note shall be final, binding and conclusive on the Tenant.
- (i) The Air Conditioning Charges that the Tenant shall pay in each month shall be determined by the Landlord based on the prevailing rate at the time of determination (which is final, binding and conclusive on the Tenant).

The Air Conditioning Charges are subject to monthly review and the Landlord has the right to adjust the amount of the Air Conditioning Charges by an appropriate amount to reflect any surplus or deficit in the actual cost of providing chilled water supply and air-conditioning for that month in

accordance with Clause 6.2(j) when the actual cost can be ascertained.

- (j) If the actual cost of providing chilled water supply and air-conditioning for any month is greater than the Air-Conditioning Charges which have been paid in advance for the month by the Tenant, the Tenant shall pay to the Landlord the deficit amount on or before the 7th day of the following month.

If the actual cost of providing chilled water supply and air-conditioning for any month is less than the Air-Conditioning Charges which have been paid in advance for the month by the Tenant, the surplus paid by the Tenant shall be carried forward to the next month without interest.

- (k) When notification of actual possession date of the First Berth and Premises within the Cruise Terminal Building is given to the Tenant pursuant to Clauses 4.1(f) or 4.1(j), the Landlord shall inform the Tenant of the amount of advance payment of the Air Conditioning Charges of the first month of the Term.

- (l) If the Tenant shall require air conditioning to the Premises (excluding Ancillary Commercial Area, Transportation Area, Parking Area, plant rooms, meter rooms, communication rooms and outdoor area) or chilled water supply to the Ancillary Commercial Area (excluding plant rooms, meter rooms, communication rooms and any outdoor area therein) outside the hours as agreed by the Landlord under Clause 6.2(g), the same shall whenever possible be provided by the Landlord Provided That:

- (i) the Tenant shall give:

- (A) at least one (1) month's advance written notice to the Landlord or the Property Manager confirming the required operating schedules of air conditioning for the Premises (excluding Ancillary Commercial Area, Transportation Area, Parking Area, plant rooms, meter rooms, communication rooms and outdoor area) and chilled water supply to the Ancillary Commercial Area (excluding plant rooms, meter rooms,

communication rooms and any outdoor area therein) in the coming month; and

- (B) 24-hour written notice to the Landlord or the Property Manager to re-confirm the requested hours of air-conditioning and chilled water supply; and

- (ii) in the event that the Premises (excluding Ancillary Commercial Area, Transportation Area, Parking Area, plant rooms, meter rooms, communication rooms and outdoor area) are allowed to be used for temporary non-cruise related use under Clause 9.1(i), the Tenant shall give at least one (1) week's advance written notice to the Landlord or the Property Manager confirming the date and required operating hours of air conditioning and chilled water supply.

- (iii) the Tenant shall pay the cost of the additional air-conditioning and chilled water on receipt of the demand note therefor which may be rendered monthly or at such other intervals as the Landlord may decide.

- (m) The Tenant shall have no claim against the Landlord and the Property Manager for any loss arising from any failure, malfunction or interruption of chilled water supply and air conditioning.

6.3 Utilities. The Tenant shall pay all charges and deposit in respect of all telephone, electricity, water, gas and any other utilities supplied to the Premises.

6.4 Sewage Charges for on-shore sewage collection system. The Tenant shall pay sewage charges to Drainage Services Department in connection with the collection of sewage from the cruise vessels through on-shore sewage collection system. The Tenant shall at its own cost report in writing the readings of the flow meter of the on-shore sewage collection system to Drainage Services Department on the first day of each calendar month.

6.5 Rates, etc. The Tenant shall pay and discharge all existing and future rates, taxes, assessments, duties, charges and any other outgoings whatsoever which are now or during the Term shall be imposed, assessed or

charged upon the Premises or part of thereof or upon the owner or occupier.

7. ASSETS FOR OPERATION

7.1 Landlord's Provisions.

- (a) The Landlord will deliver different Landlord's Provisions to the Tenant for the operation of the Cruise Terminal on such dates to be determined by the Landlord.
- (b) The Landlord shall have full right to revise the list of the Landlord's Provisions as set out in Annex X at its sole discretion. Annex X shall be subject to revision by the Landlord.

The Landlord shall give a written notice to the Tenant informing the Tenant of any revision to the list of the Landlord's Provisions as set out in Annex X as soon as practicable. Such revision may involve addition to the Landlord's Provisions as set out in Annex X and/or removal of any item in Annex X.

- (c) The Tenant shall not be entitled to terminate this Agreement and shall have no claim against the Landlord for any loss, damage, inconvenience or compensation of in whatsoever nature that it may suffer or incur as a result of or in connection with the revision of Annex X nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

Without limiting the generality of the foregoing, in the event of the Landlord making revision to the list of the Landlord's Provisions as set out in Annex X, the Tenant shall:

- (i) accept deletion or reduction of item(s) in the list of Annex X; and/or
 - (ii) take up new item(s) without making objection.
- (d) Except with the prior written approval of the Landlord, the Tenant is not allowed to use any of

Landlord's Provisions for any purpose other than the operation of the Cruise Terminal in accordance with this Agreement.

- (e) Except with the prior written approval of the Landlord and unless specified otherwise in Clause 16.2, the Tenant shall not make any repair, alteration or addition to any of Landlord's Provisions.
- (f) The Tenant shall at its own cost and expense provide sufficient numbers of qualified personnel in relevant discipline/trades for the safe, proper and efficient operation of the Landlord's Provisions. Upon demand of the Landlord, the Tenant shall produce curriculum vitae and licenses or permits of the qualified personnel for inspection.
- (g) The Tenant shall observe the terms and conditions of user or operating manuals for use of tools, equipment, instruments and all the Landlord's Provisions provided by the Landlord.
- (h) The Tenant shall take proper and adequate care and precaution when using any of the Landlord's Provisions.
- (i) The Tenant shall report any damage or loss of any of the Landlord's Provisions to the Landlord and shall provide an incident report within seven (7) working days from the date of the incident. If any of the Landlord's Provisions is found damaged or lost due to whatsoever cause while in the possession or control of the Tenant, the Tenant shall pay the cost of all required repairing or replacement of the same plus a sum to be determined by the Landlord as an administrative overhead charge.
- (j) The Tenant shall provide an updated inventory list of the Landlord's Provisions to the Landlord within one (1) month after the end of each financial year.
- (k) The Landlord shall be entitled to take stock checking of any or all of the Landlord's Provisions at all reasonable times and the Tenant shall provide assistance to the Landlord as the Landlord may determine.
- (l) Upon the expiration or the termination of this Agreement, the Tenant shall return all Landlord's

Provisions to the Landlord in good repair and serviceable conditions (fair wear and tear excepted).

- (m) The Landlord does not represent or warrant that the Landlord's Provisions are suitable for the use or purposes to which the Tenant proposes to put them. The Landlord shall not be liable for any loss arising directly or indirectly from any defect in or failure or malfunction of any of the Landlord's Provisions.

7.2 Assets to be provided by Tenant for operation.

- (a) Except for the Landlord's Provisions as set out in Annex X (subject to revision in accordance with Clause 7.1), the Tenant shall provide (in a timely manner or at such time as the Landlord may require) and maintain at its own cost and expense all plant, machinery, equipment, furniture, materials, tools and instruments necessary for safe, proper and efficient operation of the Cruise Terminal, including all those items set out in Annex XI (subject to revision in accordance with Clause 7.1). For the avoidance of doubt, the list of items set out in Annex XI is not an exhaustive list.
- (b) The Tenant shall at its own cost and expense provide sufficient numbers of qualified personnel in relevant discipline/trades for the safe, proper and efficient operation of its own plant, machinery, equipment, tools and instrument. Upon demand of the Landlord, the Tenant shall produce curriculum vitae and licenses or permits of the qualified personnel for inspection.

In the event that the Landlord is not satisfied with any aspect relating to the personnel, the Tenant shall at its own cost and expense take such actions as required by the Landlord.

- (c) The Tenant shall at its own cost and expense keep and maintain its plant, machinery, equipment, furniture, materials, tools and instruments in good, clean, safe and serviceable condition.
- (d) If the Landlord considers that plant, machinery, equipment, furniture, material, tools and instrument provided by the Tenant are inadequate or inefficient (the Landlord's decision shall be final, binding and conclusive on the Tenant), the Tenant shall repair,

refurbish or replace such within a reasonable time to the satisfaction of the Landlord.

- (e) Upon expiration or early termination of this Agreement, the Tenant can retain the ownership of those plant, machinery, equipment, furniture, materials, tools and instruments provided by the Tenant under Clause 7.2(a) and remove them from the Premises, and if such removal will cause any damage to the Premises or any other part of the Cruise Terminal, the Tenant shall forthwith make good such damage. The Tenant's obligation to make good such damage shall survive the termination of this Agreement.

7.3 New or replacement machinery and equipment.

- (a) Prior to, during and after the installation of new or replacement machinery and equipment by the Landlord in the Premises, the Tenant shall assist and co-operate with the Landlord and its employees, contractors, agents in relation to the installation, testing and commissioning of such new machinery and equipment, and comply with any processes or procedures in relation to the commissioning and operation of the new or replacement machinery and equipment.
- (b) Prior to installation of new or replacement machinery and equipment in the Premises by the Tenant, the Tenant shall provide all technical drawings, specifications and proposals to the Landlord for prior written approval. The approval to be granted shall be subject to such condition as the Landlord may think fit. The installation and replacement works shall be carried out in accordance with the approved drawings, specifications and proposals and any deviation therefrom shall be rectified forthwith by the Tenant, failing which the Landlord shall have the right to execute the work at the Tenant's cost and expense. The cost incurred by the Landlord shall be a debt from the Tenant to the Landlord and be recoverable forthwith by action or deduction of same amount to be made from the Deposit upon which the Tenant shall deposit with the Landlord the amount so deducted.

8. SUPPLY OF UTILITIES

8.1 Installation of utilities. The Tenant shall at its own cost and expense furnish and install or arrange for the installation of all utilities such as electricity, water, gas, telephones and telecommunication equipments as well as any utility services within the Premises together with such meters as are necessary (except electricity supply meters) to measure the consumption in relation to the Premises and the fixtures, fittings, additions, installations and the Landlord's Provisions therein and thereto and the plant, machinery, equipment, furniture, materials, tools, instruments and facilities used or operated by the Tenant, its sub-tenants and licensees (including charging facilities, signs and video wall (if any)) (collectively referred to as the "Utility Consumption Units").

8.2 Electricity supply meters.

- (a) Prior to the delivery of the Handover Area to the Tenant, the Landlord shall apply for the installation of electricity supply meters to measure the consumption of electricity in relation to the Handover Area and the corresponding Utility Consumption Units that consume electricity ("Electricity Consumption Units").
- (b) When the Handover Area is delivered to the Tenant, the Tenant shall take up the electricity supply meters connected to the Handover Area and the corresponding Electricity Consumption Units.
- (c) The Tenant shall at its own cost and expense apply for change of electricity account of the electricity supply meters from the existing account holder(s) to itself and connect the Electricity Consumption Units to the electricity supply meters.
- (d) If the electricity supply meters installed by the Landlord are insufficient to meet the Tenant's needs, the Tenant shall at its own cost and expense install additional electricity supply meters subject to the prior written approval of the Landlord.

8.3 Water supply meters.

- (a) Prior to the delivery of the Handover Area to the Tenant, the Landlord shall apply for the installation

of water supply meters to measure the consumption of water in relation to the Handover Area and the corresponding Utility Consumption Units that consume water ("Water Consumption Units").

- (b) When the Handover Area is delivered to the Tenant, the Tenant shall take up the water supply meters connected to the Handover Area and the corresponding Water Consumption Units.
- (c) The Tenant shall at its own cost and expense apply for change of water account of the water supply meters from the existing account holder(s) to itself and connect the Water Consumption Units to the water supply meters.
- (d) If the water supply meters installed by the Landlord are insufficient to meet the Tenant's needs, the Tenant shall at its own cost and expense install additional water supply meters subject to the prior written approval of the Landlord.

8.4 Application to utilities companies. It shall be the responsibility of the Tenant to apply to the appropriate utility companies with respect to its service requirement and establishment of service and meters and to fulfil the requirements of the utility companies thereof.

8.5 Payment of charges. The Tenant shall pay all charges in connection therewith including the cost of installing and maintaining thereof and on determination of the tenancy, the cost of dismantling any Conduits (whether or not installed by the Tenant) as demanded by the Landlord.

8.6 No overloading. The Tenant shall not overload electrical wiring, cable or apparatus associated therewith in or serving the Premises and shall comply in all respects with all requirements and regulations of the utility companies and/or the Landlord with respect to the said utilities.

8.7 Transfer of utility accounts. Upon expiration or early termination of this Agreement, the Tenant shall at its own cost and expense arrange for the utility accounts to be transferred to the Landlord or such person(s) as the Landlord may nominate. Without limiting the generality of the foregoing, the Tenant shall execute, deliver any and all applications and other documents and shall co-operate with the Landlord or such person(s) as the

Landlord may nominate to the fullest extent in transferring the utility accounts.

9. USE OF THE PREMISES

9.1 Permitted Uses of the Premises.

(a) Layout Plan.

- (i) The Tenant acknowledges and accepts that the Premises within the Cruise Terminal Building will be divided into Terminal Operation Area, Ancillary Office Area, Ancillary Commercial Area, Transportation Area and Parking Area as showed on the Layout Plan. The Layout Plan sets out the location and layout of various parts of the Premises and determines uses of various parts of the Premises.
- (ii) When the Landlord informs the Tenant of the estimated possession date of the First Berth and the Premises within the Cruise Terminal Building as stated in Clause 4.1, the Landlord shall provide the Layout Plan to the Tenant at the same time.
- (iii) The Tenant is not allowed to amend the location and layout of Terminal Operation Area, Ancillary Office Area, Ancillary Commercial Area, Transportation Area and Parking Area as shown on the Layout Plan except with the prior written approval of the Landlord.
- (iv) The Tenant is not allowed to use the Terminal Operation Area, Ancillary Office Area, Ancillary Commercial Area, Transportation Area and Parking Area as shown on the Layout Plan for any purposes other than the designated uses pursuant to Clause 9.1(c), (d), (e), (f) and (g) except with the prior written approval of the Landlord.
- (v) The Landlord shall have full right to formulate and develop the Layout Plan and modify the Layout Plan at its sole discretion

prior to the commencement date of the tenancy and at any time during the Term and the Tenant shall have no right to object or bring action or claims against the Landlord in connection with the modification of the Layout Plan and the restrictions imposed under the Layout Plan and its subsequent amendment(s). The Tenant further acknowledges and agrees that it shall not be entitled to terminate this Agreement and shall have no claim against the Landlord for any loss, damage, inconvenience or compensation of whatsoever nature that it may suffer or incur as a result of or in connection with the modification of the Layout Plan and the restrictions imposed under the Layout Plan nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

- (vi) Upon enquiry by the Tenant and before the provision of the Layout Plan by the Landlord stated in Clause 9.1(a)(ii), the Landlord may provide the draft Layout Plan to the Tenant for reference as soon as practicable. The Tenant hereby acknowledges that no warranty or representation whatsoever has been given or made by the Landlord that the draft Layout Plan shall be final or shall not be subject to change or modification. The Landlord shall be under no liability whatsoever to the Tenant for any loss howsoever arising out of or in connection therewith or as a consequence thereof or the provision of draft Layout Plan to the Tenant.

(b) General.

- (i) The Tenant shall not use or suffer the Premises or any part thereof to be used for any illegal, immoral or improper purposes and the determination of the Landlord as to what constitutes illegal, immoral or improper purposes shall be final, binding and conclusive on the Tenant.

- (ii) Only cruise vessels are allowed to berth at the Cruise Terminal. Except with prior written approval of the Landlord, vessels other than cruise vessels are not allowed to berth at the Cruise Terminal and the Landlord's decision on what constitutes a cruise vessel is final, binding and conclusive on the Tenant.
 - (iii) No cruise refueling facilities shall be installed, constructed, provided or operated within the Premises.
 - (iv) The Tenant is not allowed to use the Premises for the purpose of loading and unloading non-cruise related cargo operation to or from any kind of vessels.
 - (v) The Tenant shall not use or permit or suffer the use of the Premises or any part thereof for residential purpose except such watchmen's quarters as the Tenant may consider essential for safety and security of the Premises provided that the location and size of such quarters shall be subject to prior written approval of the Landlord.
- (c) Terminal Operation Area.
- (i) Subject to Clause 9.1(a), the Terminal Operation Area shall not be used for any purpose other than a cruise terminal for the berthing of cruise vessels, embarkation and disembarkation of cruise passengers and crews, loading and unloading of cruise supplies and luggage of passengers and crews, and such other ancillary or supporting facilities as may in the opinion of the Landlord be essential to the operation, safety and security of the Cruise Terminal (the Landlord's opinion in this regard shall be final, binding and conclusive on the Tenant) and such other facilities as may be required by the Landlord.
 - (ii) The Landlord's decision as to what constitutes cruise terminal purposes shall be final, binding and conclusive on the Tenant.

- (iii) The maximum Floor Area within the Terminal Operation Area to be used for passengers check-in and ticketing purpose shall not exceed 4,000m².
- (d) Ancillary Office Area.
- (i) Subject to Clause 9.1(a), the Ancillary Office Area shall not be used for any purpose other than maintenance office, stevedores' office, equipment room, office ancillary to cruise terminal operation and other purposes as may be approved by the Landlord. The Landlord's decision as to what constitutes office ancillary to cruise terminal operation shall be final, binding and conclusive on the Tenant.
 - (ii) The maximum Floor Area within the Premises to be used for the purposes stated in Clause 9.1(d)(i) shall not exceed 843m².
- (e) Ancillary Commercial Area.
- (i) Subject to Clause 9.1(a), the Ancillary Commercial Area shall not be used for any purpose other than retail shops, banks, restaurants, money exchange shops, tourist information centre and other purposes as may be approved by Landlord.
 - (ii) The maximum Floor Area within the Premises to be used for the purposes stated in Clause 9.1(e)(i) shall not exceed 5,600m².
- (f) Transportation Area.
- (i) Subject to Clause 9.1(a), the Transportation Area shall not be used for any purpose other than driveway, circulation of motor vehicles, queuing of motor vehicles, drop off and pick up passengers and other purposes as may be approved by the Landlord. It shall not be used for the purposes of car parks and storage, display or exhibiting of motor vehicles for sale or otherwise.
 - (ii) The pick up and drop off spaces should not be used for any purpose other than passenger loading and unloading.

- (iii) The Tenant is not allowed to alter the layout of the driveway, circulation, queuing spaces and pick up and drop off spaces as shown on the Layout Plan except with prior written approval of the Landlord.

(g) Parking Area.

- (i) Subject to Clause 9.1(a), the Tenant shall not use Parking Area for any purpose other than as a car park for the parking of private cars and motorcycles currently licensed by the Commissioner for Transport under the provisions of the Road Traffic Ordinance (Chapter 374), any regulations made and any amending legislation and regulation.
- (ii) The Tenant is not allowed to alter the layout of the parking spaces and loading and unloading spaces as shown on the Layout Plan except with prior written approval of the Landlord.
- (iii) No vehicles repairing activities or vehicles washing or fuelling or lubricating or maintenance services of motor vehicles or storage or display or exhibiting of motor vehicles, car beautification services shall be carried out on the parking spaces and loading and unloading spaces as shown on the Layout Plan.

- (h) Apron Area. The Apron Area shall not be used for any purpose other than for the purpose of berthing of cruise vessels, embarkation and disembarkation of cruise passengers, loading and unloading of cruise passengers, crew, cruise supplies and provision, and other uses as approved by the Landlord in writing.

- (i) Temporary use of the Premises for other purposes. Notwithstanding Clause 9.1, the Tenant is allowed to use the Premises (excluding Apron Area) and any part thereof for the purpose of temporary non-cruise related uses subject to prior written approval of the Landlord.

- 9.2 Sub-tenants and licensees. The Tenant shall procure its sub-tenants and licensees to observe Clause 9.1.

- 9.3 No representation and warranty. The Landlord does not represent or warrant that the Premises are suitable for the use or purposes to which the Tenant proposes to put them and the Tenant shall satisfy itself or shall be deemed to have satisfied itself that they are suitable for the purpose for which they are to be used and the Tenant hereby agrees that it will at its own cost and expense apply for any requisite licence or licences permit or permits from all Government or public authorities in respect of the carrying on of the Tenant's businesses therein and shall execute and comply with all ordinances, regulations, orders, notices or rules made by all competent Government or public authorities in connection with the conduct of such business by the Tenant in the Premises.

9.4 Cessation of user.

- (a) If, at any time during the Term, the Landlord is of the opinion that the Premises or any part thereof has ceased to be used for the purposes specified in Clause 9 (as to which, and without prejudice to the Landlord's discretion and the rights of the Landlord under this clause, the non-user of the Premises or any part thereof for those purpose for a total period of more than six (6) months during the Term shall be conclusive evidence) or that the extent of the user for the purposes has so diminished to the extent that the Premises or any part thereof is, in the opinion of the Landlord, either not being used or adequately used for the purposes for which it is granted, the Tenant shall be deemed to be in breach of Clause 10.1 and this clause and the Landlord shall be entitled to terminate this Agreement, by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, titles and interests of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any covenants, terms and conditions herein contained. The Tenant shall

quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

- (b) Prior to serving the written termination notice stated in Clause 9.4(a), the Landlord may (but not obliged to) serve a written notice to the Tenant requiring the Tenant to remedy the failure within the timeframe specified in the default notice. For the avoidance of doubt, the absence of written notice from the Landlord does not affect the validity and enforceability of the termination notice served by the Landlord pursuant to Clause 9.4(a).
- (c) For the purpose of determining whether there is cessation of user or the extent of non-user as stated in Clause 9.4(a), the Landlord's decision shall be final, binding and conclusive on the Tenant.

10. COMMENCEMENT OF BUSINESS

- 10.1 Cruise Terminal (excluding the Ancillary Commercial Area). The Tenant shall commence operation at the relevant parts of the Cruise Terminal (excluding the Ancillary Commercial Area) within two (2) months from (i) the possession date of the First Berth and the Premises within the Cruise Terminal Building; and (ii) the possession date of the Second Berth and shall throughout the Term continue to operate the Premises for the purposes specified in Clause 9 on a scale to the satisfaction of the Landlord. For the purpose of this Clause 10.1, the Tenant will be considered as having commenced operation at the relevant parts of Cruise Terminal (excluding the Ancillary Commercial Area) when (a) the Tenant complies with all statutory requirements (if any), including, obtains all necessary Government licences, permits, authorities, permissions and consent; (b) the Tenant has obtained the Landlord's written approval for the Service Pledges required under Clause 11.2, the Terminal Security Plan required under Clause 17.1 and Traffic Management Plan required under Clause 19.1; and (c) the Tenant brings the Cruise Terminal (excluding the Ancillary Commercial Area) into use as a cruise terminal for the efficient berthing and operation of the Cruise Terminal by embarking and disembarking passengers.

- 10.2 Failure to commence operation at the Cruise Terminal (excluding the Ancillary Commercial Area). In the event that the Tenant shall fail to commence to operate the relevant parts of Cruise Terminal (excluding the Ancillary Commercial Area) within the time limit specified in Clause 10.1, the Tenant shall (i) apply to the Landlord for an extension of the time limit; (ii) provide reasons for the non-compliance with Clause 10.1; (iii) provide all information to the Landlord's satisfaction to demonstrate the efforts made by the Tenant to comply with Clause 10.1; (vi) submit a remedy proposal in writing to the Landlord for approval; and (v) implement the approved remedy proposal within the prescribed timeframe to the satisfaction of the Landlord.

Failure of the Tenant to comply with this clause to the Landlord's satisfaction shall constitute a material breach of this Agreement entitling the Landlord to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, titles and interests of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions contained in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

10.3 Ancillary Commercial Area.

- (a) The Tenant shall use its best endeavours to keep the Ancillary Commercial Area fully let or occupied. The Tenant shall be deemed to have complied with this Clause 10.3 if:
 - (i) not less than 30% of the Floor Area of the Ancillary Commercial Area is open for business within six (6) months from the possession date of the Ancillary Commercial Area;
 - (ii) not less than 60% of the Floor Area of the Ancillary Commercial Area is open for

- business within eighteen (18) months from the possession date of the Ancillary Commercial Area;
- (iii) each sub-tenancy shall contain a clause which imposes an obligation on the sub-tenant to keep full assortment of merchandise to offer for sale and be fully staffed to serve customers by a date that is consistent with Clause 10.3(a) above; and
 - (iv) the Tenant's compliance with any other requirements stipulated by the Landlord from time to time.
- (b) For the purpose of this Clause 10.3, the Ancillary Commercial Area shall be considered as having been open for business when the sub-tenants have full assortment of merchandise to offer for sale and are fully staffed to serve customers Provided that the installation and operation of automatic vending machines shall not be construed as opening the Ancillary Commercial Area for business.
 - (c) The Tenant shall at its own cost and expense provide written report (in such form and contents as the Landlord may require) to the Landlord by seven (7) months and nineteen (19) months from the possession date of the Ancillary Commercial Area to prove that Clause 10.3(a) has been fulfilled. The Landlord may consider the written report produced by the Tenant and such other information as the Landlord deems appropriate in determining whether the Tenant has complied with the aforesaid clauses.
 - (d) The Tenant shall procure its sub-tenants to operate their businesses in manner that is consistent with this Clause 10.3.
 - (e) In the event that the Tenant fails to meet the requirements in this Clause 10.3, the Tenant shall:
 - (i) apply to the Landlord for an extension of the time limit;
 - (ii) provide reasons for the non-compliance with Clause 10.3;

- (iii) provide all information to the Landlord's satisfaction to demonstrate the efforts made by the Tenant to meet the said requirements;
- (iv) submit a remedy proposal in writing to the Landlord for approval; and
- (v) implement the approved remedy proposal within the prescribed timeframe to the entire satisfaction of the Landlord.

11. OPERATION OF BUSINESS

11.1 Standard of service.

- (a) The Tenant shall and shall procure its sub-tenants to furnish first class service to patrons and customers and to conduct the operation and business so as not to prejudice the goodwill and reputation of the Cruise Terminal as a first class cruise terminal and ancillary commercial complex. In particular but without limitation to the generality of the foregoing, the Landlord reserves the right to require the cessation of any activity conducted upon the Premises whether or not previously specifically permitted by the Landlord which causes or in the opinion of the Landlord is likely to cause danger nuisance or annoyance or material damage to the patrons, customers and/or the sub-tenants of the Tenant or of other users or to other occupiers of the Cruise Terminal and such danger nuisance annoyance or material damage is in the opinion of the Landlord caused by or likely to be caused by the patronage or pursuit of such activity or activities on the Premises. Without limitation to the generality of the foregoing, the Tenant shall:-
 - (i) not conduct or permit the conduct of any auction fire bankruptcy close out or similar sales nor utilise or permit the utilisation of any unethical business practice in the conduct of operation or business or otherwise provided that this provision shall not preclude the conduct of genuine periodic seasonal or promotional sales;
 - (ii) not permit any touting or soliciting for business or the distribution of any

- pamphlets or advertising matter to be conducted at or near the Premises or in any other part of the Cruise Terminal (other than in the HKTB Accommodation where distribution of promotion material and travel information for Hong Kong by HKTB is permitted);
- (iii) at all times maintain and procure its sub-tenants to maintain adequate stock of merchandise for sale in the Ancillary Commercial Area;
 - (iv) maintain and procure its sub-tenants to maintain displays of merchandise in the shopfront windows of the relevant parts of the Ancillary Commercial Area and to the satisfaction of the Landlord and it is agreed that the Landlord may order the removal of any item of display which the Landlord in its sole opinion shall find offensive or objectionable;
 - (v) at its or its sub-tenants' cost and expense keep lit the shop signs and shopfront windows of the Ancillary Commercial Area during such hours as the common areas of the Cruise Terminal are open;
 - (vi) keep or procure its sub-tenants to keep the shop windows of the Ancillary Commercial Area dressed and illuminated in a manner appropriate to first class cruise terminal and ancillary commercial complex to the satisfaction of the Landlord, and in accordance with such style, theme and ambience, whether seasonal, festive or otherwise, as may be determined from time to time by the Landlord;
 - (vii) not permit or suffer block up, darkening or obstruction of any shopfront window or showcase or any other windows or lights belonging or appurtenant to the Ancillary Commercial Area which face onto any passageway of the Ancillary Commercial Area or any public area; and

- (viii) at all times throughout the term of this Agreement maintain and procure its sub-tenants to maintain display, illumination and decoration of the shop windows and the interior of the Ancillary Commercial Area to a first class standard.
- (b) In the event the Tenant and/or any of its sub-tenants fails to perform and provide satisfactory quality management and operation style at the Premises to meet the standards, requirements and expectations as to be determined by the Landlord from time to time or the Tenant and/or any of its sub-tenants fails to perform to the Landlord's satisfaction, the Landlord may serve a warning notice on the Tenant. If the Tenant and/or any of its sub-tenants fails to meet the Landlord's requirements within the time prescribed in the said notice, the Landlord shall be entitled to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of the termination notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions contained in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.
 - (c) The Tenant hereby covenants that the sub-tenancies between the Tenant and its sub-tenants shall contain a provision similar to this clause.

11.2 Service pledges.

- (a) The Tenant shall, within twelve (12) months after the execution of this Agreement, propose the service pledges for the approval of the Landlord. Upon the Landlord's approval being given, the Tenant shall publish the service pledges as approved or amended by the Landlord within one (1) month prior to the commencement date of business

in a manner agreed with the Landlord. The service pledges approved by the Landlord shall be referred to as the “**Service Pledges**”.

- (b) The Tenant shall recruit and supervise a sufficient number of the trained personnel to provide services in a professional manner and at a standard to be expected from a first class cruise line operators. The Tenant undertakes to observe the Services Pledges throughout the Term.
- (c) If so required by the Landlord, the Tenant shall at its own cost and expense appoint an independent operation and management consultant approved by the Landlord to verify whether the Service Pledges have been met through regular and random checks. Without limiting the generality of the foregoing, the qualifications of the proposed consultant are subject to prior written approval of the Landlord.
- (d) The Tenant shall prepare a report on compliance with the Service Pledges on annual basis except that the first compliance report shall cover the period from the commencement date of the tenancy to the last day of the same year. The Tenant shall submit the said report to the Landlord for consideration within two (2) calendar months after the end of each calendar year. The last report shall be submitted by the Tenant within two (2) calendar months after the expiration or early termination of this Agreement. The format and content of such report shall be agreed in advance with the Landlord.
- (e) The Tenant shall include the compliance report in the annual operation and maintenance report as stated in Clause 11.9(b).
- (f) If the Tenant fails to meet the Service Pledges, the Landlord will serve a written notice to the Tenant requiring the Tenant to remedy the failure within the timeframe specified in the default notice. If the Tenant fails to comply with the default notice, the Landlord may exercise its right to terminate this Agreement. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the

rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the obligations in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

- (g) Upon demand of the Landlord at any time throughout Term, the Tenant shall provide information relating to performance of Services Pledges or such other information as may be required by Landlord to prove the performance of Service Pledges.

11.3 Berth-Allocation Guidelines.

- (a) The Tenant shall at its own cost and expense set up, operate and manage a berthing slots booking system in accordance with the berth-allocation guidelines set out in Annex XIV (the “**Berth-Allocation Guidelines**”) in all respects to the satisfaction of the Landlord. For the avoidance of doubt, the Tenant acknowledges that use of the Premises shall be subject to the Berth-Allocation Guidelines and only cruise vessels assigned in strict accordance with the Berth-Allocation Guidelines are allowed to use the Apron Area.
- (b) The Tenant shall operate and manage the berthing slots booking system on an impartial basis without giving favour to any particular person whether or not such person is a person in which the Tenant has any direct or indirect financial, commercial, personal or other interest.
- (c) The Tenant shall not open and accept booking of berthing slots for the booking period after the expiry of the Term unless the Landlord and the Tenant have entered into a new tenancy agreement or supplementary agreement for the New Term under Clause 2.2.
- (d) The Berth-Allocation Guidelines can only be amended with the agreement of the Landlord and the Tenant.
- (e) The Tenant shall at its own cost and expense formulate and develop detailed berthing slots allocation policies within the framework set out in

the Berth-Allocation Guidelines and upload such policies on the Website in a manner agreed by the Landlord.

- (f) Upon demand of the Landlord at any time during the Term, the Tenant shall provide information relating to berth booking schedules, fees and charges or such other information as may be required by the Landlord to prove to the Landlord's satisfaction that the Berth-Allocation Guidelines and this Clause 11.3 have been complied with.
- (g) If the Landlord considers that there is any non-compliance with the Berth-Allocation Guidelines or this Clause 11.3 or any conflict between the detailed berthing slots allocation policies and the Berth-Allocation Guidelines, the Landlord will issue a written notice to the Tenant to require rectification of any non-compliance or non-compatible area within the timeframe specified in that notice. If the Tenant fails to comply with that notice, the Landlord may exercise its right to terminate this Agreement. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the obligations in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.
- (h) The Landlord's decision as to what constitutes non-compliance or non-compatible area is final, binding and conclusive on the Tenant.
- (i) The Tenant shall have no claim against the Landlord for any loss, compensation, damage, costs or expenses arising from the Landlord's decision made in Clause 11.3(h).

11.4 Fees and Charges.

- (a) The Tenant shall not charge dockage fee(s) and passenger fee(s) exceeding the rates set out in Schedule at Annex XV and the same may be

reviewed in accordance with the manner stated in Clause 5.8.

For the avoidance of doubt, the Tenant may charge different dockage fees and passenger fees for different types of cruise vessel operations.

- (b) The Tenant shall publish its prevailing dockage fee(s), passenger fee(s) and other fees (if any) on the Website in a manner agreed by the Landlord.
- (c) Any other fee(s) and charge(s) that may be set by the Tenant shall be comparable to that of other cruise terminal(s) or berthing facilities in Hong Kong.
- (d) The prevailing dockage fee(s) and passenger fee(s) shall apply to all cruise line operators and cruise vessels (including any cruise vessels owned by the Tenant and the Related Parties).
- (e) For the purpose of calculating Gross Receipt, if the cruise vessels of the Tenant or any of the Related Parties berth at the Cruise Terminal, the following provisions shall apply:
 - (i) The Tenant shall report any proposed berthing of cruise vessel by itself and the Related Parties to the Landlord.
 - (ii) The Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) deemed prevailing dockage fee(s) and passenger fee(s) or (2) the dockage fee(s) and passenger fee(s) paid by the Tenant or (as the case may be) the Related Parties.
 - (iii) The Landlord shall have the full right to adopt the prevailing dockage fee(s) and passenger fee(s) assessed by the Landlord as deemed prevailing dockage fee(s) and passenger fee(s) to be included in the Gross Receipt. The Landlord's assessment of prevailing dockage fee(s) and passenger fee(s) shall be final, binding and conclusive on the Tenant.

11.5 Industry engagement.

- (a) During the subsistence of this Agreement, the Tenant shall at its own cost and expense establish, organize and conduct a market consultation forum (the “Forum”) in all respects to the satisfaction of the Landlord. The Forum is set up to carry out the scope of work listed out in Annex XVI
- (b) The Tenant shall hold the first meeting of the Forum on or before 31 December 2012 or such other date as approved or required by the Landlord at such venue as the Landlord may require.
- (c) The Tenant shall hold the Forum at least on a quarterly basis or such other frequency as approved or required by the Landlord at such venue as the Landlord may require.
- (d) The Tenant shall invite the representatives of major cruise line operators, travel agents, the Travel Industry Council of Hong Kong, HKTb and the Landlord to the Forum.
- (e) The Landlord reserves all rights to amend the membership and agenda of the Forum.
- (f) If so required by the Landlord, the Tenant shall attend and participate in the advisory committee on cruise industry and provide necessary support and information to that Committee.

11.6 Promotion of cruise tourism.

- (a) The Tenant acknowledges and accepts that the aims of the Landlord are to develop Hong Kong as a regional cruise hub and to attract the deployment of cruise vessels to the Cruise Terminal.
- (b) The Tenant shall in good faith and with all reasonable diligence use its best efforts to promote Hong Kong as a regional cruise hub and attract the deployment of cruise vessels to the Cruise Terminal.
- (c) The Tenant shall at its own cost and expense take part at least one (1) overseas promotional visit and participate in at least one (1) international/regional cruise market conference each year as a member of the HKTb delegation in promoting Hong Kong as a regional cruise hub. The Tenant shall at its own

cost and expense provide all necessary support and information to the delegation.

- (d) The Tenant undertakes to facilitate HKTb’s organization of reception ceremonies for cruise vessels.

11.7 Website.

- (a) The Tenant shall, within two (2) months after the date of this Agreement, at its own cost and expense set up a website (the “Website”) to invite bookings of berthing slots through the Website and maintain the Website in all respects to the satisfaction of the Landlord during the subsistence of this Agreement.
- (b) The Tenant shall upload booking results of the berthing slots to the Website, provide an updated booking schedule of cruise vessel arrivals and departures and other necessary information (including composition of the Management Team, change in the Management Team, services and facilities of the Cruise Terminal, general safety and security arrangements, berth utilization rate, annual and monthly vessel calls, annual and monthly passengers throughput, schedule of prevailing fees and charges (including dockage fee(s) and passenger fee(s)), detailed berth-allocation policies, available slots, compliance report on Service Pledges, code of ethics, accident and incident records, summary of market consultation forum) in the Website and update information in the Website at least on a monthly basis.

11.8 Code of ethics.

- (a) The Tenant shall formulate in consultation with the Independent Commission Against Corruption a code of ethics which includes clauses on acceptance of advantages and entertainment, avoidance and declaration of conflict of interest, and handling of confidential information and implement and publish such code on the Website within six (6) months after the date hereof.
- (b) The Tenant shall issue the code of ethics to its directors and staff for compliance. The Tenant shall also take every reasonable precaution to ensure that

its directors and staff do not breach any clauses in the code of ethics.

- (c) The Tenant shall update the code of ethics as and when necessary in consultation with the Independent Commission Against Corruption.

11.9 Reporting to the Government.

- (a) Prior to not less than two (2) months before the commencement of business for the First Berth, the Tenant shall submit a readiness report to the Landlord to the Landlord's satisfaction that:
 - (i) the required resources including Management Team, staff, tools, furniture, plant, and machinery, utility connections;
 - (ii) the necessary approvals including security and traffic management; and
 - (iii) the insurance policies required under Clause 30

are readily available by the commencement of business for the First Berth.

- (b) The Tenant shall submit an annual operation and maintenance report to the Landlord within two (2) calendar months after the end of each calendar year. The format and content of such report shall be agreed in advance with the Landlord. The annual operation and maintenance report shall include the change in the Management Team, performance of Service Pledges, industry engagement activities, promotion of cruise tourism, terminal security and traffic management, building condition of the Premises, condition of the E & M Facilities maintained by the Tenant, and maintenance schedule.
- (c) The Tenant shall promptly inform the Landlord of any circumstance which the Tenant anticipates will result in disruption to the Tenant's operation and management of the Cruise Terminal under this Agreement, including the following circumstances which the Tenant anticipates will result in the aforesaid disruption:

- (i) inclement weather such as the hoisting of typhoon signals;
- (ii) interruption to the supply of electricity, water and other utilities;
- (iii) structural safety problems;
- (iv) failure of E & M Facilities and other facilities and furniture;
- (v) labour disputes; and
- (vi) the occurrence of any accident, personal injury and death within the Premises.

11.10 Conflict of interest.

- (a) The Tenant expressly acknowledges that the primary commercial interest of the Landlord is to maximize utilization of the Cruise Terminal.
- (b) The Tenant shall in good faith and with all reasonable diligence use its best efforts to (i) attract the deployment of cruise vessels to the Cruise Terminal; and (ii) maximize the cruise vessels calls and passengers throughput of the Cruise Terminal.
- (c) In consideration of the Landlord agreeing to let the Premises to the Tenant upon the terms and conditions of this Agreement, the Tenant shall during the subsistence of this agreement :-
 - (i) Ensure that it shall not undertake any service, task or business or other activity which conflicts, or may reasonably be seen to conflict, with the commercial interest of the Landlord stated in Clause 11.10(a), or is in breach, or potentially in breach, of the obligations stated in Clause 11.10(b).
 - (ii) Promptly notify the Landlord in writing of all or any facts which may reasonably be considered to give rise a situation where the interests of the Tenant conflict or compete or may conflict or compete with the commercial interest of the Landlord stated in Clause 11.10(a) and its obligation stated in Clause 11.10(b).

- (iii) Upon demand of the Landlord at any time, the Tenant shall provide information relating to profile of its business or such other information as may be required by the Landlord to prove to its satisfaction that the Tenant's business is not in conflict with the commercial interest of the Landlord stated in Clause 11.10(a), or is in breach, or potentially in breach, of the obligations stated in Clause 11.10(b).
- (d) If the Landlord considers that there is any breach of Clause 11.10(c), the Landlord will issue a notice to the Tenant to rectify the breach within five (5) days of such notice being given. In the event that the Tenant fails to rectify the breach within the prescribed timeframe, the Tenant shall be deemed to be in breach of this Agreement and the Landlord may exercise its right to terminate this Agreement. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the obligations in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.
- (e) The Tenant shall have no claim against the Landlord for any loss arising from the Landlord's decision made pursuant to Clause 11.10(d).

11.11 Management Team.

- (a) The Tenant shall in its own name through the management team as set out in Annex XVII (the "Management Team", which reference shall include the Management Team consisting of different members from time to time as may be approved by the Landlord under this Agreement) manage the Premises and operate the Cruise Terminal efficiently in accordance with this Agreement and in accordance with such reasonable

directions as may from time to time be given by the Landlord.

- (b) All members of the Management Team shall be recruited and shall have entered into binding employment agreements with the Tenant for the execution of all duties of the Tenant as set out in this Agreement and the management and operation of the Premises during the Term within three (3) months from the date of this Agreement.
- (c) The Tenant shall use its best endeavours to ensure each member of the Management Team shall be under the employment of the Tenant throughout the subsistence of this Agreement.
- (d) Without prejudice to the generality of the foregoing, the Tenant shall ensure that:
 - (i) at least one (1) full time member of the Management Team shall provide services in Hong Kong within three (3) months from the date of this Agreement;
 - (ii) at least two (2) full time members of the Management Team shall provide services in Hong Kong within one (1) year from the date of this Agreement; and
 - (iii) at least three (3) full time members of the Management Team shall provide services in Hong Kong within one (1) year from the commencement date of the operation in respect of the First Berth.
- (e) The Tenant shall ensure that the members of the Management Team shall solely serve the Tenant and none of them shall be engaged in other appointments which may give rise to any potential conflicts of interests with the duties and responsibilities as a member of the Management Team or with the Tenant's obligation stated in Clause 11.10(b) and/or Clause 11.10(c).
- (f) The members of the Management Team shall perform or procure the performance of all duties of the Tenant as set out in this Agreement, including without limitation, cruise terminal operations, commercial operations and administration of sub-tenancies, licences and the video wall (if any).

(g) The Tenant shall ensure that the Management Team comprises of:

- (i) at least two (2) or more members who shall have three (3) years' or above full-time experience in the capacity of not lower than deputy head level in their previous positions in cruise terminal operations at any time during the Term; and
- (ii) at least one (1) member who shall have three (3) years' or above full-time experience in the capacity of not lower than deputy head level in his previous position(s) in commercial operations at any time during the Term.

(h) If the Tenant wishes to replace a member to the Management Team, the Tenant shall submit an application to the Landlord for approval at least one (1) week before the proposed date of replacement, which application shall be accompanied by a curriculum vitae for the proposed replacement member, who shall be no less qualified than the proposed outgoing member.

(i) In the event that any member of the Management Team:

- (i) tenders his resignation; or
- (ii) becomes unable to carry out his job responsibilities as a result of death, incapacity or other reasons

the Tenant shall inform the Landlord in writing of any such event within one (1) week of such event, and the Tenant shall, as soon as it has identified a replacement but in any case within three (3) months after that event, submit an application to the Landlord for approval at least one (1) week before the proposed date of replacement, which application shall be accompanied by a curriculum vitae for the proposed replacement member, who shall be no less qualified than the outgoing member.

(j) The Landlord reserves the right not to accept any replacement member proposed by the Tenant. If the Landlord considers the proposed change in Management Team is unacceptable, it will issue a

written notice requesting the Tenant to withdraw the proposed change (in the case of Clause 11.11(h)) or re-submit a revised proposal (in the case of Clause 11.11(i) re-submit a revised proposal). The Landlord will provide reason(s) for not approving the proposal in the written notice.

(k) If the Landlord still considers the revised proposal referred to in Clause 11.11(j) unacceptable, it shall have an option to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the obligations in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

(l) The Tenant shall have no claim whatsoever against the Landlord in respect of such determination.

11.12 Management committee.

(a) The Landlord shall forthwith appoint a management committee to oversee and monitor the operation and performance of the Cruise Terminal. The management committee shall consist of the Landlord's representative, the Tenant's representative, the representatives from occupying departments (on need basis) and any person(s) appointed by the Landlord from time to time. The Tenant shall ensure that the Tenant's representatives shall have supervisory management and control of the operation of the Cruise Terminal and shall have authority to commit the Tenant to all decisions relating to this Agreement. The management committee meeting will be held on a quarterly basis or such other frequency to be determined by the Landlord. The management committee shall discuss issues relating to the operation and performance of the Cruise Terminal.

- (b) The Tenant shall attend to, manage and investigate any complaints/feedback/enquiries raised during the management committee meeting and ensure that any underperformance and breach of its obligations under this Agreement shall be forthwith rectified to the Landlord's satisfaction.
 - (c) For the avoidance of doubt, this Clause 11.12 shall be without prejudice to the Landlord's rights and remedies under this Agreement. In particular, the discussion of the management committee shall not be binding on the Landlord and shall not constitute waiver of any terms or conditions of this Agreement.
- 11.13 Meeting. The Landlord shall have the right to convene meeting with the Tenant to discuss any issues relating to this Agreement when the Landlord considers necessary. The Tenant shall respond promptly to the Landlord's request for the meeting and make all necessary arrangements to ensure that the meeting with the Landlord will be conducted immediately at any time as reasonably determined by the Landlord.
- 11.14 Stevedoring and Passenger Services.
- (a) The Tenant acknowledges and accepts that it does not have the exclusive right of providing stevedoring services and Passenger Services within the Premises and cruise line operators shall have the right to engage their own contractors for providing stevedoring services and Passenger Services.
 - (b) The Tenant shall allow cruise line operators or their contractor(s) or agent(s) with or without material, tools, vehicles and equipment to pass and repass on along on, along, over, by and through the Premises for provision of stevedoring services and Passenger Services to the cruise line operator.
 - (c) Notwithstanding the above and without prejudice to the generality of Clauses 1.2(1) and 16.2(e), the Tenant shall continue to be responsible for the observance and performance of the Tenant's covenants under this Agreement so that any breach of any of the said covenants by the third party contractor shall be deemed to be a breach by the Tenant entitling the Landlord to enforce its rights and remedies under this Agreement against the

Tenant. The Tenant shall indemnify the Landlord against any loss or damage suffered by the Landlord as a result of or caused by any act, deed, matter or thing done, permitted, suffered or omitted by any third party contractor.

12. FITTING-OUT AND ALTERATION, ADDITIONS AND IMPROVEMENT WORKS

- 12.1 Fitting-out of the Premises. The Tenant shall fit out the interior of the Premises in accordance with the following requirements:
- (a) The Tenant shall not carry out any work to the Premises including alteration, addition or improvement ("AA&I"), decoration, installation and fitting out without the prior written approval of the Landlord. No work shall commence until all necessary approvals licences permits permissions and consents have been obtained from the relevant competent authorities.
 - (b) Prior to the commencement of any work to the Premises, the Tenant shall furnish to the Landlord full details of all plans drawings and specifications together with technical proposal in accordance with the Technical Schedule annexed hereto as Annex XVIII for the Landlord's prior written approval. The approval to be granted shall be subject to such condition as the Landlord may think fit.
 - (c) The Tenant's works in the Premises shall be carried out in accordance with the approved plans drawings specifications and technical proposal and specifications stipulated in Annex XVIII. Any deviation therefrom shall be rectified forthwith by the Tenant.
 - (d) In carrying out such work hereunder, the Tenant shall and shall cause its servants agents sub-tenants licensees contractors and workmen to cooperate fully with the Landlord and/or the Property Manager and their/its servants agents contractors and workmen to obey and comply with all instructions and directions which may be given by the Landlord and/or the Property Manager in connection with carrying out of such work and any

rules, regulations or procedures as the Landlord and/or the Property Manager may make or implement from time to time for the fitting out, decoration and alteration of the Premises.

- (e) The Tenant shall not make any variation to the approved plans drawings specifications and technical proposal and specifications stipulated in the Annex XVIII without the prior written approval of the Landlord.
- (f) Delays howsoever occasioned in the submission/resubmission of plans drawings specifications and technical proposal and in the approval of the same shall not give rise to any claim for compensation such as rent free period or Rent abatement or affect the commencement of the Term.
- (g) For the dismantling of any part of the E & M Facilities installed by the Landlord, the Tenant shall keep such part in good condition and shall consult the Landlord on whether such part is to be disposed of by the Landlord or by the Tenant and if so instructed by the Landlord, the Tenant shall at its own cost and expense dispose such part.
- (h) If so instructed by the Landlord, the Tenant shall at its own risk, cost and expense store such part so removed and shall upon the expiration or early termination of this Agreement, at its cost and expense reinstate such part at the relevant part of the Premises to the satisfaction of the Landlord.
- (i) The Tenant shall be responsible for the maintenance of all fitting out and/or AA&I works (including installation of new part of E & M Facilities) carried out by its sub-tenants or licensees and if so required by the Landlord, to reinstate the Premises to their original condition at its own cost and expense at the expiration or early termination of this Agreement.
- (j) Any approvals given under this Clause 12.1 shall not impose on the Landlord any liability in respect of any non-compliance of any legislation or law, inadequacy or deficiency in the plans, drawings, specifications, technical proposal and specifications or works.

12.2 Fitting-out rules.

- (a) The Tenant shall make fitting out rules and regulations which are in its good professional judgment necessary and adequate to maintain the image, nature and character of the Cruise Terminal as a first class cruise terminal and ancillary commercial complex. Such rules and regulations shall be updated from time to time by the Tenant.
- (b) The Tenant shall and shall procure its sub-tenants and licensees to observe and obey the fitting out rules and regulations. The Tenant shall also monitor the compliance of its sub-tenants and licensees with such rules and regulations and take all steps necessary to enforce any covenant of any sub-tenant or licensee in the relevant sub-tenancy or licenses in the event of breach.

12.3 Additional fire prevention and fire fighting equipment.

The Tenant shall at its own cost and expense install and maintain in and upon the Premises such additional fire prevention and fire fighting equipment as may be required by and to the satisfaction of Fire Services Department.

13. **ADVERTISING SIGNAGE**

13.1 Tenant may erect advertising signs. The Tenant may erect or exhibit advertising signs in the interior of the Premises (excluding the Apron Area) Provided That:

- (a) the prior written approval of the Landlord has been obtained;
- (b) the designs, contents, dimensions, sizes and location for the advertising signs are subject to the Landlord's prior written approval and the Landlord at its sole discretion is entitled to impose conditions including the conditions as listed in Annex XIX and such other conditions before granting the approval;
- (c) the Tenant shall not erect, exhibit or display within any signage, banner or sign which may be visible from outside the Premises; and

- (d) the Tenant shall pay full market licence fee in accordance with Clause 13.7.
- 13.2 No advertising signs in exterior area. The Tenant shall not erect or exhibit signage, banner or sign in the Apron Area and on the exterior of the Cruise Terminal Building, landscaped decks and roof of the Cruise Terminal Building;
- 13.3 Obtaining of licences. The Tenant shall at its own cost and expense seek, obtain and renew all necessary approvals and licences from the Government and/or any other competent authorities for the design, installation, use, maintenance, repair and removal of the advertising signs and shall comply with all relevant legislation, ordinances, regulations, by-laws, rules and requirements. In this respect, the Tenant shall indemnify and keep the Landlord indemnified against any loss and liabilities arising from or incidental to the breach of this clause and shall take out adequate insurance for such purpose.
- 13.4 Repair and maintenance of advertising signs. The Tenant shall be responsible for the repair and maintenance of the advertising signs and shall indemnify the Landlord against all loss damage action claim costs or expenses the Landlord may sustain or incur as a result of the installation and existence of such signs.
- 13.5 Removal of advertising signs for works. In the event that works need to be carried out in any part of the Premises by the Landlord, the Tenant shall co-operate with the Landlord and remove or reposition or alter any of the signs if demanded by the Landlord in its sole discretion as to whether such removal or repositioning or alteration results in a reduction or an increase or change in the number of or the size of the display areas. For the avoidance of doubt, the Tenant shall be responsible for all costs and expenses associated with the removal, re-installation, repositioning or alteration of such signs. The Tenant shall have no claim against the Landlord for any loss, damage or compensation in whatsoever nature nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.
- 13.6 No signage other than advertising signage. The Tenant shall not erect or exhibit any signage within the Premises

which is not for advertising purposes except with the prior written approval of the Landlord.

13.7 Licence fee.

- (a) All income generated from the erection or exhibition of advertising sign shall be included as part of the Gross Receipt under Clause 5.4(b).
- (b) For the purpose of calculating Gross Receipt, if the Tenant or any of the Related Parties erects or exhibits any advertising sign in the interior of the Premises (excluding the Apron Area), the following provisions shall apply:
- (i) The Tenant shall report any proposed erection or exhibition of advertising sign by itself and the Related Parties to the Landlord.
- (ii) The Tenant and the Related Parties shall pay full market licence fee for the erection or exhibition of advertising sign.
- (iii) The Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) the deemed licence fee for the erection or exhibition of advertising sign or (2) the licence fee paid by the Tenant or (as the case may be) the Related Parties.
- (iv) If so required by the Landlord, the Tenant shall at its own cost and expense engage an independent valuer appointed by the President of Hong Kong Institute of Surveyors to assess full market licence fee for the erection or exhibition of advertising sign. The Landlord may take into account the report prepared by the independent valuer and other considerations which the Landlord may deem appropriate when determining the full market licence fee for the erection or exhibition of advertising sign. The Landlord's decision on the full market licence fee for the erection or exhibition of advertising sign shall be final, binding and conclusive on the Tenant.

14. VIDEO WALL

- 14.1 Provision of video wall. The Landlord may provide and install a video wall in such size and dimension as the Landlord may deem appropriate to be erected on the external wall of the Cruise Terminal Building for the Tenant's operation, management and maintenance.
- 14.2 Management and operation.
- (a) If so required by the Landlord, the video wall shall be delivered to the Tenant for operation, maintenance and management. The Tenant shall take up the video wall and at its own cost and expense manage and operate the video wall in all respects to the satisfaction of the Landlord.
 - (b) The Landlord shall be entitled to impose conditions including the conditions as listed in Annex XX and such other conditions at its sole discretion from time to time and the Tenant shall forthwith comply with such conditions.
 - (c) The Tenant shall include the video wall in the annual maintenance report as stated in Clause 16.2(g).
- 14.3 Repair and maintenance. The Tenant shall at its own cost and expense keep and maintain the video wall (including the supporting structure) in good clean working order and deliver up the same to the Landlord at the expiration or early termination of this Agreement in the like condition.
- The Tenant shall engage contractor to undertake routine maintenance of the video wall on a regular basis and to execute repair and remedial work to the video wall in order to ensure all parts of the video wall are safe and fit for display and advertisement at all times throughout the Term.
- 14.4 Replacement of equipment. The Tenant shall obtain the prior written approval of the Landlord when any part or equipment of the video wall needs to be replaced.
- 14.5 Costs. The Tenant shall pay and discharge all outgoings and expenditure whatsoever which may be incurred by the Tenant in connection with the video wall.
- 14.6 Approval of proposals. If the Tenant is desirous of using the video wall for the display of advertisements and signs,

it shall obtain the Landlord's prior written approval and submit details of its proposals, including the contents of the advertisement and advertising income generated from the proposal.

- 14.7 Acceptance of advertising air-time. The Tenant shall not open and accept booking of advertising air-time for the period after the expiry of the Term unless the Landlord and the Tenant have entered into a new tenancy agreement or supplementary agreement for the New Term under Clause 2.2. The Tenant shall indemnify and keep the Landlord indemnified against any loss and liabilities arising from or incidental to the breach of this sub-clause.
- 14.8 Indemnity. The Tenant shall indemnify the Landlord against all loss damage action claim costs or expenses the Landlord may sustain or incur as a result of the operation, management and maintenance of the video wall.
- 14.9 Income from video wall.
- (a) All income generated from the video wall shall be included as part of the Gross Receipt under Clause 5.4(b).
 - (b) For the purpose of calculating Gross Receipt, if the Tenant or any of the Related Parties displays advertisement, sign or logo on the video wall, the following provisions shall apply:
 - (i) The Tenant shall report to the Landlord any proposed sale of advertising air-time to itself and the Related Parties.
 - (ii) The Tenant and the Related Parties shall pay full market fee for display of advertisement, sign or logo on the video wall.
 - (iii) The Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) deemed full market fee for the advertising air-time (2) the fee paid by the Tenant or (as the case may be) the Related Parties.
 - (iv) The Landlord shall have the full right to adopt the full market fee assessed by the Landlord as deemed full market fee for the advertising air-time to be included in the Gross Receipt. The Landlord's assessment

of full market fee shall be final, binding and conclusive on the Tenant.

- 14.10 Cessation of display. If the Landlord considers that any advertisement or sign displayed on the video wall is likely to contravene any statutory enactments or regulations, the Landlord shall be entitled to require the Tenant to cease displaying any advertisement or sign on the video wall. The Tenant and its advertising agent(s) or advertiser(s) shall not make any claims and compensation of whatsoever nature against the Landlord.
- 14.11 Allocation of air-time to the Landlord. If so required by the Landlord, the Tenant shall at its own cost and expense allocate air-time (as specified by the Landlord in a written notice) of the video wall to the Landlord for promotion of Hong Kong tourism and Government's events and activities without payment of any fee in any form whatsoever. No rent abatement or compensation whatsoever will be payable.
- The Tenant shall not in any circumstances be entitled to any abatement of Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement nor to claim against the Landlord or to raise any objection or make any complaints in respect of the exercise of right by the Landlord mentioned herein.
- 14.12 Cessation of use of video wall. For the avoidance of doubt, the use of the video wall shall be absolutely ceased on the same date of expiration or early termination of this Agreement. The Tenant shall be solely liable for any claim for cessation of the use of video wall and shall indemnify the Landlord against any liability incurred by the Landlord to any third party.
- 14.13 Landlord selecting operator.
- (a) The Landlord reserves all rights to manage and operate the video wall itself or to appoint any party or company to manage and operate the video wall.
 - (b) Clauses 14.2 to 14.12 shall not apply if the Landlord manage and operate the video wall itself or appoint other party or company to manage and operate the video wall.
- 14.14 No guarantee. There is no guarantee or warranty that the video wall will be installed during the Term.

15. CLEANSING

- 15.1 Sanitary and clean condition. The Tenant shall keep and maintain the Premises at all times in a sanitary and clean condition and shall at its own cost and expense clean the Apron Area and interior of the Premises (including gangways, escalators, elevators, travelators, windows, inner side of curtain walling, cladding within the Premises) and arrange disposal or removal of garbage, rubbish and refuse from the Premises on a daily basis or such other frequency as required by the Landlord at any time and from time to time. The Tenant shall not bring or keep or suffer to be kept in or on the Cruise Terminal anything which in the opinion of the Landlord is or may become unclean, unsightly or detrimental to the Cruise Terminal. Without limiting the generality of the foregoing, garbage, rubbish, debris, refuse and waste collected from any cruise vessel shall be removed immediately from the Cruise Terminal and shall under no circumstances be placed or stored in the refuse collection chamber of the Cruise Terminal Building.
- 15.2 Disposal. The Tenant shall not dispose of any garbage or rubbish in any Common Parts **except** in the place from time to time prescribed by the Landlord or the Property Manager and until such time as such garbage or rubbish is removed from the Cruise Terminal to keep the same **securely** sealed in containers of a design to be approved by the Landlord and/or the Property Manager and to indemnify the Landlord and the Property Manager of any costs of cleaning up any refuse, rubbish, litter or other article or thing disposed of in contravention of this Clause 15.2.
- 15.3 Removal of stains and dirt. The Tenant shall take all reasonable steps to prevent the accumulation of any stains, dirt discharged from the Premises through kitchen exhaust and ventilation systems on any exterior of the Premises.
- 15.4 Cleaning of drains and sewers.
- (a) The Tenant shall pay on demand to the Landlord the cost incurred by the Landlord in cleansing and clearing any of the main drains choked or stopped up owing to improper or careless use by the Tenant

or its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees.

- (b) The Tenant shall and shall procure its sub-tenants to carry out the cleansing and clearing of all the drainage and sewerage pipes exclusively serving the Premises or any parts thereof at such regular interval as may be prescribed by the Landlord to prevent choking and blockage of the pipes and installation. Where the Landlord reasonably considers that hot or warm effluent can congeal and cause blockage within the drainage system, the Tenant shall forthwith on demand by the Landlord undertake at its own cost and expense either an emulsifying or a neutralizing effect by using such equipment as may be prescribed by the Landlord.

15.5 Cleansing of grease traps. In the event that Ancillary Commercial Area or any part thereof are used for restaurant or fast food shop and after commencement of business, the Tenant shall and shall procure its sub-tenants to carry out cleansing and clearing of the grease traps in the Premises on a daily basis or at such regular interval as may be prescribed by the Landlord.

16. MAINTENANCE AND REPAIR

16.1 Landlord's obligations.

- (a) The Landlord shall keep in repair of those items of work that are installed or provided by the Landlord as set out in Annex XII. For the avoidance of doubt, the items of work set out in Annex XII are exhaustive.
- (b) In the event of the Tenant becoming aware of any defect or want of repair in any of the items of work specified in Annex XII, the Tenant shall report in writing immediately to the responsible Government departments set forth in the third column of Annex XII of such defect or want of repair provided that the Landlord's liability for the maintenance and repair of the items shall not arise unless and until a written report of defect or want of repair shall have been given by the Tenant to the responsible Government departments and such Government departments shall have failed to repair and maintain the same within a reasonable period of time after the service on the responsible Government

departments of such report and provided further that the Landlord shall be entitled to be fully indemnified by the Tenant for the cost incurred for this purpose due to the act, default, negligence or omission of the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees.

16.2 Tenant's obligations.

- (a) Save and except items that are to be maintained by the Landlord set out in Annex XII, the Tenant shall keep all the parts of the Premises and the Landlord's Provisions, E&M Facilities, fixtures, fittings, installations and articles therein including (but without prejudice to the generality of the foregoing) all doors, windows, flooring and interior plaster or other finishing materials or rendering to walls floors, ceilings, traffic signs, traffic aids as well as sanitary apparatus, pipes, plumbing and drainage facilities that serve the Premises exclusively or used exclusively by the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees (whether located in the Premises or elsewhere) in good clean tenable substantial and proper repair and condition and properly preserved painted and replaced as may be appropriate when from time to time required and to so maintain the same at the cost and expense of the Tenant and deliver up the same to the Landlord at the expiration or early termination of this Agreement in the like condition. Without limiting the generality of the foregoing, the Tenant shall keep in repair of those items of work set out in the Tenant's maintenance schedule in Annex XIII. For the avoidance of doubt, the list of items of work set out in the Tenant's maintenance schedule in Annex XIII is not an exhaustive list.
- (b) Without prejudice to the generality of the foregoing, the parties acknowledge that the Tenant shall at its own cost and expense repair and maintain the installations, fixtures and fittings installed by the Tenant (whether in the Premises or elsewhere).
- (c) The quality of repair and maintenance works carried out by the Tenant shall meet such standards acceptable to the Landlord at its sole discretion. A

complete record of repair and maintenance works shall be kept by the Tenant for inspection by the Landlord. The Tenant shall forthwith produce such record upon request of the Landlord.

- (d) Notwithstanding Clause 16.1, the Tenant shall at its own cost and expense repair or replace or make good any damage to the item of works (including those set out in Annex XII) which has been caused by or arising from the negligence, omission, act or default of the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors and invitees.
- (e) If damage to the Landlord's Provisions or any part of the Cruise Terminal is caused by the acts or failure to act, default, negligence or omission of Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees, the Tenant shall be responsible for all costs, losses and damages, direct or indirect, associated with repairing the damage.
- (f) The Tenant shall attend all vessel dockings and undocking and, upon vessel departures, conduct reasonable berth inspections. Whenever practicable, the Tenant shall also prepare written reports of any evidence of damage to Apron Area, pilings and fender systems and give immediate notification of such damage to the Landlord.
- (g) The Tenant shall prepare and submit an annual maintenance report prepared by a qualified independent professional reporting the condition of the Premises and the fixtures, fittings and Landlord's Provisions therein for the repair of which the Tenant is responsible hereunder and specifying any damage which shall be repaired by the Tenant under this Agreement. Such report shall be in a form approved by the Landlord. The Tenant shall submit the first annual maintenance report, which shall cover the period from the commencement date of the tenancy to the last day of the same year, to the Landlord for consideration within two (2) calendar months after the end of the same calendar year. The subsequent annual maintenance reports shall be submitted by the Tenant to the Landlord for consideration within two

(2) calendar months after the end of each calendar year.

- (h) The Tenant shall give notice to the Landlord of any damage that may be caused to the Premises and of any accidents to or defects in the furnishings, water pipes, gas pipes, plumbing, telephone lines, wiring, piping, fittings, fixtures and Landlord's Provisions within three (3) days from the Tenant becoming aware of any such damage, accident or defects and forthwith execute works and repairs. If the Landlord shall give a written notice requiring the Tenant to execute works and repairs within a period, the Tenant shall comply with the said notice within the timeframe specified therein.
- (i) The Landlord may inspect the Premises and give a written notice requiring the Tenant to repair and make good all defects and wants of repair to the Premises for which the Tenant may be liable. Upon receipt of said notice, the Tenant shall comply with the said notice within the timeframe specified therein.
- (j) If the Tenant shall fail to execute such works or repairs in compliance with the written notice mentioned in Clause 16.2(g) or Clause 16.2(i), the Tenant shall permit the Landlord or its servants or agents to enter upon the Premises to execute the same and the cost thereof shall be a debt from the Tenant to the Landlord and be recoverable forthwith by action or deduction of same amount to be made from the Deposit upon which the Tenant shall deposit with the Landlord the amount so deducted pursuant to Clause 40.5.
- (k) The Tenant shall also at its own cost and expense take all necessary measures and steps to warn others of any unsafe condition, such as erect barricades and warning signs.

17. SECURITY

17.1 Terminal Security Plan.

- (a) The Tenant shall at its own cost and expense prepare a security plan for the Cruise Terminal Building (the “**Terminal Security Plan**”) and submit the same to the Landlord for approval not less than five (5) months before the estimated possession date of the First Berth and the Premises within the Cruise Terminal Building. The Terminal Security Plan shall take into consideration the whole Cruise Terminal Building including the part of the Premises therein, the landscaped decks, Ancillary Commercial Area and other area required by the Landlord, and shall include those security measures as may be directed by the Landlord.
 - (b) The Tenant shall at its own cost and expense observe, perform and implement the Terminal Security Plan approved by the Landlord (the “**Approved Terminal Security Plan**”) within the Premises and co-operate with the Landlord to implement security plan adopted by the Landlord in other parts of the Cruise Terminal Building that do not form part of the Premises in all respects to the satisfaction of the Landlord. Without limiting the generality of the foregoing, the Tenant shall from time to time recruit and supervise sufficient trained security personnel and provide equipment for carrying out all security measures contained in the Approved Terminal Security Plan.
- 17.2 Additional security measures. If required in writing by the Landlord from time to time, the Tenant shall at its own cost and expense carry out any additional measure in relation to the security of the Premises within the time limit specified by the Landlord.
- 17.3 Cooperation with disciplinary forces.
- (a) The Tenant acknowledges and accepts that the Hong Kong Police Force, Immigration Department and Customs and Excise Department shall be entitled to install and operate their own closed circuit television systems within the Premises and the Tenant shall co-operate with the Hong Kong Police Force, Immigration Department and Customs and Excise Department in such operation. The Hong Kong Police Force, Immigration Department and Customs and Excise Department shall have sole access, control, operation and management of the

closed circuit television systems and any information or data collected through the operation of the closed circuit television systems.

- (b) The Tenant acknowledges and accepts that Hong Kong Police Force, Immigration Department and Customs and Excise Department will share the signal of a closed circuit television system managed by the Tenant in areas within the Premises designated by Hong Kong Police Force, Immigration Department and/or Customs and Excise Department from time to time.
- (c) The Tenant shall allow the Hong Kong Police Force to operate any closed circuit television system of the Tenant or any of its sub-tenants or licensees at the Premises and to collect and use information and data collected from such operation in the event of an emergency situation and the Tenant shall and shall procure its sub-tenants and licensees to co-operate with the Hong Kong Police Force in such operation.
- (d) The officers of Hong Kong Police Force, Customs and Excise Department, Immigration Department, Department of Health and Marine Department shall have free and unrestricted access to the Premises at any time for the purpose of carrying out their official duties.
- (e) In the event of an emergency, Government vessels shall have free and unrestricted marine access to berth at or along the seafront of the Premises for carrying out their official duties. The Tenant shall cooperate with the Landlord and shall have no claim against the Landlord for any loss, compensation, damage, costs or expenses arising from this clause.
- (f) The Tenant shall immediately inform the Hong Kong Police Force, Immigration Department and Customs and Excise Department of any situation which may affect the smooth and safe operation and security of the Premises.
- (g) The Tenant shall at its cost and expense implement all necessary measures to achieve effective physical segregation of departing and arriving cruise passenger in any part of the Premises designated by

the Landlord in all respects to the satisfaction of the Landlord.

- (h) The Tenant shall at its cost and expense organise and conduct, together with Government departments, annual exercise to handle major incidents / emergency situation in all respects to the satisfaction of the Landlord.

17.4 Sub-tenants and licensees. The Tenant shall ensure each of its sub-tenants and licensees observes the Approved Terminal Security Plan and the security measures referred to in Clauses 17.1 and 17.2.

17.5 Failure to comply. If the Tenant fails to comply with Clause 17, the Landlord may serve a written notice to the Tenant requiring the Tenant to remedy the failure within the timeframe specified in that notice. If the Tenant fails to comply with that notice, the Landlord may exercise its right to terminate this Agreement. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the obligations in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

17.6 Statutory requirement. For the avoidance of doubt, this Clause 17 shall not prejudice or affect the Tenant's obligation to comply with any statutory regulation and requirement in relation to port security.

18. OPERATION AND MANAGEMENT

18.1 Co-ordination. The Tenant shall co-ordinate with Customs and Excise Department, Immigration Department, Hong Kong Police Force and Department of Health to maximise rapid, convenient and efficient movement of passengers and handling of baggage.

18.2 Vessel arrival and departure.

- (a) The Tenant shall inform Customs and Excise Department, Immigration Department, Hong Kong Police Force and Department of Health of (i) vessel arrival and departure date and time; and (ii) estimated numbers of arrival passengers, departure passengers transit passengers and crew members by serving written notice at least three (3) months before each vessel arrival and departure. The Tenant shall immediately notify Customs and Excise Department, Immigration Department, Hong Kong Police Force and Department of Health of any subsequent change of the scheduled arrival and departure date and time.

(b) In the event that:-

- (i) the berthing of three (3) cruise vessels involves handling of arrival passengers coming from more than two (2) cruise vessels simultaneously; or
- (ii) the berthing of three (3) cruise vessels involves handling of arrival passengers coming from more than one (1) cruise vessel and departure passengers or transit passengers simultaneously; or
- (iii) the cruise vessel stays overnight at the Cruise Terminal and involves handling of transit passengers;

the Tenant shall at least three (3) months before the date of vessel arrival and departure, at its own cost and expense submit an operation plan to the Landlord for approval and implement operational measures within the Premises to the satisfaction of the Landlord.

19. TRAFFIC

19.1 Traffic Management Plan.

- (a) The Tenant shall at its own cost and expense prepare a traffic management plan (the "Traffic Management Plan") and submit the same to the Landlord for approval not less than five (5) months before the estimated possession date of the First Berth and the Premises within the Cruise Terminal

Building. The Traffic Management Plan shall show the management and operation of:

- (i) the pedestrian and vehicular traffic flows of the Cruise Terminal;
- (ii) all vehicular access of the Cruise Terminal;
- (iii) the Transportation Area;
- (iv) the parking spaces and loading and unloading spaces within the Premises;
- (v) services vehicles for provision of supplies, goods and services to cruise vessel and Cruise Terminal; and
- (vi) Temporary Access Road as referred to in Annex VIII (subject to revision).

shall include but not limited to sketches/drawings showing the road layout, road marking, location of signs, queuing areas, drop-off, pick up, loading and unloading spaces, all traffic and pedestrian control measures.

- (b) The Tenant shall at its own cost and expense observe, perform and implement the Traffic Management Plan approved by the Landlord (the "Approved Traffic Management Plan") within the Premises in all respects to the satisfaction of the Landlord. Without limiting the generality of the foregoing, the Tenant shall provide from time to time sufficient personnel and equipment for carrying out all traffic measures contained in the Approved Traffic Management Plan.

19.2 Traffic management measures. If required in writing by the Landlord from time to time, the Tenant shall at its own cost and expense carry out any additional traffic management measures as may be required by the Landlord in relation to the Transportation Area, Apron Area, Temporary Access Road, Parking Area within the time limit specified by the Landlord.

19.3 Failure to comply with Approved Traffic Management Plan and additional traffic management measures. If the Tenant fails to comply with Clauses 19.1(b) and 19.2, the Landlord may serve a written notice to the Tenant requiring the Tenant to remedy the failure within the

timeframe specified in that notice. If the Tenant fails to comply with that notice, the Landlord shall be entitled to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, title and interest of the Tenant hereunder shall cease and terminate upon expiry of the termination notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions contained in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

20. ACCESS TO THE SEA AND BERTHING CONSTRAINTS

20.1 Right of access to the sea. Except with prior written approval of the Landlord, the Tenant shall have no right of access to the sea from the Premises and from the sea except between the points B and C as shown on the plan at Annex II.

20.2 Berthing positions. Except with prior written approval of the Landlord, the Tenant is not allowed to berth any vessel at or along the seafront of the Premises between the said points C and D as shown on the plan at Annex II.

20.3 Berthing restriction. The Tenant is not allowed to berth any vessel at the First Berth within twenty-five (25) metres of the said point B.

20.4 Berthing manner. Except with the prior written approval of Landlord, any vessel berthing at the First Berth must adopt a port side berthing arrangement with the bow of the vessel pointing towards Lei Yue Mun provided that if there are two (2) or more vessels berthing at the First Berth at the same time, only the vessel in the closest proximity to the said point B has to adopt such port side berthing arrangement.

20.5 Provisional berthing restriction. Prior to delivery of vacant possession of the Second Berth to the Tenant, no vessel shall be berthed at the First Berth except at or

along the seafront of the premises within four hundred (400) metres of the said point B.

21. APRON AREA

21.1 Non-building area within the Apron Area.

Except with the prior written approval of the Landlord, the Tenant is not allowed to erect or construct any building or structure or support on, over, above, below or within the Apron Area.

21.2 Parking within the Apron Area

The Tenant is not allowed to park nor permit parking of motor vehicles within the Apron Area except for (i) emergency vehicles; (ii) vehicles which are essential for carrying out maintenance and repair works; and (iii) vehicles for loading and unloading of cruise supplies.

21.3 Emergency vehicular access and Place of Ultimate Safety within the Apron Area

- (a) The Tenant acknowledges and accepts that part of the Apron Area as shown on the plans at Annex II (subject to revision in accordance with Clause 3.2) and Annex VIII (subject to revision) is designated as an emergency vehicular access to the Cruise Terminal Building. The Tenant shall at its own cost and expense (i) keep the emergency vehicular access within the Apron Area unobstructed throughout the Term; (ii) at all time permit fire services personnel with or without vehicles, tool, equipment and fire services appliance the free and uninterrupted use of the emergency vehicular access; and (iii) comply with other requirements of the emergency vehicular access as specified by Fire Services Department.
- (b) The Tenant acknowledges and accepts that the whole of Apron Area is designated as a Place of Ultimate Safety. The Tenant shall at its own cost and expense allow occupiers and visitors of the Cruise Terminal and members of the public to access the Apron Area through the means of escape within the Cruise Terminal Building in the event of a fire or other acts of God.

22. ANCILLARY COMMERCIAL AREA AT LANDSCAPED DECK

22.1 Place items at landscaped deck. The Tenant is not allowed to place any items (including without limitation table and chair) outside the Ancillary Commercial Area at landscaped deck except with prior written approval of the Director of Leisure and Cultural Services who may impose conditions (including payment of rent or fee) in giving such approval. For avoidance of any doubt, nothing here shall impose upon the Director of Leisure and Cultural Services any obligation to approve such application.

22.2 Opening hours. In the event that the Tenant desires to set the opening hours of the Ancillary Commercial Area outside the opening hours of the landscaped deck, the Tenant shall at its own cost and expense submit an operation plan to the Director of Leisure and Cultural Services for prior written approval and implement all approved measures to the satisfaction of the Director of Leisure and Cultural Services.

22.3 Security. The Tenant acknowledges and accepts that the opening of the landscaped deck is subject to security requirements of the Cruise Terminal and the Landlord does not warrant the opening of the landscaped deck. The Tenant expressly agrees that it shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature arising from the closure of landscaped deck to the public nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

22.4 Working spaces. In the event that the Tenant requires working spaces at landscaped deck for carrying out fitting out work, repair and maintenance work and cleansing work relating to Ancillary Commercial Area, the Tenant shall at its own cost and expense provide all technical drawings, specifications and work programme to the Director of Leisure and Cultural Services for prior written approval and implement all approved measures to the satisfaction of the Director of Leisure and Cultural Services.

23. VEHICULAR ACCESS

- 23.1 Right of vehicular access. The Tenant shall have no right of ingress or egress to or from the Premises for the passage of motor vehicles except between the points X and Y through Z and between the points U and V through W shown and marked on the plan at Annex I (subject to revision in accordance with Clause 3.2), through the Temporary Access Road (to the extent subsisting) or such other points as may be approved by the Landlord.
- 23.2 Commencement date. The commencement date of operation of vehicular access at the said points U, V and W will be specified in a written notice issued by the Landlord. There is no guarantee or warranty that the said vehicular access point will commence to operate during the Term.
- 23.3 Provisional access. Prior to the commencement date of operation of the vehicular access at the said points U, V and W, the Tenant is allowed to use ingress or egress to or from the Premises for the passage of motor vehicles between the said points L and M through N provided that such access shall be restricted to Government vehicles and goods vehicles for the provision of supplies and goods for the operation of the Cruise Terminal.
- 23.4 Landlord's obligation. The Landlord shall at its own cost and expense carry out necessary modification or alteration work within the Premises and adjoining government land to cater for the opening of vehicular access at the said points U, V and W and the closure of temporary said access points L, M and N.
- 23.5 Tenant's obligation. The Tenant shall cooperate with the Landlord and provide assistance in carrying out the modification or alteration work within the Premises and adjoining government land as the Landlord may determine.
- 23.6 No liability. The Tenant shall have no claim against the Landlord for any loss, compensation, damage, costs or expenses arising from the closure of the said temporary vehicular access points at L, M and N and the opening of the said vehicular access points at U, V and W.

24. CHARGING FACILITIES FOR ELECTRIC CAR

- 24.1 Operation, management and maintenance. The Tenant shall at its own cost and expense operate, manage and maintain the charging facilities to the satisfaction of the Landlord.
- The Tenant shall operate the charging facilities in an efficient way to ensure that the charging facilities for electric car are readily available for the use of electric car and are user-friendly.
- 24.2 Work. The Landlord may give direction and instructions regarding work for the provision of charging services for electric cars to be carried out by the Tenant and operation of the charging facilities. The Tenant shall at its own cost and expense comply with such direction and instructions.
- 24.3 Repair and maintenance. The Tenant shall at its own cost and expense keep the charging facilities in good clean tenable substantial and proper repair and condition and replace as may be appropriate from time to time required and maintain the same at the cost and expense of the Tenant and deliver up the same to the Landlord at the expiration or early termination of this Agreement in such condition that is consistent with this clause.
- The Tenant shall include the charging facilities in the annual maintenance report as stated in Clause 16.2(g)
- 24.4 Electricity supply. The Tenant acknowledges and accepts that the power cables in respect of the charging facilities shall be connected to the Tenant's electricity supply meter.
- 24.5 Indemnity. The Tenant shall be strictly liable for any damage caused directly or indirectly by the operation, management, repair, maintenance or use of the charging facilities.
- The Tenant shall indemnify the Landlord from and against all actions costs claims demands expenses damages and losses of any nature whatsoever which the Landlord may suffer or incur in connection with loss of life personal injury and/or damage to property arising from this clause.

25. VEGETATION MAINTENANCE

- 25.1 Maintenance obligation. The Tenant shall at its own cost and expense maintain and keep the planted vegetation and shrubs within the Premises in clean, neat, tidy and healthy condition to the satisfaction of the Landlord.
- 25.2 No removal of trees. No tree growing within the Premises shall be removed or interfered with without the prior written approval of the Landlord.

26. COMPLIANCE WITH LAWS

- 26.1 Compliance with laws. In carrying out or performing any works or obligations under this Agreement including the operation, management or maintenance of the Premises as a Cruise Terminal, the Tenant shall observe and comply with all applicable Ordinance, regulations, by-laws and rules for the time being in force in Hong Kong including without limitation:
- (a) any Ordinances, regulations, by-laws and rules (if any) governing the control and operation of the Premises as a Cruise Terminal;
 - (b) any Ordinances, regulations, by-laws and rules (if any) relating to the use and occupation of the Premises or any other act, deed, matter or thing done, permitted, suffered or omitted therein or thereon by the Tenant or any contractor, servant, agent, licensee, sub-tenant, officer, employee, visitor or invitee of the Tenant;
 - (c) any Ordinance, regulations, by-laws and rules governing the control, regulation and operation of vessels in the waters of Hong Kong; and
 - (d) any Ordinances, regulations, by laws and rules governing the control of any form of pollution, including air, noise, water and waste pollution, and for the protection of the environment.

27. ASSIGNMENT AND SUBLETTING

- 27.1 Berthing of vessels. The Tenant shall be permitted to issue permission or licence to permit berthing of the cruise vessels at the Apron Area provided that:
- (a) dockage fee(s) and passenger fee(s) are charged in accordance with the prevailing fees and charges contained in the Website as required under Clause 11.4(b);
 - (b) no further assignment or transfer of the permission or license for berthing of cruise vessels to other party;
 - (c) the Tenant shall report any transaction with the Related Parties to the Landlord; and
 - (d) The cruise vessels shall be assigned in strict accordance with the Berth-Allocation Guidelines as provided under Clause 11.3.

If so required by the Landlord, the Tenant shall at its own cost and expense provide all evidence to the satisfaction of the Landlord that the above sub-clauses are fully complied with.

27.2 Subletting of Ancillary Commercial Area.

- (a) The Tenant shall be permitted to sublet any part or parts of the Ancillary Commercial Area (a “**Sublet Area**”) provided that:
 - (i) each portion of the Sublet Area must be sublet at full market rent at the date of the relevant subletting;
 - (ii) the Tenant shall not sublet any part of the Ancillary Commercial Area at a fine or premium and without prejudice to the generality of the foregoing, no premium, key money or similar payment shall be paid by the sub-tenant;
 - (iii) no rent shall be payable in advance for a period greater than three (3) months;
 - (iv) any grant of rent free period or concessionary rent period or waiver of any rental payment under the sub-tenancies is

- subject to the prior written approval of the Landlord;
- (v) there shall be no further subletting of the Sublet Area;
 - (vi) terms of the sub-tenancies shall not exceed three (3) days prior to the expiry of the Term;
 - (vii) the Tenant shall report any transaction with the Related Parties to the Landlord; and
 - (viii) if so required by the Landlord, the Tenant shall at its own cost and expense engage an independent valuer appointed by the President of Hong Kong Institute of Surveyors to assess full market rent of the Sublet Area or any part(s) thereof. The Landlord shall have full and absolute discretion to adopt the assessed full market rent as deemed rental income for such subletting in the Gross Receipt.
- (b) The Tenant shall incorporate the following clauses in all of the sub-tenancies:
- (i) a clause which states that notwithstanding any rule of law or equity to the contrary, it is an essential condition of the sub-tenancy that the sub-tenancy shall be absolutely determined on or before the date of termination of this Agreement if this Agreement shall for whatever reasons be terminated and the sub-tenant shall expressly waive any claim against the Landlord for damages or compensation whatsoever in respect of the determination of the sub-tenancy;
 - (ii) a clause which requires the sub-tenant to fit-out the Sublet Area and maintain shopfront display in a style appropriate to a first class cruise terminal and ancillary commercial complex and forthwith comply with any request made by the Landlord relating thereto. Without limiting the generality of the foregoing, the relevant requirements imposed by the Tenant must be

no less onerous than those contained in this Agreement; and

- (iii) a clause which specifies that the clauses referred to in Clause 27.2(b)(i) shall survive the determination of the sub-tenancy.

27.3 Licensing of car park.

- (a) The Tenant shall be permitted to issue permission or license for parking of motor vehicles in the parking spaces in the Parking Area provided that:
 - (i) full market licence fee is charged at the date when the relevant permission or license for parking is granted;
 - (ii) any grant of licence fee free period or concessionary fee period or waiver of any fee is subject to the prior written approval of the Landlord;
 - (iii) there is no assignment or transfer of permission or license for parking;
 - (iv) except with prior approval of the Landlord, all parking spaces in the Parking Area shall only be made available for short term parking for licensed motor vehicles, either on an hourly basis or daily basis or such other basis as may be approved by the Landlord; and
 - (v) the Tenant shall neither be permitted to sublet the whole Parking Area to a sub-tenant nor issue permission or license to a licensee in respect of the whole Parking Area.
- (b) The Tenant shall incorporate the following clauses in all such permits and licences:
 - (i) a clause which states that notwithstanding any rule of law or equity to the contrary (if any), it is an essential condition of the permit or licence (as the case may be) that the permit or licence (as the case may be) shall be absolutely determined on or before the date of termination of this Agreement if this Agreement shall for whatever reasons

be terminated and the car park user shall expressly waive any claim against the Landlord for damages or compensation whatsoever in respect of the determination of the permit or licence (as the case may be); and

- (ii) a clause which specifies that the clauses referred to in Clause 27.3(b)(i) shall survive the determination of the permits and licences.
- (c) If so required by the Landlord, the Tenant shall provide all information to support full market licence fee is charged at the date when the relevant permission or license for parking is granted.
- (d) For the purpose of calculating Gross Receipt, if the Tenant or any of the Related Parties uses any car parking space in the Parking Area, the following provisions shall apply:
 - (i) The Tenant shall report any proposed use of car parking space in the Parking Area by itself and the Related Parties.
 - (ii) The Tenant and the Related Parties shall pay full market licence fee for the use of car parking space in the Parking Area.
 - (iii) The Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) the deemed licence fee for the use of car parking space in the Parking Area or (2) the licence fee paid by the Tenant or (as the case may be) the Related Parties.
 - (iv) The Landlord shall have the full right to adopt the licence fee assessed by the Landlord as deemed licence fee for the use of car parking space in the Parking Area to be included in the Gross Receipt. The Landlord's assessment of full licence fee shall be final, binding and conclusive on the Tenant.

27.4 Licensing for certain installations.

- (a) The Tenant shall be permitted to issue permission or licence for installation of automatic vending

machines, automatic teller machines and pay phones, within the Premises subject to the prior written approval of the Landlord.

- (b) The Tenant shall incorporate the following clauses in all such permits and licences:

- (i) a clause which states that notwithstanding any rule of law or equity to the contrary (if any), it is an **essential** condition of the permit or licence (as the case may be) that the permit or licence (as the case may be) shall be absolutely determined on or before the date of termination of this Agreement if this Agreement shall for whatever reasons be terminated and the permittee or licensee (as the case may be) shall expressly waive any claim against the Landlord for damages or compensation whatsoever in respect of the determination of the permit or licence (as the case may be); and

- (ii) a clause which specifies that the clauses referred to in Clause 27.4(b)(i) shall survive the determination of the permits and licences.

- (c) All income generated from the installation of automatic vending machines, automatic teller machines and pay phones, within the Premises shall be included as part of the Gross Receipt under Clause 5.4(b).

- (d) For the purpose of calculating Gross Receipt, if the Tenant or any of the Related Parties installs automatic vending machines, automatic teller machines or pay phones within the Premises, the following provisions shall apply:

- (i) The Tenant shall report any proposed installation of automatic vending machines, automatic teller machines or pay phones within the Premises by itself and the Related Parties to the Landlord.

- (ii) The Tenant and the Related Parties shall pay full market licence fee for the installation of automatic vending machines, automatic

teller machines or pay phones within the Premises.

- (iii) The Landlord shall have the sole discretion to include in the Gross Receipt the higher of (1) the deemed licence fee for the installation of automatic vending machines, automatic teller machines or pay phones within the Premises or (2) the licence fee paid by the Tenant or (as the case may be) the Related Parties.
- (iv) The Landlord shall have the full right to adopt the full licence fee assessed by the Landlord as deemed full licence fee for the for the installation of automatic vending machines, automatic teller machines or pay phones within the Premises to be included in the Gross Receipt. The Landlord's assessment of full licence fee shall be final, binding and conclusive on the Tenant.

- 27.5 Licensing for signs. The Tenant shall be permitted to issue permission or licence for exhibiting advertising signs within the interior of the Premises (excluding Apron Area) subject to the prior written approval of the Landlord and similar considerations and conditions as set out in Clause 13 will be made and imposed by the Landlord.

All income generated from the issuance of permission or licence for exhibiting advertising signs shall be included as part of the Gross Receipt under Clause 5.4(b). If the Tenant issues permission or licence for exhibiting advertising signs to any of the Related Parties, Clause 13.7(b) shall apply.

- 27.6 Provision of documents and reports. Without prejudice to the generality of the foregoing, the Tenant shall:

- (a) furnish the Landlord with certified copies of the duly executed and stamped sub-tenancy agreements and licence agreements for the Landlord's record within twenty-one (21) days upon execution of the same;
- (b) submit reports to the Landlord in relation to the leases, tenancies and licences in the form specified by the Landlord within thirty (30) days of the end

of each successive period of six (6) calendar months or such other period as required and specified in a Landlord's written notice which elapses during the currency of this Agreement and within thirty (30) days after expiration or early termination of this Agreement; and

- (c) provide to the Landlord such other information as the Landlord may deem necessary from time to time.

- 27.7 No letting and assignment. Save as permitted under this Agreement, the Tenant shall not assign underlet or otherwise part with the possession of the Premises or any part thereof in any way whether by way of subletting, lending, charging, mortgaging, sharing or other means whereby any person or persons not a party to this Agreement (including without limitation the Related Parties) obtains the use or possession of the Premises or any part thereof irrespective of whether any rental or other consideration is given for such use or possession unless with the Landlord's prior written approval and in the event of any such transfer, sub-letting, sharing, assignment or parting with the possession of the Premises (whether for monetary consideration or not), the Landlord may at its sole discretion terminate this Agreement absolutely by notice in writing to the Tenant (but without prejudice to any remedies which the Landlord may have against the Tenant for breach of this Agreement) and upon termination of this Agreement as aforesaid, the Tenant shall forthwith vacate the Premises on notice to that effect from the Landlord. Without in any way limiting the generality of the foregoing the following acts and events shall unless approved in writing by the Landlord be deemed to be breaches of this Clause 27.7:

- (a) In case of a Tenant which is a partnership the taking in of one or more partners whether on the death or retirement of an existing partner or otherwise.
- (b) In case of a Tenant which is a body corporate, any takeover, reconstruction, amalgamation, merger, voluntary liquidation or change in the person who owns a majority of its voting shares or who otherwise has or has effective control of the body corporate.

- (c) The giving by the Tenant of a power of attorney or similar authority whereby the donee of the power obtains the right to use possess occupy or enjoy the Premises or any part thereof or does in fact use possess occupy or enjoy the same.
- (d) The change of the Tenant's business name without the prior written approval of Landlord which approval the Landlord may give or withhold at its sole discretion.
- (e) The holding on trust by the Tenant of the right to use the Premises.
- (f) The assignment or sharing any revenue from the Tenant's business in respect of the Premises.
- (g) Any arrangement whereby de facto management or control of the Tenant's business in or in respect of the Premises is vested in or enjoyed by any person other than the Tenant.
- (h) Any issuance of permission and/or licence, or any sub-letting which is in breach of or does not comply in full with Clauses 27.1, 27.2, 27.3, 27.4 or 27.5.
- (i) The breach of Clause 38.2(c).
- (j) The breach of Clause 11.3.

28. PROVISION OF ACCOMMODATION TO HKT B

- 28.1 HKT B Accommodation. The Tenant shall at its own cost and expense provide an accommodation to HKT B with a floor area of not less than fifteen (15) square metres (the "**HKT B Accommodation**") in such condition set out at Annex IV (subject to revision in accordance with Clause 3.2) for the use and enjoyment of the HKT B Accommodation for any purposes that the Landlord or HKT B may deem appropriate including the promotion of Hong Kong tourism and Government's events and activities.
- 28.2 Sub-letting of HKT B Accommodation. When called upon by the Landlord, the Tenant shall underlet the HKT B Accommodation to HKT B for tourism use at a nominal rent of HK\$1.00 per year (if demanded) for a term commencing from such date as the Landlord may determine and expiring on the date that falls three (3)

days before the expiry date of this Agreement and on such other terms and conditions as the Landlord may in its sole discretion determine which, without prejudice to the Landlord's discretion, may include:

- (a) HKT B's right to further sublet the HKT B Accommodation or any part or parts thereof subject to the Landlord's written approval;
- (b) HKT B's right to change the use of the HKT B Accommodation subject to the Landlord's prior written approval;
- (c) HKT B's right to determine the under-lease by serving three (3) calendar months' notice in writing on the Tenant; and
- (d) HKT B's contribution to the Management Fees, Air Conditioning Charges and utility charges (if no separate meters are installed for HKT B Accommodation) in such amounts or on such basis as the Landlord may determine or approve.

- 28.3 Location of HKT B Accommodation. The location of the HKT B Accommodation is showed on the plan at Annex I (subject to revision in accordance with Clause 3.2) and the Landlord reserves all rights to revise the location at its sole discretion and the Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.
- 28.4 Handover condition of HKT B Accommodation. The Tenant shall at its own cost and expense be responsible for all works that are necessary to render the HKT B Accommodation in good clean and tenantable condition that is consistent with the handover condition as set out in Annex IV (subject to revision in accordance with Clause 3.2).
- 28.5 Utilities. The Tenant shall provide utilities, and air-conditioning services to HKT B.
- 28.6 HKT B's responsibilities. The Tenant shall incorporate clauses in the sub-tenancy agreement to be entered into between HKT B and the Tenant, which specify that during the term of the sub-tenancy agreement, HKT B shall be responsible for:

- (a) the fitting out of the HKTB Accommodation;
 - (b) the operating expenses (includes utility charges, air conditioning charges, management fees) of the HKTB Accommodation; and
 - (c) the maintenance of the external and interior of the HKTB Accommodation.
- 28.7 Documentation. The Tenant shall by itself and shall procure HKTB to complete and execute a sub-tenancy agreement in such form as prescribed by the Landlord to effect the underletting. The Tenant shall bear its own legal costs, all costs and expenses in preparing and completing the sub-tenancy agreement and stamp duty payable on the same.
- 28.8 No extra area. For the avoidance of doubt, the floor area of the HKTB Accommodation is included in the total Floor Area of the Ancillary Commercial Area, and the Tenant shall in no circumstance be entitled to any extra floor area by let or license as a result of the provision of the HKTB Accommodation.
- 28.9 Provisions of sub-letting not applicable. Clause 27.2 shall not apply to the under-letting of the HKTB Accommodation.

29. SIGNAGES FOR PROMOTION OF HONG KONG TOURISM

- 29.1 Right to install. The Tenant hereby agrees, accepts and acknowledges that the Landlord and HKTB have the right to install in or affix to any part of the Premises signs, signages and posters for promotion of Hong Kong tourism and Government's events and activities without payment of any fee in any form whatsoever together with the right to enter and remain on the Premises for the purpose of repairing, maintaining, servicing, removing or replacing the same from time to time notwithstanding that the Tenant's enjoyment and use of the Premises or any part thereof will be interfered with (whether temporarily or permanently).
- 29.2 Right to lay wiring. The Tenant hereby agrees, accepts and acknowledges that the Landlord and HKTB have the right to lay wiring within the Premises for connecting and supplying electricity to the signage spaces.

- 29.3 Installation and removal of signages. The Landlord shall by itself and shall procure HKTB to be responsible for the installation and removal of the signages. The Landlord shall by itself and shall procure HKTB to bear the electricity cost of the signage spaces.
- 29.4 Disturbance and interference. The Tenant hereby agrees, accepts and acknowledges that the exercise by the Landlord or HKTB of any of the rights mentioned above (works undertaken by the Landlord or HKTB in relation thereof) may cause nuisance, annoyance, disturbance, interference or disruption to the use and enjoyment of the Premises and the business and operation therein, and/or may diminish, interfere with, obstruct or affect the amenity of the Premises.
- 29.5 No claim against the Landlord. The Tenant shall not in any circumstances be entitled to any abatement of Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement nor to claim against the Landlord or to raise any objection or make any complaints in respect of the exercise by the Landlord, HKTB or their authorised persons of any of the rights mentioned above, nor shall the Landlord or HKTB be held liable to the Tenant or any other person whomsoever or be regarded as being in breach of any provisions of this Agreement or in derogation of the grant hereunder by reason of the exercise by the Landlord or HKTB of any of the rights mentioned above.

30. INSURANCE

- 30.1 Property damage insurance. Without prejudice to the Tenant's obligations under this Agreement, the Tenant shall at its own cost and expense, effect and maintain at all times throughout the Term for the benefit and in the joint name of the Tenant and the Landlord the insurance covering all loss or damage, arising from whatever cause, to all contents in the Premises including without limitation all properties and assets listed out in Annex XXI, all equipment, tools, instruments, facilities and material provided from time to time by the Landlord at the Premises for (i) their full reinstatement and replacement value; and (ii) all costs of debris removal and demolition of any damaged works and site clearance, obtaining any consent required by and complying with applicable law for works to be carried out for reinstatement and obtaining all consultancy or

professional services involved. The risks insured shall include but not be limited to fire, flood, storm, landslide, typhoon, explosive, traffic accidents, watermain burst and such other risks as the Tenant deems fit and such other risks as may from time to time be required in writing by the Landlord.

- 30.2 Third party / legal liability insurance. Without prejudice to the Tenant's obligations under this Agreement, the Tenant shall at its own cost and expense, effect and maintain at all times throughout the Term, for the benefit and in the joint names of the Tenant and the Landlord, the third party / legal liability insurance with a cross liability clause indemnifying the Tenant and the Landlord (as if a separate insurance policy had been insured to each of them) the sum of not less than HK\$780,000,000 for any one (1) occurrence and unlimited number of occurrences for any one (1) period of insurance or such greater sum as specified in writing by the Landlord from time to time with one (1) month's notice against legal liabilities for accidental death of or bodily injury to persons or accidental loss of or damage to property arising out of or in consequence of the occupation of the Tenant including any sub-tenant, licensee, contractor or agent in the Premises or any of their activities in relation to such occupation. If in the Tenant's opinion, the amounts or the sum insured are insufficient to cover the Tenant's risks, duties, obligations and liabilities in connection with the tenancy hereunder, at common law or otherwise, the Tenant may effect such further insurance as it considers necessary.

- 30.3 Business interruption insurance. Without prejudice to the Tenant's obligations under this Agreement, the Tenant shall at its own cost and expense, effect and maintain at all times throughout the Term, for the benefit and in the joint names of the Tenant and the Landlord, the business interruption insurance for an amount specified in writing by the Landlord (such amount to be reviewed annually by the Landlord taking into account such factors as the Landlord may consider appropriate, including without limitation the annual turnover of the Tenant) covering the loss of income and profits to the Tenant and the Landlord for a minimum period of six (6) months resulting from interruption or cessation of the Tenant's business (or the business of any sub-tenants or licensees) caused by any damage or destruction or loss to the Premises (or any as

its content) or any terrorist act or spread of contagious disease or epidemic or any other event not in the control of the Tenant. If in the opinion of the Tenant, the amounts or sum insured are insufficient to cover the Tenant's potential loss of profit or income, the Tenant may effect such further insurance as it considers necessary.

Other insurance. Without prejudice to the Tenant's obligations under this Agreement, the Tenant shall take out and maintain such other policies of insurance as required under the Law of Hong Kong for the time being in force.

- 30.4 Approval and examination of policies and premium receipts.

- (a) The Tenant shall obtain the Landlord's prior approval of the terms of each insurance policy to be effected or maintained by the Tenant and the Tenant shall effect and maintain each insurance policy in accordance with good insurance practice.
- (b) The Tenant shall, whenever reasonably requested in writing by the Landlord, provide documentary evidence to the Landlord of the insurance policies (including renewed insurance policies) effected and maintained by the Tenant under this clause within such timeframe as specified by the Landlord. The Tenant shall further provide, or cause to be provided to the Landlord a copy of premium receipt, certificate of currency, renewal certificate and endorsement slip, as soon as practicable after receipt by or on behalf of the Tenant.
- (c) The Tenant shall, no less than thirty (30) days prior to the expiry of an insurance policy, produce a new draft policy for the renewal of such insurance policy for approval by the Landlord. The Tenant shall forthwith upon such approval by the Landlord effect renewal of the insurance policy. No less than fourteen (14) days prior to the expiry of an insurance policy, the Tenant shall furnish to the Landlord the renewed insurance policy, cover note and other relevant document for record and shall produce to the Landlord for examination the premium receipt evidencing the renewal of such insurance policy.

- (d) Each insurance policy shall be issued by a reputable insurance company with Standard & Poor credit rating is no less than A- and licensed under the Insurance Companies Ordinance (Cap. 41).
- (e) The Tenant shall pay all premiums and all other fees and charges for effecting, renewing or maintaining the insurance policies, as and when they fall due. Under no circumstance, whatsoever, shall the Landlord be responsible for the premium payable under the insurance policies or premium payable for the renewal thereof.
- (f) Without prejudice to any other provisions of this Agreement, except to the extent prohibited by law, the Tenant must ensure that each insurance policy contains provisions acceptable to the Landlord that:
 - (i) require the insurer to give not less than thirty (30) days' prior written notice to the Tenant and Landlord before effecting any cancellation, avoidance or variation of, or exercising other rights concerning, the insurance policy;
 - (ii) a notice of claim to the insurer by the Landlord will be accepted by the insurer as a notice of claim validly given under the policy;
 - (iii) require the insurer, whenever the Tenant fails to renew an insurance policy or to pay a premium, to give notice in writing thereof forthwith to the Landlord and the Tenant prior to the insurer giving any notice of cancellation or non-renewal.
- (g) The Tenant shall, as soon as practicable, inform the Landlord in writing of any occurrence or incident that may give rise to claim under an insurance policy and shall keep the Landlord informed of subsequent development concerning that occurrence or claim.
- (h) Upon settlement of a claim under an insurance policy, where the insurance proceeds are paid to the Tenant, the Tenant must pay such proceeds to the Landlord to compensate any and all losses that the Landlord has suffered or for which the Tenant is

liable to indemnify the Landlord under this Agreement or otherwise.

- (i) Wherever pursuant to this Agreement insurance is effected in more than one (1) name, the policy of such insurance must, insofar as the policy may cover more than one (1) insured:
 - (i) provide that all insuring agreements and endorsements operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured;
 - (ii) provide that insurer waives irrevocably and unconditionally all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the insured and that failure by any insured to observe and fulfil the terms of the insurance policy does not prejudice the insurance in regard to any other insured party;
 - (iii) contain a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy or any fraud or other act, omission or default by one insured does not affect another provided that the said acts or omissions were not made with the connivance of that other insured.

30.5 Observance and performance. The Tenant shall observe, perform and conform to the terms and conditions of every insurance policy, and satisfy all reasonable requirements of each insurer in connection with the settlement of claims, the recovery of losses and the prevention of accidents; and 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 premiums be increased, or which otherwise amount to a breach of any of the insurance policies. The Tenant shall bear the economic consequences of, and indemnify the Landlord in full from and against any loss and liability which may arise from, any failure of the Tenant to do so. The Tenant shall bear the cost of all excesses (deductibles) under each insurance policy and all losses and damages falling

within any applicable, exclusion and limitation under each insurance policy and shall compensate the Landlord for any and all such costs, losses and damages which the Landlord is unable to recover under the insurance policy. The Tenant shall remain fully liable under other provisions of this Agreement to the extent any claims under any of the insurance policies are subject to any of exclusions or limitations contained in such insurance policies. The Landlord shall be entitled to draw under bank guarantee any amounts owed by the Tenant to the Landlord under this clause.

30.6 Tenant's breach. If the Tenant fails to:

- (a) effect and keep in force any insurance policy which is required to be effected under this Agreement; or
- (b) pay any premium or cost of excesses, deductibles, exclusions or limitation,

then and in any such case the Landlord may effect and keep in force any such insurance policy and pay such premium or costs as may be necessary for that purpose. Without prejudice to the rights of or remedies available to the Landlord, the Landlord shall be entitled to draw under the bank guarantee the premiums or cost so paid by the Landlord plus an administrative charged incurred by the Landlord.

30.7 Other obligations. The Tenant shall:

- (a) ensure that it shall not assign, encumber or pledge any interest in the insurance policies without the written approval of the Landlord;
- (b) ensure that no exclusions, endorsements or variation to the policies shall be made without the written approval of the Landlord;
- (c) immediately inform the Landlord in writing of any conviction, judgement or finding of any court or tribunal relating to the Tenant (or any of its director, officer or shareholder) of a nature which may likely affect the decision of an insurer or underwriter to grant or to continue any insurance hereunder.

30.8 Release of the Landlord's liabilities. The Tenant hereby releases the Landlord and its agents, contractors and employees from, and agrees that the Landlord shall not be

liable for any liability or loss arising from, and any cost, charge or expense incurred in connection with:

- (a) damage, loss, injury or death unless it is caused by a deliberate act of the Landlord;
- (b) anything the Landlord is permitted or required to do or perform under this Agreement; and
- (c) the Landlord's fixtures and fitting not working properly.

30.9 Indemnity. The Tenant shall be liable for and shall indemnify the Landlord against all liabilities and losses arising from, and any cost, charge or expense incurred in connection with:

- (a) damage, loss, injury or death to property or person caused or contributed to by the Tenant or the Tenant's agents, contractors and employees; or
- (b) the Landlord doing anything which the Tenant is obliged to do under this Agreement but has not done so or which the Landlord considers the Tenant has not done properly.

30.10 Application of insurance monies.

- (a) Without prejudice to Clause 30.4(h), the Tenant shall cause all sums received by virtue of an insurance policy be paid to the Landlord, who shall forthwith apply the same towards the discharge of any liability, settlement of any action or claims and/or reinstatement of any damaged property. The Tenant shall make up any deficiency in the amount required for discharging such liability, settling such action or claim and/or reinstatement, if any, to the extent it is liable or otherwise responsible for doing so under other provisions of this Agreement.
- (b) The Tenant shall give full, true and particular information to the relevant insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy of insurance or the payment of any or all moneys thereunder.
- (c) Before the modification or cancellation by the Tenant of any insurance required to be effected under this Agreement, the Tenant must first obtain the prior written approval of the Landlord after

having provided the Landlord with the reasons for the proposed modification or cancellation (as the case may be) and details of the replacement insurance which is proposed to be substituted for the policy proposed to be modified or policy proposed to be cancelled (as the case may be).

- (d) Without prejudice to the other provisions of this Agreement, the Tenant shall do everything reasonably required by the Landlord or any other person in whose name an insurance policy is effected and maintained to enable the Landlord or the other person (as the case may be) to claim, and to collect or recover money due, under or in respect of any insurance policy.

- 30.11 Procure others to effect insurance. The Tenant shall procure each of its sub-tenants, licensees, contractors and agents to effect and maintain insurances as are appropriate and customary for the business of the sub-tenants, licensees, contractors and agents (as the case may be). The Tenant shall produce to the Landlord a copy of certified copies of the insurance policies.

31. COMMON PARTS AND PROPERTY MANAGER

- 31.1 Control. The Landlord shall have the exclusive right of control over the Common Parts.
- 31.2 Appointment of property manager. The Landlord shall have the exclusive right from time to time to appoint a property manager (the "Property Manager") to manage the Common Parts.
- 31.3 House Rules. The Landlord shall be entitled to either by itself or through the Property Manager from time to time make, adopt, introduce and modify house rules and regulations as it may consider proper or necessary for the management, operation, use, repair and/or maintenance of the Common Parts. The Tenant shall at all times observe and comply and to procure its sub-tenants and licensees to at all times observe and comply with the said house rules and regulations.
- 31.4 Modification of Common Parts. The Landlord shall provide a plan to the Tenant indicating the Common Parts no later than two (2) months before the commencement date of the tenancy. The Landlord shall have the

exclusive right to modify the demarcation of the Common Parts or designate any areas, parts, facilities, equipment and systems as Common Parts prior to the commencement date of the tenancy and at any time during the Term provided that Tenant's right of access to and from the Premises is not unreasonably affected. The Tenant shall not be entitled to terminate this Agreement and shall have no claim, demand or action against the Landlord for any loss, damage, inconvenience or compensation of whatsoever nature that it may suffer or incur as a result of or in connection with this Clause 31.4 nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable. any part thereof be reduced, abated or cease to be payable.

- 31.5 No liability. The Landlord and the Property Manager, and their respective attendants servants employees contractors or agents shall not be liable for any loss or liabilities arising directly or indirectly from:

- (a) any defect in or failure or malfunction of any of the Common Parts; or
- (b) any failure, malfunction or interruption of the supply of water, gas, electricity or other utility services to the Common Parts or to the Premises; or
- (c) fire, flood or the overflow or leakage of water; or
- (d) the activity of termites, cockroaches, rats, mice or other pests or vermin; or
- (e) theft or burglary.

32. LANDLORD'S RESERVED RIGHTS

- 32.1 Rights reserved. It is hereby agreed and expressly confirmed that the following rights in this Clause 32 are excepted and reserved to the Landlord (its successors and assigns and all persons having the like right) during the subsistence of this Agreement.
- 32.2 Landlord's rights of entry. The right for the Landlord, its officers, employees, agents, contractors or any other persons authorized by the Landlord to, with or without surveyors, contractors, workmen and others, and with or without vehicles, plant, machinery, equipment, material

or chattel at all times and free of cost and payment of any nature, enter into and remain at the Premises or any part thereof for any of the following purposes:

- (a) viewing (and opening up floors and other parts of the Premises where such opening-up is required in order to view) the state of repair and condition of the Premises;
- (b) taking photographs and videos on the condition of the Cruise Terminal and any E & M Facilities in the Premises;
- (c) taking inventories of the Landlord's Provisions and assets;
- (d) testing the Common Parts;
- (e) taking the reading of the utility meters;
- (f) carrying out any works, repairs or maintenance which require to be done to the Premises, Government Accommodations, landscaped decks, Common Parts and any E & M Facilities or any other part or parts of the Cruise Terminal;
- (g) carrying out any necessary modification or alteration works in the Premises for the closure of the connection between the Premises and the Temporary Access Road upon or after the right of way over the Temporary Access Road has terminated in accordance with this Agreement;
- (h) the development of the Cruise Terminal, including the construction in on under or over the Premises of any facilities for the benefit of the Cruise Terminal;
- (i) inspecting, rebuilding, repairing, renewing, maintaining, cleansing, painting or decorating the Cruise Terminal or any part thereof and for such purposes to erect scaffolding to the external surfaces of the walls of the Cruise Terminal Building notwithstanding that such scaffolding may temporarily obstruct pedestrian access to the Premises or limit or reduce access to any service elevators or the Cruise Terminal used by the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors and invitees;

- (j) giving to the Tenant (or leaving upon the Premises) a written notice which specifies any repairs, renewals, replacements, rebuilding, cleaning and maintenance that the Tenant has failed to execute in breach of this Agreement and requesting the Tenant immediately to commence and thereafter diligently pursue the same including the making good of such opening-up (if any);
- (k) rectifying any breach of the Tenant's covenants in this Agreement and carrying out any work or repair required to be done by the Tenant;
- (l) making inspections and testing to ascertain whether the Tenant is operating and managing the Premises in compliance with this Agreement;
- (m) investigating the causes of any incidents or any damages to the Premises and E & M Facilities installed in the Premises;
- (n) preserving the external façade of the Cruise Terminal Building from injury or damage if any excavation or other building works shall be made or authorised in the vicinity of the Cruise Terminal;
- (o) altering, maintaining or repairing the Cruise Terminal or to the infrastructure of the same;
- (p) management of the Premises or the Cruise Terminal;
- (q) security of the Cruise Terminal; and
- (r) exercising or giving effect to any of the rights reserved under this Clause 32 or otherwise

Provided that the Landlord shall use its reasonable endeavours to cause as little interference with the Tenant's normal operation of the Premises as is reasonably practicable and make good any damage caused to the Premises by the negligent acts of the officers, agents, workmen, contractors or other person or persons authorized by the Landlord or other Government departments in carrying out the repair and maintenance works.

The Tenant hereby agrees that it and its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors and invitees shall not be entitled to claim against the Landlord and/or any other person for

any loss, disturbance, annoyance, inconvenience in any form (including physical damage to the Premises) whatsoever suffered or may have sustained by the Tenant or its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees as a result of or in connection with or arising from any of the rights referred to in Clause 32.2 nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

32.3 Other reserved rights.

- (a) Utilities. The right of free and uninterrupted passage and running of water, soil, gas, drainage, electricity and all other utilities, services or supplies through such Conduits as are now or may hereafter be in, on or under the Premises and serving or capable of serving the Cruise Terminal or any adjoining or neighbouring property TOGETHER WITH the right to at all times inspect, install, repair, maintain, replace, renew, alter, improve or remove any such existing and new Conduits (including any aerial transmitter or other telecommunications cable wiring or equipment on or above the false ceiling or otherwise over or under the Premises). The Tenant shall not remove, alter, interfere with or cause damage to any such Conduit and shall indemnify the Landlord against all losses arising from the breach of such obligation.
- (b) Suspension of facilities. The right from time to time on giving notice to the Tenant (such notice not to be required in case of emergency or breakdown) to suspend the chilled water supply, air-conditioning system, elevators, escalators, travelators, electric power, water supply and any other building service provided in or serving the Cruise Terminal for the purpose of adjusting, servicing, maintaining, repairing, renewing, improving or replacing the same and any of them.
- (c) Common Parts. The right to restrict the use of any Common Parts insofar as is reasonably required for the purposes of inspecting, repairing, maintaining,

decorating, replacing, renewing or connecting to them.

- (d) External walls and roofs. The exclusive and unrestricted right and privileges to use or grant the right to use (whether by way of tenancy licence or in any form or manner whatsoever) all the external walls and façade and/or roofs of the Cruise Terminal Building. In particular but without affecting the generality of the aforesaid, the Landlord shall have the exclusive right to let or license any part of the external walls and façade and/or roof to any third party on such terms and conditions as the Landlord shall deem fit. The Tenant hereby acknowledges and agrees to waive any rights or claims whatsoever it may have against the Landlord or its successors in title or person deriving interest from the Landlord as aforesaid.
- (e) Alteration. The right to alter in any way whatsoever the Common Parts or any part of the Cruise Terminal and to vary any building plans relating to the same from time to time and for such purpose to underpin, shore up and bond and tie into the structure of the Premises.
- (f) Works. The right to carry out all necessary works in relation to the Cruise Terminal Building or the Cruise Terminal including fitting out works notwithstanding any noise, disturbance or interference that the Tenant may suffer.
- (g) Support. The right to subjacent and lateral support from the Premises for the remainder of the Cruise Terminal.
- (h) Licence to telecommunication companies. The right to grant licence of space to any telecommunication companies for installation and erection of any telecommunication system and Conduits at the Premises, areas for common use or elsewhere in the Cruise Terminal at the Landlord's sole discretion.
- (i) Partial surrender.
 - (i) In the interest of the Landlord's operation need and the public interest, the Landlord shall have the right to require the Tenant to surrender any part or parts of the Premises

(except the Ancillary Commercial Area) whenever the Landlord shall in its sole discretion think fit and appropriate at any time and from time to time during the Term. The Landlord's decision shall be final, binding and conclusive on the Tenant.

- (ii) In exercising such right, the Landlord must give prior notice to the Tenant. Within the period as prescribed in the said notice, the Tenant shall deliver vacant possession of the relevant part or parts of the Premises in accordance with this Agreement to the Landlord. The Landlord shall also at its own cost and expense be responsible for the necessary reinstatement works including erection of a partition wall to separate the surrendered area of the Premises and separation of services such as electrical/mechanical installations before delivering possession of such surrendered area. For the avoidance of doubt, the Landlord shall neither be responsible for the Tenant's fit-out cost nor the reimbursement of the Tenant's decorations, improvements, fixtures and fittings installed in such part or parts of the Premises.

Save for the cost associated with the aforesaid reinstatement works, the Tenant shall be solely responsible for all costs and expenses associated with the surrender.

- (iii) If so required by the Landlord, the parties shall at their own costs enter into a partial surrender agreement or supplemental agreement.
- (iv) Without prejudice to Clause 32.4(a), where a part of the Premises (except the Ancillary Commercial Area) is surrendered, there shall be no adjustment in the Rent and Air Conditioning Charges (if applicable).
- (v) The Tenant shall not make any objection thereto or make any claim in respect of any loss and damage which the Tenant may

suffer as a result of or on account of such surrender.

(j) Signage.

The right to exhibit signages, banners, and commercial advertising signs (including LED displays) or similar structures on the external façade of the Cruise Terminal Building, the Common Parts and any other area of the Cruise Terminal other than the Premises TOGETHER WITH the right to at all times to inspect, install, adjust, repair, maintain, replace, renew, alter, improve or remove any such signages, banners, and commercial advertising signs or similar structures.

- (k) Closure of parking spaces. If so required by the Landlord from time to time, the Tenant is required to close the parking space(s) and loading and unloading space(s) to facilitate inspection, repair and maintenance works provided that the carrying out of inspection, repair and maintenance works shall necessitate the closure of any parking spaces and loading and unloading spaces within the Premises. No compensation in whatever form will be payable by the Landlord for such closing.

(l) Closure of Apron Area.

- (i) If so required by the Landlord from time to time, the Apron Area or any part thereof shall be closed to facilitate the Landlord or its authorized agents, contractors or any other persons authorized by the Landlord to carry out inspection, repair and maintenance works. If so required by the Landlord, the Tenant shall provide assistance or assign suitable representative(s) to accompany the aforesaid personnel for facilitating them to carry out the above-mentioned works.
- (ii) The Landlord shall not be liable or responsible to the Tenant for any loss, injury, damage, annoyance, inconvenience, cost or expense which may be sustained by the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees,

visitors or invitees arising out of or incidental to the Landlord's exercise of the rights under this Clause 32.3(l).

(m) Development of the vicinity of the Cruise Terminal.

- (i) Without prejudice to anything herein contained, the Landlord hereby expressly reserves the right to develop or redevelop by itself or by any other person any adjoining or neighbouring property or sites or property/sites in the vicinity of the Cruise Terminal for such purpose as the Landlord may in its sole discretion determine from time to time including:
 - (A) the construction of footbridges or other passageways connecting the Cruise Terminal Building;
 - (B) the construction of a heliport; and
 - (C) the construction of rail system.
- (ii) The Tenant hereby expressly confirms that it hereby takes the tenancy of the Premises notwithstanding that building works may be carried out for the purpose(s) aforesaid or otherwise and further agrees that it shall in no circumstances claim against the Landlord for any compensation for loss or damage whatsoever arising from the carrying out of the said building works or the operation of the said building works, structures or facilities (including any nuisance or disturbance caused thereby) nor shall the Landlord be regarded as being in breach of any provisions of this Agreement or in derogation of the grant thereunder by reason thereof.
- (iii) For the avoidance of doubt, the Tenant hereby acknowledges that no warranty or representation whatsoever has been given or made by the Landlord as to the nature, purpose, timing or any other aspects of the development or redevelopment mentioned in Clause 32.3(m)(i) or that such development or redevelopment will be carried out by the

Landlord at any time. Should there be any such warranty or representation, the same is deemed to be withdrawn. The Landlord shall be under no liability whatsoever to the Tenant for any loss howsoever arising out of or in connection therewith or as a consequence thereof or if the said development or redevelopment or any part thereof is not eventually carried out.

- (n) Parking at the Apron Area. The Landlord and the Government departments shall have the rights to park and authorise parking of motor vehicles within the Apron Area. Without limiting the generality of the foregoing, the Landlord, Immigration Department, Hong Kong Police Force, and Customs and Excise Department shall have the rights to (i) use the designated government parking spaces showed on the plan at Annex I (subject to revision in accordance with Clause 3.2) and Annex VIII (subject to revision); (ii) permit emergency vehicles to access and remain in the Apron Area, (iii) permit Government vehicles to access and remain in the Apron Area to carry out official duties; (iv) permit vehicles which are essential for carrying out maintenance and repair works to access and remain in the Apron Area and (vi) permit other vehicles authorised by the Landlord, Immigration Department, Hong Kong Police Force, and Customs and Excise Department to access and remain in the Apron Area.
- (o) Means of fire escape. The right to designate any part(s) of the Premises as means of fire escape. The Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature in connection with such designation.
- (p) Use of elevators. The right to allow the Landlord, Immigration Department, Customs and Excise Department, Hong Kong Police Force, Department of Health, Civil Aviation Department, Leisure and Cultural Services Department and Marine Department, and their officers, contractors and agents to use the elevators designated by the Landlord from time to time (whether or not such elevators are installed by the Landlord or the

Tenant) without any payment for the management and maintenance of the Government Accommodations, the landscaped deck and the Premises. For the avoidance of doubt, the Landlord will not share any operating and management costs of the elevators. The Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature in connection with the Landlord's exercise of the right hereunder.

32.4 No claim.

- (a) The Tenant hereby agrees that it and its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors and invitees shall not be entitled to claim against the Landlord and/or any other person for any loss, disturbance, annoyance, inconvenience in any form (including physical damage to the Premises) whatsoever suffered or may have sustained by the Tenant or its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees as a result of or in connection with or arising from the exercise of any of the rights referred to in Clause 32. The Landlord shall not be regarded as being in breach of any provisions of this Agreement or in derogation of the grant thereunder by reason of exercising any of the rights referred to in Clause 32.
- (b) Without limiting the generality of Clause 32.4(a), the Tenant acknowledges and agrees that the Landlord is entitled to carry out alterations, modifications, renovation and expansion works or any other building work or works relating to the Cruise Terminal during the subsistence of this Agreement and those works may cause inconvenience, annoyance, nuisance or disturbance to the use or quiet enjoyment of the Premises of the Tenant and/or the use of the Premises of the Tenant's sub-tenants and licensees during the time when those works are carried out. The Tenant hereby expressly agrees that it will not bring any action or claim whatsoever against the Landlord or its agents, contractors or servants for any indemnity, compensation, loss, abatement of rent or extension of licence period or rent free period whatsoever arising out of or in connection with any such

annoyance, inconvenience, nuisance or disturbance of quiet enjoyment.

- (c) Nothing contained or implied in this Agreement imposes or is to be deemed to impose any restriction on the Landlord on the use of any other parts of the Cruise Terminal or any adjoining or neighbouring property or give the Tenant the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any covenant, agreement or condition entered into in respect thereof or to prevent or restrict its development. The Landlord shall be entitled to carry out or permit the development of the remainder of the Cruise Terminal or any neighbouring properties and to alter or change the Premises or to re-route any services in or access to the Premises or the Cruise Terminal without payment of compensation to the Tenant for any damage or otherwise.

33. RIGHTS OF WAY

- 33.1 Government Accommodations. The Tenant shall permit Government vehicles or such other vehicles as authorized by the Landlord and the Landlord, the Immigration Department, Customs and Excise Department, Hong Kong Police Force, Department of Health, Civil Aviation Department, Marine Department, Leisure and Cultural Services Department, Marine Department their officers, employees, agents, contractors or any other persons authorized by the Landlord with or without vehicles to pass and repass on, along, over, by and through the Premises (including Transportation Area) at all times and free of interruption, cost and payment of any nature for access to and away from the Government Accommodations.
- 33.2 Heliport accommodation. The Tenant shall permit all passengers, visitors, operators and guests of heliport accommodation and the Landlord its officers, employees, agents, contractors or any other persons authorized by the Landlord with or without vehicles to pass and repass on, along, over, by and through the Premises (including the Transportation Area) at all times and free of interruption,

cost and payment of any nature for access to and away from that heliport accommodation.

- 33.3 Landscaped deck. The Tenant shall permit all members of the public for all lawful purposes to the landscaped deck of the Cruise Terminal to pass and repass on, along, over, by and through a free and uninterrupted vehicular and pedestrian access (including elevators and escalators) within the Premises (including the Transportation Area) at all time during the opening hours (which said hours are to be determined by the Director of Leisure and Cultural Services at his sole discretion) of the landscaped deck of the Cruise Terminal and free of interruption, cost and payment of any nature for access to and away from the landscaped deck of the Cruise Terminal. The Tenant shall at its own cost and expense provide the vehicular and pedestrian access to the landscaped deck within the Premises, which can be used and accessed by the public, to the satisfaction of the Landlord.
- 33.4 Works. The Tenant shall permit the Landlord, the Immigration Department, Customs and Excise Department, Hong Kong Police Force, Department of Health, Civil Aviation Department, Marine Department and Leisure and Cultural Services Department their officers, employees, agents, contractors or any other persons authorized by the Landlord with or without material, tool, vehicles and equipment to pass and repass on, along, over, by and through the Premises (including the Transportation Area) for (i) loading and unloading necessary equipment and any items for the purpose of this clause (ii) carrying out fitting out, installation, alteration, testing, commissioning, repair and maintenance works; (iii) inspection of the Premises, Government Accommodations, heliport accommodation and landscaped decks of the Cruise Terminal; and (iv) carrying out day-to-day management within the Government Accommodations, heliport accommodation and landscaped decks of the Cruise Terminal at all time and free of interruption, cost and payment of any nature for the aforesaid purposes. The Tenant shall have no claim demand and/or action whatsoever against the Landlord in respect thereof.
- 33.5 Public buses and mini buses.
- (a) The Tenant shall permit public buses and green mini buses authorised by the Landlord to enter into the Premises and to pass and repass on, along over,

by and through all driveways within the Transportation Area within such period required by the Landlord and free of interruption, cost and payment of any nature for picking up and dropping off bus passengers, visitors and guests at lay-bys designated by the Landlord.

- (b) The Tenant shall permit the public bus operators, green mini bus operators and its officers, workmen and contractors authorized by the Landlord to enter into the Cruise Terminal at all reasonable time with or without materials, equipment, vehicles and tools and free of interruption, cost and payment of any nature for erecting, altering, maintaining, repairing and removing bus stop stands at the said lay-bys.
- (c) The Tenant is not entitled to impose any rents, fees and charges on parties relating to the use of these lay-bys, and the Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature in connection with this Clause 33.5 nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

- 33.6 Taxi. The Tenant shall permit taxi to enter into the Premises and to pass and repass on, along over, by and through all driveways within the Transportation Area at all time and free of interruption, cost and payment of any nature for picking up and dropping off passengers, visitors and guests. The Tenant is not allowed to impose any rents, fees and charges on parties relating to the use of the taxi pick up and drop off spaces. The Tenant shall have no claim, demand or action against the Landlord for any loss, damage or compensation in whatsoever nature in connection with this Clause 33.6 nor shall the Rent, Management Fees, Air Conditioning Charges, rates or other charges payable under this Agreement or any part thereof be reduced, abated or cease to be payable.

- 33.7 No claim. The Tenant hereby agrees that it and its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors and invitees shall not be entitled to claim against the Landlord and/or any other person for any loss, disturbance, annoyance, inconvenience in any form whatsoever (including

physical damage to the Premises) suffered or may have sustained by the Tenant or its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees as a result of or in connection with or arising from the exercise of any of the rights referred to in Clause 33. The Landlord shall not be regarded as being in breach of any provisions of this Agreement or in derogation of the grant thereunder by reason of exercising any of the rights referred to in Clause 33.

34. ON-SHORE POWER SUPPLY FACILITIES

34.1 Landlord's right of access. The Landlord, its agent, contractor and other persons authorized by the Landlord shall have a free and uninterrupted access to the Premises with or without material, tool, vehicles and equipment in order to deliver, install, operate, repair, maintain and replace on-shore power supply facilities in the on-shore power supply rooms as showed on the plan at Annex I (subject to revision in accordance with Clause 3.2) during the subsistence of this Agreement.

34.2 Tenant's assistance. The Tenant shall cooperate and assist the Landlord, its agent, contractor and other person authorized by the Landlord in the delivery, installation, operation, repair, maintenance and replacement of the on-shore power supply facilities.

34.3 Tenant as operator. If so required by the Landlord, the on-shore power supply facilities will be delivered to the Tenant for operation together with the on-shore power rooms and such ancillary area (collectively "Additional Area") which shall form part of the Premises. The Landlord will issue at least 1-month written notice to the Tenant confirming the date of delivery of the on-shore power supply facilities and the Additional Area and the Tenant is obliged to take up the facilities and the Additional Area on the specified date and at its own cost and expense operate the on-shore power supply facilities to the satisfaction of the Landlord throughout the Term.

If so required by the Landlord, the parties shall at their own costs enter into a supplemental agreement.

34.4 Landlord selecting operator. The Landlord reserves all rights to allow any party or company to manage and operate the on shore power supply facilities.

34.5 Delivery of on-shore power supply facilities. Upon delivery of the on-shore power supply facilities as stated in Clause 34.3 or operation of the on-shore power facilities by the party stated in Clause 34.4, the Tenant shall ensure that cruise vessels equipped with necessary facilities to use on-shore power shall, during their berthing at the Cruise Terminal, switch off their own electricity generators and use only power from the said on-shore power supply system and facilities.

34.6 No guarantee. There is no guarantee or warranty that the on-shore power supply facilities will be installed during the Term.

34.7 No liability. The Tenant shall have no claim against the Landlord for any loss, compensation, damage, costs or expenses arising from installation or non-installation and operation of the on shore power supply facilities.

35. DREDGING

35.1 Dredging works.

(a) When vacant possession of the First Berth and Second Berth is delivered to the Tenant, the Landlord shall at its own cost and expense complete the dredging works within zone A and zone B respectively to the levels as showed and marked on the plan at Annex II.

(b) The Landlord shall at its own cost and expense carry out dredging works within the zone C to the levels as showed and marked on the plan at Annex II after diversion works of the submarine gas main as showed on the plan at Annex II is completed.

(c) When the dredging work within zone C is near completion, the Landlord will issue a 3-month advance written notice to the Tenant confirming the completion date.

(d) There is no guarantee or warranty as to the completion date of dredging work within zone C during the Term.

(e) The Landlord reserves the right to amend the extent of zone A, zone B and zone C as showed on the plan at Annex II and the Landlord shall inform the

Tenant of such amendment in writing as soon as practicable.

- (f) The Tenant shall have no claim against the Landlord for any loss arising from the completion date of dredging works for zone C and amendment to the extent of zone A, zone B and zone C as showed on the plan at Annex II.
- (g) The Tenant acknowledges that prior to completion of dredging works within zone C as showed on the plan at Annex II, the Second Berth cannot accommodate cruise vessels with draft deeper than 7.6m. It is hereby agreed and declared that the Landlord does not expressly or impliedly represent or warrant that Second Berth can accommodate cruise vessel with draft less than 7.6m and all representations and warranties (if any) as to the berthing capacity of the Second Berth implied by law or otherwise are hereby expressly negated. The Tenant shall at its cost and expense conduct its own assessment on the berthing capacity of the Second Berth prior to completion of dredging work within zone C.

35.2 Maintenance of dredging zones.

- (a) Subject to the completion of dredging works for respective zones under Clauses 35.1(a) and 35.1(b), the Landlord shall at its own cost and expense:
 - (i) maintain the seabed of zones A, zone B and zone C at such levels as specified and required as shown and marked on the plan at Annex II throughout the Term; and
 - (ii) carry out maintenance dredging within zone A, zone B and zone C at locations where and when the seabed levels exceed 0.5m above the levels as shown and marked on the plan at Annex II.
- (b) The Tenant shall cooperate and assist the Landlord, its agent, contractor and other person authorized by the Landlord in carrying out maintenance dredging within zone A, zone B and zone C as aforesaid.

36. VIEWING BY PROSPECTIVE TENANTS

- 36.1 Viewing of Premises. The Tenant shall allow any prospective tenants, as notified by the Landlord, at all reasonable times subject to an advance written notice of two (2) days being given, to enter upon the Premises to view the condition of the Premises.
- 36.2 No liability. The Landlord shall not be liable to the Tenant for any loss to persons or properties arising from the entry of the prospective tenants and the Tenant shall also keep the Landlord indemnified against such claims.

37. YIELDING UP PREMISES

37.1 Yielding up condition.

- (a) The Tenant shall yield up the Premises with all fixtures, fittings, additions, installations, alterations, modifications and the Landlord's Provisions therein and thereto at the expiration of this Agreement in good clean tenantable substantial and proper repair and condition in accordance with all the stipulations herein contained together with all keys giving access to all parts of the Premises having removed all the trade furniture, fixtures and movable properties of the Tenant, its sub-tenants and licensees (including all vessels) and making good any damage to the Premises caused as a result thereof.
- (b) The Tenant shall also return to the Landlord the charging facilities and the video wall (if any) at the expiration of this Agreement in accordance with Clause 24.3 and Clause 14.3 respectively.

- 37.2 Reinstatement. Where the Tenant has made any alterations, additions, fixtures and fittings to the Premises, the Landlord may at its sole discretion require the Tenant at the Tenant's own cost and expense to reinstate or remove or do away with all or any part or portion thereof and to make good and repair in a proper and workmanlike manner any damage to the Premises and the Landlord's Provisions therein as a result thereof before delivering up the Premises to the Landlord. The Landlord shall serve a written notice to specify the yield up condition of the Premises on the Tenant at least ten (10) calendar months before the expiration of the Term.

The Landlord's notice shall be final, binding and conclusive on the Tenant and the Tenant shall comply with the Landlord's notice and yield up the Premises in the same condition as provided therein at its own cost and expense at the expiration of this Agreement.

- 37.3 Independent inspection. Prior to not less than eight (8) calendar months before the expiration of this Agreement, the Tenant shall at its own cost and expense engage a qualified independent professional to carry out investigation, inspection and assessment to the satisfaction of the Landlord in respect of the state and condition of the Premises, charging facilities, video wall (if any) and fixtures, fittings, installations, and those Landlord's Provisions maintained by the Tenant.
- 37.4 Report. Prior to not less than six (6) calendar months before the expiration of this Agreement, the Tenant shall submit a report prepared and certified by a qualified independent professional reporting on the state and condition of the Premises, the charging facilities, the video wall (if any) and the fixtures, fittings, installations and Landlord's Provisions to the Landlord. Such report shall be in a form approved by the Landlord.
- 37.5 Further remedial works. After receipt of the report in Clause 37.4, the Landlord shall give a written notice requiring the Tenant to carry out all works, if any, as may be necessary to make good, remedy and rectify any defects and want of repair or any breach, non-performance or non-compliance of the Tenant in respect of Clauses 37.1 and 37.2. The Tenant shall at its own cost and expense and within such time limit as may be specified by the Landlord in the said notice carry out the aforesaid works and complete the same to the satisfaction of the Landlord.
- 37.6 Completion report. Upon completion of the Tenant's work, the Tenant shall submit to the Landlord a completion report prepared and certified by a qualified independent professional. The report shall be in a form approved by the Landlord and shall contain such information and particulars as the Landlord may require including a certificate that all remedying works have been duly completed provided that such information and particulars may, if required or approved by the Landlord, be included in the final operation and annual maintenance

report to be submitted under Clause 11.9 instead of a separate report.

- 37.7 Early termination. In the event of early termination of this Agreement, the Tenant shall at its own cost and expense yield up the Premises (except the HKTB Accommodation and signage spaces used by the Landlord pursuant to Clause 29) and the fixtures, fittings, additions, installations, alterations, modifications and the Landlord's Provisions therein and thereto together with the charging facilities and the video wall (if any) in accordance with the conditions and time limit specified in a written notice issued by the Landlord. The said written notice shall be final, binding and conclusive on the Tenant. The Tenant shall not be entitled to object to the said written notice and shall have no right of claim for compensation whatsoever against the Landlord in connection with any matters arising from this sub-clause.
- 37.8 Registered contractors required. All dismantling and reinstatement works (including without limitation works that involve any alteration to or modification of or in any way associated with the building services system) to be carried out by the Tenant must be carried out by registered contractors stated in paragraph 4 of Technical Schedule at Annex XVIII.
- 37.9 Removal of debris, etc. The Tenant shall, at its own cost and expense, remove from the Premises and the Cruise Terminal all the trash, rubbish, debris and surplus building material produced from the Tenant's works. All costs and expenses associated thereof (including costs relating to generation and removal of waste which is payable to the Government and other competent authorities) shall be borne by the Tenant solely.
- 37.10 Right to claim consequential loss. The Landlord shall also have the right to claim against the Tenant for all loss consequential to or resulting from or arising out of the delay or failure of the Tenant to deliver up possession of the Premises and the fixtures, fittings, additions, installations, alterations, modifications and the Landlord's Provisions therein and thereto together with the charging facilities and the video wall (if any) in a condition acceptable to the Landlord on the expiration or early termination of this Agreement.

37.11 Failure to comply. Without limiting the generality of the foregoing, if the Tenant fails to comply with and perform its obligations under this Clause 37 and the Premises and the fixtures, fittings, additions, installations, alterations, modifications and the Landlord's Provisions therein and thereto together with the charging facilities and the video wall (if any) are not delivered up to the standards and satisfaction of the Landlord, the Landlord may (but shall not be obliged to) do all things necessary to effect such compliance and/or performance to the Landlord's satisfaction and recover all costs and expenses incurred thereof from the Tenant. The Landlord shall be entitled to charge interest at the rate as stipulated in Clause 5.7 on the amount owed from the date the Landlord incurs such costs and expenses until the date of payment.

37.12 Recovery of cost. The cost and expenses incurred thereof and interest shall be a debt from the Tenant to the Landlord and be recoverable forthwith by action or deduction of same amount to be made from the Deposit upon which the Tenant shall deposit with the Landlord the amount so deducted pursuant to Clause 40.5.

38. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

38.1 Due Incorporation and Capacity. The Tenant represents, warrants and undertakes to the Landlord in respect of each of the Tenant and the Guarantor as follows:

- (a) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated;
- (b) it has the requisite corporate power and authority to own and operate its assets and property and to engage in its business;
- (c) it has the full corporate power, right and authority to execute, deliver and perform under (in the case of the Tenant) this Agreement or (in the case of the Guarantor) the deed(s) and document(s) required to be executed by the Guarantor under Clause 41;
- (d) it has obtained all consents, approvals and authorizations required to validly execute and deliver (in the case of the Tenant) this Agreement or (in the case of the Guarantor) the deed(s) and

document(s) required to be executed by the Guarantor under Clause 41;

- (e) it has authorized its authorized representative to execute on its behalf (in the case of the Tenant) this Agreement or (in the case of the Guarantor) the deed(s) and document(s) required to be executed by the Guarantor under Clause 41; and
- (f) the execution, delivery and performance of (in the case of the Tenant) this Agreement or (in the case of the Guarantor) the deed(s) and document(s) required to be executed by the Guarantor under Clause 41 will not violate any provision of its articles of association or other organizational documents.

38.2 Others. The Tenant further represents, warrants and undertakes to the Landlord that:

- (a) all provisions (including representations and warranties) in the deed(s) and document(s) required to be executed by the Guarantor under Clause 41 have been and will be fully complied with during the Term;
- (b) all information provided by or on behalf of the Tenant to the Landlord in the tender submission and all the statement set out in the documents to be provided by the Tenant to the Landlord for tender are true, accurate and not misleading as from the time of their provision to the Landlord up to the expiry of the Term (or the early determination of the Term by the Landlord in accordance with this Agreement); and
- (c) the shareholding structure and Control of the Tenant is shown in the diagram in Annex XXII and such shareholding structure and Control of the Tenant has remained and will remain unchanged (save with the prior written approval of the Landlord which approval the Landlord may give or withhold at its sole discretion) from the date of this Agreement up to the expiry of the Term (or the early determination of the Term by the Landlord in accordance with this Agreement). "Control" for the purpose of this Clause 38.2(c) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or

policies of an entity, whether through the ownership of shares, or by contract or otherwise, and includes:

- (i) possession, directly or indirectly, of more than one half of the voting power of such entity, or
- (ii) power, directly or indirectly, to appoint a majority of the members of, or otherwise control, the board of directors or similar governing body of such entity.

39. INDEMNITY

39.1 Indemnity. The Tenant shall be wholly responsible for and indemnify the Landlord its officers agents servants contractors and workmen in full from and/or against:

- (a) all actions costs claims demands expenses damages and losses of any nature whatsoever which the Landlord its officer servants contractor agents or workman may suffer or incur in connection with loss of life personal injury and/or damage to Cruise Terminal arising from or out of any occurrences in upon or at the Premises or the use or occupation of the Premises or any part thereof caused by Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees or arising from the operation of Landlord's Provisions, systems, equipment, plant, machinery, charging facilities or video wall (if any) by the Tenant, its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees;
- (b) any tax outgoings or imposition which becomes payable either during the Term or after its ending by reason of whether directly or indirectly or in whole or in part any act omission negligence or default of the Tenant its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees and which but for such act or default or omission or negligence would not have been payable;
- (c) all actions costs claims demands expenses damages and losses arising as a result of any breach or non-observance of the Tenant's covenants in or other stipulations of this Agreement or by reason of

whether directly or indirectly or in whole or in part any act omission negligence or default of the Tenant its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees;

- (d) all actions costs claims demands expenses damages and losses caused directly or indirectly by the Tenant its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees or arising as a result of the escape of any liquid solid or gas originating from the Premises in particular but without limiting the generality of the foregoing caused directly or indirectly by the use or misuse waste or abuse of water gas or electricity or faulty fittings or fixtures of the Tenant;
- (e) all actions costs claims demands expenses damages and losses arising as a result of any dangerous, unsafe, hazardous, defective or damaged condition or operation of any part of the Premises or any of the fixtures fittings plant machinery Conduits or Landlord's Provisions or the charging facilities or video wall (if any) for the repair thereof which is the Tenant's responsibility under this Agreement;
- (f) all liabilities claims demands actions proceedings damages losses costs and expenses arising directly or indirectly from or incidental to the execution of alterations, additions or repairs to the Premises; and
- (g) all liabilities on the part of the Landlord under the Occupiers Liability Ordinance (Cap. 314).

40. SECURITY DEPOSIT

40.1 Provision of security deposit.

- (a) On or before signing of this Agreement, the Tenant shall pay to the Landlord a deposit in the total amount of six (6) months' of the highest ascertainable Monthly Fixed Rent during the Term or HK\$5,000,000.00, whichever is higher.
- (b) When the amount of the highest Revised Monthly Fixed Rent during the Review Period agreed or (as the case may be) determined after the mid term review in Clause 5.8 comes into effect exceeds the amount of deposit referred to in Clause 39.1(a), the

Tenant shall make a further deposit equal to the difference in the deposit held by the Landlord and the amount of six (6) months' of the highest ascertainable Revised Monthly Fixed Rents for the Review Period within seven (7) days from the date of the agreement of Revised Monthly Fixed Rents or (as the case may be) determination of the Revised Monthly Fixed Rents for the Review Period referred to in Clause 5.8. For the avoidance of doubt, if the amount of six (6) months' of the highest ascertainable Revised Monthly Fixed Rent during the Review Period agreed or (as the case may be) determined after the mid term review in Clause 5.8 comes into effect is lower than the amount of deposit paid by the Tenant, the Landlord shall not be required to refund part of the deposit to the Tenant.

- (c) The deposit referred to in Clause 40.1(a), together with all further deposit referred to in Clause 40.1(b) shall be referred to as the “**Deposit**”.

40.2 Purpose of Deposit. The Deposit shall be held by the Landlord to secure the due observance and performance by the Tenant of the covenants, agreements, stipulations and conditions herein contained and on the Tenant's part to be observed and performed.

40.3 Form of Deposit.

The Deposit shall be either in cash or in the form of a bank guarantee issued by a licensed bank in Hong Kong under Section 16 of the Banking Ordinance which is substantially in the same form annexed hereto as Annex XXIII. Without limiting the generality of the foregoing, the bank guarantee shall remain valid until the later of either (i) seven (7) months after the expiry or early termination of this Agreement or (ii) the date on which all the obligations and liabilities of the Tenant under this Agreement have been duly carried out, completed and discharged in accordance with the terms of this Agreement.

40.4 Bank guarantee becoming not effective.

- (a) To the intent that in the event that a bank guarantee provided under Clause 40.3 shall expire or be void, voidable or determined due to whatever cause, the amount payable under that bank guarantee shall be

replaced accordingly. The Tenant shall before the date on which the said bank guarantee expires or becomes void, voidable or determined (as the case may be) deliver to the Landlord a new bank guarantee in substitution for the bank guarantee then held by the Landlord. Upon receipt of the new bank guarantee abovementioned, the Landlord shall return to the Tenant the bank guarantee then held by it. Each new guarantee to be delivered by the Tenant to the Landlord shall be issued by a licensed bank in Hong Kong under Section 16 of the Banking Ordinance and shall be in substantially the same form as that delivered under Clause 40.3 save that the aggregate amount payable thereunder shall be an amount equal to the amount stipulated in Clause 40.1. The provisions of this Clause 40.4 shall apply to the new bank guarantee mutates mutandis.

- (b) Alternatively, if so requested by the Landlord, the Tenant shall forthwith deposit and maintain with the Landlord in cash such sum as shall be sufficient and adequate to supplement the bank guarantee(s) (if still valid) and the cash deposit then held by the Landlord so that the Landlord shall hold valid guarantee(s) (if any) and cash deposit for an aggregate amount equal to the amount stipulated in Clause 40.1.

40.5 Deduction. The Deposit shall be retained by the Landlord throughout the subsistence of this Agreement free of any interest to the Tenant and in the event of any breach or non-observance or non-performance by the Tenant of any of the covenants, agreements, stipulations or conditions herein contained the Landlord shall be entitled to terminate this Agreement in which event the Deposit may be forfeited to the Landlord. Notwithstanding the foregoing, the Landlord may at its option elect not to terminate this Agreement but to deduct from the Deposit any loss and expenses incurred by the Landlord in consequence of the breach non-observance or non-performance by the Tenant (whether directly or indirectly) by applying the cash deposit and/or enforcing the bank guarantee(s) in which event the Tenant shall as a condition precedent to the continuation of this Agreement either deposit with the Landlord the amount so deducted or provide a further bank guarantee to the Landlord in the amount of the sum so deducted and if the Tenant shall

fail to do within fourteen (14) days of deduction the Landlord shall forthwith be entitled to re-enter the Premises or any part thereof in the name of the whole and to terminate this Agreement in which event the Deposit may be forfeited to the Landlord as hereinbefore provided.

- 40.6 Refund of Deposit. Subject as aforesaid the Deposit shall be refunded to the Tenant by the Landlord without interest within seven (7) months after the termination of this Agreement and the delivery of vacant possession of the Premises to the Landlord and removal of all vessels away from the Premises in accordance with this Agreement and after the submission of the last audited income statement and the last Audited Accounts in accordance with Clauses 5.5(c)(i) and 5.5(d)(i) or within seven (7) months of the settlement in full of the last outstanding claim by the Landlord against the Tenant in respect of any breach non-observance or non-performance of any of the covenants, agreements, stipulations or conditions herein contained and on the part of the Tenant to be observed and performed whichever is the later. For the avoidance of doubt, the Tenant's failure to comply with Clause 42.4 is considered as a breach of this Agreement and the Landlord shall not be obliged to refund the Deposit to the Tenant prior to the Tenant's fulfilment of its obligations under Clause 42.4.

- 40.7 Transfer of Deposit. Notwithstanding anything herein contained, the parties hereto hereby expressly agree that in the event of the Landlord assigning or transferring the ownership of the Premises or any part thereof to any person (the "New Landlord") prior to the termination of the Term subject to and with the benefit of this Lease, the Landlord may transfer the cash held by the Landlord under Clauses 40 and 41.2(c) (less any deduction which the Landlord may make according to the terms of this Agreement) to the New Landlord and in that event the Tenant shall waive all claims against the Landlord for the refund of the said cash but nothing herein provided shall prejudice or affect the right of the Tenant to claim against the New Landlord for refund of the same AND a written notice sent by the Landlord or the Landlord's solicitors to the Tenant notifying the change of ownership of the Premises or any part thereof shall be conclusive evidence that the said cash has been transferred to the New Landlord unless contrary intention is expressed in the said notice.

The Tenant shall at its own cost and expense forthwith upon the request of the Landlord and/or the New Landlord deliver to the New Landlord a bank guarantee in favour of the New Landlord issued by a licensed bank in Hong Kong under Section 16 of the Banking Ordinance in the same form as provided by the Tenant to the Landlord in respect of this Agreement.

41. PERFORMANCE GUARANTEE

- 41.1 Deed of guarantee. This Agreement shall be conditional upon the Holding Company or controlling shareholder(s) of the Tenant to the satisfaction of the Landlord or any person acceptable to the Landlord (the "Guarantor") having executed a deed of guarantee in a form to be prescribed by the Landlord to guarantee the due punctual and diligent performance of the Tenant of all its obligations under this Agreement and to indemnify the Landlord against any claim of any nature whatsoever arising out of the use and occupation by the Tenant of the Premises. Without limiting the generality of the foregoing, the Guarantor shall take up the responsibility to assume all the obligations of the Tenant under this Agreement as if the terms, conditions and covenants herein contained were given by the Guarantor itself upon request by the Landlord.

- 41.2 Replacement of deed of guarantee. Without prejudice to the generality of Clause 41.1, in the case of death, insanity, unsound mind, disability, bankruptcy, liquidation, inability to pay debts or change in financial circumstances, reputation or background whatsoever of the Guarantor, the Tenant shall forthwith notify the Landlord in writing of the same. Irrespective of whether the Landlord has received any such notice from the Tenant, the Landlord shall have the right at any time after the occurrence of any of the aforesaid events serve a written notice onto the Tenant requiring the Tenant:

- (a) to procure one or more deed of guarantee from other Holding Company or controlling shareholder(s) of the Tenant to the satisfaction of the Landlord or any person(s) acceptable to the Landlord either in replacement of any of the existing deed of guarantee or in addition thereto; and/or

- (b) to provide a bank guarantee in the form as prescribed by the Landlord for an amount to be determined by the Landlord, and/or
- (c) to pay an additional cash for a sum to be determined by the Landlord

whereupon the Tenant shall procure such replacement or additional deed of guarantee be executed or bank guarantee be provided or the additional cash deposit be paid within fourteen (14) days from the date of the Tenant's receipt of the Landlord's aforesaid notice at the Tenant's own cost and expense. The failure of the Tenant to carry out its obligations under this clause shall be a material breach of this Agreement entitling the Landlord to terminate this Agreement by giving to the Tenant written notice to such effect to expire at any time without payment of compensation and recover possession of the Premises from the Tenant. Should the Landlord exercise the right to terminate this Agreement, the tenancy shall cease and determine and all the rights, titles and interests of the Tenant hereunder shall cease and terminate upon expiry of such notice but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions contained in this Agreement. The Tenant shall quit and deliver vacant possession of the Premises in accordance with the terms and conditions of this Agreement.

41.3 Direct enforcement. The Tenant hereby expressly acknowledges that the Landlord shall be entitled to at its sole discretion enforce the deed(s) of guarantee referred to in Clauses 41.1 and 41.2(a) and/or the bank guarantee referred to in Clause 41.2(b) and/or apply the cash referred to in Clause 41.2(c) without first having recourse to any other guarantee and/or indemnity or any other security, without taking any steps or proceedings against the Tenant or any other person and without resort to any other means of payment.

41.4 Fresh deed of guarantee. In the event of the Landlord assigning or transferring the ownership of the Premises or any part thereof, the Tenant hereby agrees that it shall, within fourteen (14) days from the date of written request of the Landlord, procure a fresh deed(s) of guarantee to be executed by the Guarantor or (as the case may be) fresh bank guarantee(s) to be executed in favour of the

New Landlord on the same terms and conditions of the deed(s) of guarantee as mentioned in Clauses 41.1 and 41.2(a) above or (as the case may be) the bank guarantee(s) on the same terms and conditions as mentioned in Clause 41.2(b).

42. LANDLORD'S RIGHTS TO TERMINATE

42.1 Landlord's right of re-entry.

- (a) The Landlord shall be entitled to re-enter upon the Premises at any time if:
 - (i) any part of the Rent, Management Fees, Air Conditioning Charges, rates or any other sum payable under this Agreement is unpaid for more than twenty-one (21) days after becoming due (whether formally demanded or not); or
 - (ii) there is any breach or non-performance or non-observance of any of the terms, conditions, provisions and covenants to be performed or observed by and on the part of the Tenant hereunder; or
 - (iii) the Tenant is insolvent which for the purposes of this Agreement means:
 - (A) the Tenant becomes bankrupt or goes into liquidation or a receiving order is made against it; or
 - (B) a receiver is appointed in respect of any of the Tenant's assets or the Tenant makes any composition or arrangement with creditors; or
 - (C) possession of any of the Tenant's assets is taken by a chargee or mortgagee; or
 - (D) any distress or execution is levied on the Premises or on any of the Tenant's assets; or
 - (E) the Tenant stops or suspends payment of its debts or is unable or admits it is unable to pay them; or

- (F) the Tenant enters into a scheme of arrangement with its creditors; or
- (G) the Tenant suffers prosecution in respect of non-payment of any money due to the Government or any person; or
- (H) any other similar event, action or proceeding occurs or is taken in respect of the Tenant in any jurisdiction; or
- (iv) the Premises ceases to operate as a cruise terminal; or
- (v) there is any assignment, subletting, licensing or parting with possession of the Premises or any part thereof without the written approval of the Landlord (if so required); or
- (vi) the Tenant fails to secure and maintain all required insurance; or
- (vii) any event occur or proceeding be taken with respect to the Tenant in any jurisdiction to which the Tenant is subject which has an effect equivalent or similar to any of the events or circumstances described above.
- (b) In any case set out in Clause 42.1(a), it shall be lawful for the Landlord at any time thereafter to re-enter on and upon the Premises or any part thereof in the name of the whole and thereupon this Agreement shall absolutely terminate but without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent claim or breach of any of the covenants, terms and conditions of this Agreement and the Deposit paid by the Tenant in accordance with Clause 40.1 shall be forfeited to the Landlord but without prejudice to the Landlord's right to claim against the Tenant for any loss or damage sustained by the Landlord.
- (c) Notwithstanding the foregoing, the Landlord may in any such event at its option elect not to terminate this Agreement but to deduct from the Deposit the amount of any costs, expenses, loss or damage incurred or sustained by the Landlord as the result

of the breach, non-observance or non-performance by the Tenant in the manner as stipulated in Clause 40.5.

- 42.2 Physical entry not required. A written notice served by the Landlord on the Tenant in manner hereinafter provided to the effect that the Landlord thereby exercises the power of termination and/or re-entry hereinbefore contained shall be a full and sufficient exercise of such power without physical entry on the part of the Landlord notwithstanding any statutory or common law provision to the contrary.
- 42.3 Costs and expenses. All costs and expenses incurred by the Landlord in demanding payment of overdue Rent and other overdue charges payable hereunder (if the Landlord elects to demand) and in exercising its rights and/or remedies (including the costs associated with the exercising of the right of re-entry) or in attempting to do so shall be paid by the Tenant and shall be recoverable from the Tenant as a debt.
- 42.4 Post expiry / early termination obligations.
 - (a) All bookings received by the Tenant after the expiry date or (as the case may be) the date of early termination of this Agreement and all bookings that are to be performed after the expiry date or (as the case may be) the date of early termination of this Agreement shall be cancelled and become null and void. The Tenant shall indemnify and keep the Landlord indemnified against any loss and liabilities arising from or incidental to the breach of this sub-clause.
 - (b) The Tenant acknowledges that it is critical for the Landlord to have continuity of the cruise terminal operation and the Tenant hereby agrees that it shall at its own cost and expense provide assistance to any third party appointed by the Landlord to take over the cruise terminal operation at the expiry of the Term or (as the case may be) the early termination of this Agreement for a period to be determined by the Landlord. This Clause 42.4 shall survive the expiration or early termination of this Agreement.

- (c) The Tenant shall deliver to the Landlord, upon the expiry of the Term or early termination of this Agreement, all data, books, records, manuals, working instructions, reports, keys to the Premises and any other information which the Landlord reasonably considers necessary or appropriate in order to achieve smooth delivery and subsequent operation of the Cruise Terminal.
- (d) For the avoidance of doubt, the sub-tenancies and the licences shall be absolutely determined on the same date of termination of this Agreement. The Tenant shall be solely liable for any claim for determination of the sub-tenancies and licences and shall indemnify the Landlord against any liability incurred by the Landlord to any third party.

43. GENERAL EXCLUSION OF LIABILITY

43.1 Exclusion of liability. It is hereby expressly agreed and declare that the Landlord (including its servants, contractors and agents) and the Property Manager shall not be held liable in any way to the Tenant its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees or to any other person for any loss (including loss of profit or of business or loss of life) injury damage nuisance annoyance or inconvenience which may be suffered by the Tenant its contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees or to any other person or any property however caused and in particular, but without limitation, caused by or in any way owing to:

- (a) any interruption, failure, malfunction, breakdown, suspension, reduction or termination of or defect in or any other condition of any of the services, machinery, plant, facility, services, equipment, installations or fixtures or the charging facilities or the video wall (if any) by reason of necessary repair or maintenance of any installations of apparatus or damage thereto or destruction thereof by fire, water, riot, acts of God or other cause beyond the Landlord's control or by reason of mechanical or other defect or breakdown or other inclement conditions or shortage of manpower, fuel, materials, electricity or water or by reason of labour disputes;

- (b) explosion, typhoon, landslide, subsidence, storm, fire, fumes, odours, smoke, electricity, falling plaster or any other liquid, gas or solid or substance or thing or overflow or leakage of water from any other part of the Cruise Terminal (whether the overflow or leakage is from any pipes, drains, water tanks, water apparatus, sprinkler system or other fire fighting or control apparatus) or defect or lack of repair in the piping, wiring and/or sprinkler system in the Cruise Terminal and/or any structure of the Cruise Terminal and/or any of the Landlord's fittings, fixtures, the charging facilities and the video wall (if any) and/or any defect in the Cruise Terminal;
- (c) any act, omission, default, misconduct or negligence of any attendant servant employee contractor or agent of the Landlord or the Property Manager in or about the performance or purported performance of any duty relating to the provision of the services;
- (d) any defect in the water or electricity supply or from any surge reduction variation interruption or termination in the water or electricity supply;
- (e) any accident or circumstances whatsoever occurring or any works whatsoever (and however extensive) being carried out at the Premises or any other part of the Cruise Terminal, the neighbouring properties of the Cruise Terminal or any part thereof or arising out of any defect or flaw whatsoever in or non-performance of any of the equipment products systems and processes utilised by the Landlord;
- (f) any works carried out, whether by the Landlord or otherwise, on or in respect of the Premises or any other part of the Cruise Terminal or any part thereof;
- (g) any attendant servant employee contractor or agent of the Landlord in or about the performance or purported performance of any duty relating to the Premises;
- (h) the act, omission, negligence or default of the tenants and occupiers of any other parts of the Cruise Terminal and their contractors, servants, agents, licensees, sub-tenants, officers, employees, visitors or invitees;

- (i) any want of security or safekeeping at the Cruise Terminal but without the generality of the foregoing provision (if any) by the Landlord of watchmen and caretakers or any mechanical or electrical systems of alarm of whatever nature. Nothing in this Agreement shall create any obligation on the part of the Landlord as to the safety or security of the Premises or any contents therein. Such responsibilities shall at all times rest with the Tenant; or
- (j) any act negligence default omission or misconduct of the Property Manager in its capacity of such manager or any failure in the management or maintenance of the Cruise Terminal or any act negligence default omission or misconduct of any agent contractor workman security officer cleaner caretaker or other person employed by the Landlord or any interruption of their services caused by illness, industrial action, shortage of personnel or materials or other cause not under the control of the Landlord;

nor shall the Rent, Management Fees, Air Conditioning Charges or any other sums due from the Tenant under this Agreement be reduced abate or cease to be payable on account of any of the foregoing.

44. SUSPENSION OF RENT

- 44.1 Rent abatement. If the Premises or any part thereof are rendered unfit for occupation by fire, water, storm, typhoon, defective construction, white ants, earthquake, subsidence of the ground or any calamity beyond the control of the Landlord and not attributable to any part on the part of the Tenant to observe and carry out its obligations herein contained and the policy or policies of insurance effected by the Landlord (if any) shall not have been vitiated and payment of the insurance proceeds shall not have been refused in whole or in part in consequence of any act neglect or default of the Tenant, the Monthly Fixed Rent or a fair proportion thereof according to the nature and extent of the damage sustained shall be suspended until the Premise shall again be rendered accessible and fit for occupation but subject to as aforesaid no compensation shall be payable by the

Landlord to the Tenant Provided That the Landlord shall not be obliged to reinstate the Premises so damaged or destroyed if by reason of their condition or any ordinance or regulations or other circumstances beyond the control of the Landlord it is not in its opinion practicable or reasonable so to do.

- 44.2 Termination by destruction of Premises. In circumstances when the whole or substantial part of the Premises have been rendered inaccessible or unfit for cruise terminal use and should the Premises not have been reinstated in the meantime, either the Landlord or the Tenant may at any time after six (6) months from the occurrence of such damage or destruction or inaccessibility give to the other of them notice in writing to terminate this Agreement and thereupon the same and everything herein contained shall cease and be void as from the date of occurrence of such destruction or damage or order of the Premises becoming inaccessible or unfit for cruise terminal use but without prejudice to the right and remedies of either party against the other in respect of any antecedent claim or breach of the agreement, stipulation, term and conditions herein contained or of the Landlord in respect of the Rent, Management Fees, Air Conditioning Charges, rates or any other sums payable hereunder prior to the coming into effect of the suspension.

45. GOVERNING LAW AND DISPUTE RESOLUTION

- 45.1 Governing law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Hong Kong Special Administrative Region.
- 45.2 Dispute resolution.
 - (a) Unless otherwise provided in this Agreement and in particular under Clauses 5.5(e) and 5.8(a)(viii), if any dispute or difference in respect of any matter under, arising from or relating to this Agreement (a "Dispute"), including any Dispute regarding the validity, breach or termination of any provision of this Agreement, shall arise between the parties, either party shall serve a notice in writing (a "Dispute Notice") on the other party. Each Dispute Notice shall set out the nature and extent of the Dispute so notified. Either party may then request

the Dispute be referred to mediation at the HKIAC and in accordance with the HKIAC's then current Mediation Rules.

- (b) If neither party requests a Dispute be referred to mediation within ninety (90) days of the service of the relevant Dispute Notice, or if any mediation is abandoned by the mediator or is otherwise concluded without the Dispute being resolved, or if any mediation has not been concluded within ninety (90) days of the service of the relevant Dispute Notice, either party may, within one hundred and eighty (180) days of the service of the relevant Dispute Notice, give notice in writing to the other party of its intention to commence arbitration (a "**Notice of Intention to Commence Arbitration**"). Any Notice of Intention to Commence Arbitration shall identify the Dispute(s) in relation to which it is served, the relevant Dispute Notice(s) and, if applicable, any part of the relevant Dispute that may have ceased to be in dispute since service of the Dispute Notice.
- (c) Either party may submit and refer Disputes set out in any one or more Notice(s) of Intention to Commence Arbitration to the HKIAC for final resolution by arbitration in accordance with the HKIAC Administered Arbitration Rules then in force, as the same may be modified by this clause. Nothing in this Agreement shall prevent any facts or matters being raised by way of set-off or counterclaim in any arbitration. The seat of arbitration shall be Hong Kong. The arbitration shall be conducted in Hong Kong save as otherwise may be agreed by the parties in writing. There shall be three arbitrators. The arbitration proceedings shall be conducted and recorded in English. The award of the arbitrators shall be final and binding on the parties. The cost of arbitration shall be borne by the parties in equal shares on an interim basis unless the arbitral tribunal shall order otherwise. Final disposition of costs shall be subject to the arbitral tribunal's discretion.
- (d) Each party shall continue to be bound by and perform its obligations pursuant to the terms and conditions of the Agreement notwithstanding any

Dispute Notice or the commencement of mediation or arbitration.

- 45.3 **Process agent.** [applicable only if the Tenant is a foreign party] The Tenant hereby irrevocably appoints [*] as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process [(including any notices and documents in mediation and arbitration proceedings)] in Hong Kong. If for any reason the agent named above (or its successor) no longer serves as agent of the Tenant for this purpose, the Tenant shall promptly appoint a successor agent satisfactory to the Landlord, notify the Landlord and deliver to the Landlord a copy of acceptance of appointment of the new process agent, provided that until the other parties receive such notification, they shall be entitled to treat the agent named above (or its said successor) as the agent of the Tenant for the purposes of this Clause 45.3. The Tenant agrees that any such legal process shall be sufficiently served on it if delivered to such agent for service at its address for the time being in Hong Kong whether or not such agent gives notice thereof to the Landlord.

46. MISCELLANEOUS

46.1 Confidentiality.

- (a) The Tenant undertakes to the Landlord that it shall at all times treat as strictly confidential, and shall at all times procure the Related Parties and their respective directors, officers, representatives, agents, employees and advisers treat as strictly confidential, all information (whether oral, graphic, written or in electronic form) which it receives or obtains as a result of entering into or performing this Agreement (the "**Confidential Information**"), including the existence, provisions and subject matter of this Agreement and information relating thereto and information relating to the negotiations and communications between the parties leading up to this Agreement.
- (b) The restrictions contained in Clause 46.1(a) shall not apply so as to prohibit disclosure or use of any information if and to the extent:

- (i) the disclosure or use is required or requested by law or by any securities exchange or supervisory or regulatory or governmental body pursuant to rules to which the Tenant or its Holding Companies are subject;
- (ii) the disclosure is made by the Tenant to its directors, officers, representatives, agents, employees or advisers for purposes relating to this Agreement on terms that (i) such directors, officers, representatives, agents, employees or advisers are notified of the provisions of Clause 46.1(a) in respect of such information; and (ii) the recipient has entered into, or is subject to, obligation of confidentiality similar to those contained in the Clause;
- (iii) the information becomes publicly available (other than by a breach of this Agreement or any other obligation of confidence); or
- (iv) the disclosure or use is required for the purpose of any judicial proceedings arising out of this Agreement;

provided always that prior to disclosure or use of any information pursuant to Clause 46.1(b)(i), the Tenant shall promptly notify the other parties of such requirement and shall consult with the Landlord where lawful and feasible and give due consideration to their reasonable requirements before complying with such requirement.

- (c) The Tenant's obligations and restrictions under this Clause 46.1 shall take effect immediately on and from the date of this Agreement and shall continue to apply and bind the Tenant even if this Agreement shall have been expired or for whatever reason be cancelled, rescinded or terminated.
- (d) If for whatever reasons there shall be any breach of this clause, then without prejudice to all the Landlord's rights and remedies, the Landlord shall be entitled to an injunction to prevent a breach and/or continued breach and/or any threatened breach of the Tenant's obligations and restrictions hereunder and to claim against the Tenant for any

loss, damages, cost and expenses which the Landlord may incur or sustain as a result of such breach and/or threatened breach.

The Tenant shall indemnify the Landlord against all loss, damages, cost and expenses which the Landlord may incur or sustain as a result of such breach and/or threatened breach.

46.2 Force Majeure.

The Landlord is neither in breach of any of its obligations under this Agreement nor liable for any delay or failure in performance of any of its obligations under this Agreement, to the extent that its performance is prevented, impeded or delayed by reason of casualties, acts of God (including, without limitation, typhoons, tornadoes, floods, earthquakes and other forms of inclement weather), acts of the public enemy, government embargo restrictions, labor strikes, or action or inaction on the part of public utilities or governmental, statutory, public or competent authority.

46.3 Notice.

- (a) Any notices, requests and other communications required or permitted hereunder shall be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid or courier) to the parties at the following addresses or facsimile numbers:
 - (i) Landlord: [set out particulars]
 - (ii) Tenant: [set out particulars]
- (b) All such notices, requests and other communications will:
 - (i) if delivered personally to the address as provided in this Clause 46.3, be deemed given upon delivery;
 - (ii) if delivered by facsimile transmission to the facsimile number as provided in this Clause 46.3, be deemed given when confirmation of its transmission has been recorded by the sender's facsimile machine; and

- (iii) if delivered by mail or courier in the manner described above to the address as provided in this Clause 46.3, be deemed given three (3) working days after posting it.
 - (c) Any party may from time to time change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party in accordance with this Clause 46.3.
- 46.4 Severability. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 46.5 Specific performance. The Tenant acknowledges and agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Landlord shall be entitled to preliminary relief to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which it may be entitled by law or equity.
- 46.6 Waiver.
- (a) Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by the party waiving such term or condition.
 - (b) No waiver by a party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

- (c) The acceptance by the Landlord of Rent, Management Fees, Air Conditioning Charges, rates or any other sums payable hereunder shall not be deemed to operate as a waiver by the Landlord of any right to proceed against the Tenant.
- 46.7 Rights and remedies cumulative.
- (a) Each and all of the various rights, powers and remedies of a party will be considered to be cumulative with and in addition to any other rights, powers and remedies which such party may have to seek at law or in equity in the event of the breach of any of the terms of this Agreement.
 - (b) The exercise or partial exercise of any right, power or remedy will neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.
- 46.8 Entire agreement. This Agreement contains the entire agreement between the parties with respect to the matters covered hereby and supersede any and all other prior written or oral communications, negotiations, commitments, writings, representations and warranties between the parties with respect thereto. Save and except any representation and warranty of the Landlord expressly stipulated in this Agreement, no representation and warranty (whether relating to the condition of the Premises or any other part of the Cruise Terminal) is given by the Landlord (whether expressed or implied). Each party, acknowledges that in entering into this Agreement, it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty other than as expressly set out in this Agreement. Nothing in this Clause 46.8 shall limit or exclude any liability for fraud.
- 46.9 Final, binding and conclusive. Under this Agreement, the Landlord's decision, determination or calculation of certain matters is final or binding or conclusive and under this Agreement certain matters are subject to the Landlord's discretion. The Tenant hereby expressly acknowledges and agrees that:
- (a) such arrangement is reasonable, appropriate and acceptable as, inter alia, the arrangement will avoid uncertainties and disputes and will facilitate the

- smooth operation of the Cruise Terminal to the benefit of both parties;
- (b) such arrangement shall be valid and enforceable at all times; and
 - (c) the Landlord's decision, determination or calculation shall be final, binding and conclusive and the relevant matter shall not be subject to Clause 45.2.
- 46.10 Counterpart. This Agreement may be executed in any number of counterparts, all of which shall be deemed an original, but all of which together will constitute one and the same instrument.
- 46.11 Legal cost and stamp duty. Each party shall pay its own legal costs for the preparation or approval of this Agreement. The Tenant shall bear the adjudication fee and fifty (50%) per cent of the stamp duty (if any) payable on this Agreement and its counterpart. Section 42(2) of the Stamp Duty Ordinance (Cap. 117) shall be deemed to be incorporated herein.
- 46.12 Landlord's works and approval. That where in this Agreement, it is provided that:-
- (a) The Landlord or its duly authorized officers shall or may carry out works of any description on the Premises or any part thereof or outside the Premises (whether on behalf of the Tenant or on the failure of the Tenant to carry out such works or otherwise) at the cost of the Tenant or that the Tenant pay or repay to the Landlord or its duly authorised officer on demand the cost of such works, such cost shall include such supervisory and overhead charges as may be fixed by the Landlord or by its duly authorized officers.
 - (b) Where prior approval of the Landlord or its duly authorized officers is required, they may give the approval on such terms and conditions as they see fit or refuse it at their absolute discretion.
- 46.13 Continuance of provisions. The provisions of Clauses 5.6, 7.2(e), 42.4(b) and 46.1 shall continue to apply even after the expiration or early termination of this Agreement. The Landlord shall hold the Deposit to secure the due observance and performance by the Tenant of the covenants under Clauses 7.2(e) and 42.4(b).

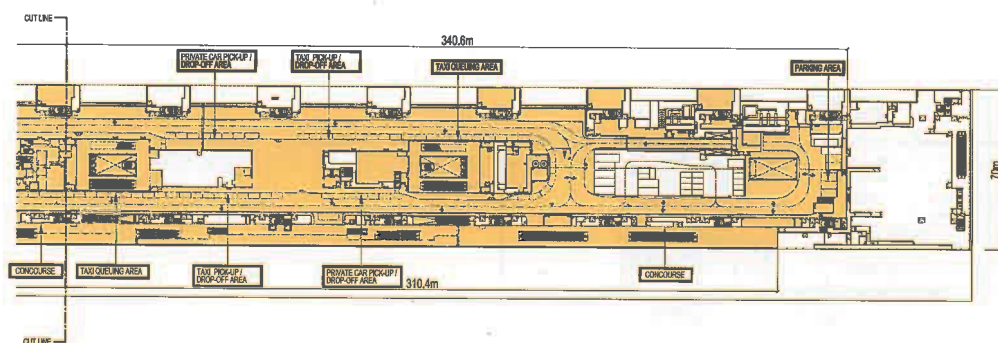
- 46.14 Area outside the Premises. Subject to the Landlord's prior written approval (which can be given or withheld at the Landlord's sole discretion), the Tenant may use and occupy area within the Cruise Terminal that does not form part of the Premises. The Landlord may impose any conditions it deems appropriate to any approval.
- 46.15 No claim against the Landlord. Despite any loss, damage, nuisance or disturbance that may be caused to the Tenant or other person, the Landlord shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Tenant or any other person (whether arising out of or incidental to the fulfilment of the Tenant's obligation under this Agreement or the exercise of the rights by the Landlord under this Agreement (including without limitation the right of re-entry)) or otherwise. No claim for compensation or otherwise shall be made against the Landlord by the Tenant in respect of such loss, damage, nuisance or disturbance.

IN WITNESS whereof the Commissioner for Tourism being duly authorised by the Chief Executive so to do has executed this Agreement for and on behalf of the Chief Executive by setting his hand and seal and the Tenant by affixing its common seal hereunto the day and year first above written.

SIGNED, SEALED AND)
DELIVERED by)
)
)
for on and on behalf of the Chief)
Executive of the Hong Kong)
Special Administrative Region)
in the presence of :-)

SEALED with the)
COMMON SEAL of the Tenant)
and SIGNED by)
)
)
in the presence of :-)

The site plan illustrates the layout of the Beijing National Aquatics Center and its surrounding facilities. The main building is a large, irregularly shaped structure with a complex internal layout. To the left of the building is a long, narrow concourse area. To the right of the building is a large parking area. The plan also shows various other areas, including a concourse, a parking area, a taxi queuing area, and a concourse. Dimensions are provided for several areas: 207.8m for the main building, 365.8m for the concourse, and 207.8m for the parking area. The plan is oriented with North at the top, indicated by a north arrow.



FIRST FLOOR PLAN

LEGENDS:

 TENANCY AREA WITHIN CRUISE TERMINAL BUILDING

239.6m

215m

PRIVATE CAR PICKUP / DROP-OFF AREA

COACH PICKUP AND DROP-OFF AREA

BAGGAGE HANDLING AREA

PARKING AREA

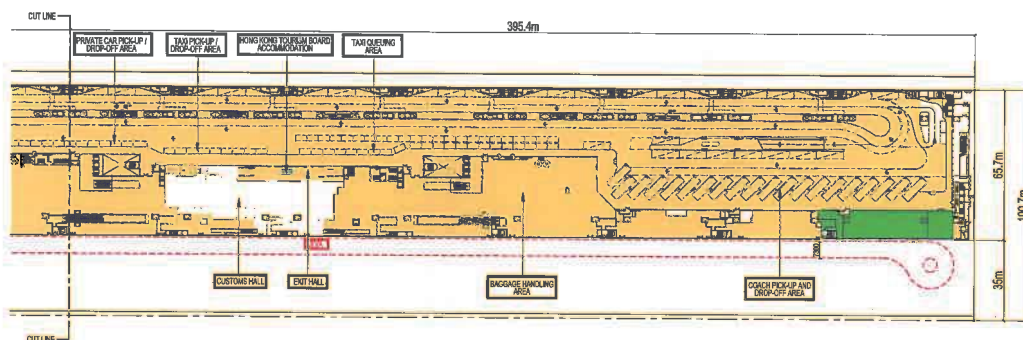
ANCILLARY OFFICE AREA

HEAVY GOODS VEHICLE PARKING FOR LONG TERM POLICE FORCE (11m x 3.5m)

PARKING FOR MOTORSPORT DEPARTMENT (9m x 3.5m)






CONTAINER TRUCK PARKING FOR CUSTOMS & EXCISE DEPARTMENT (4m x 5m)

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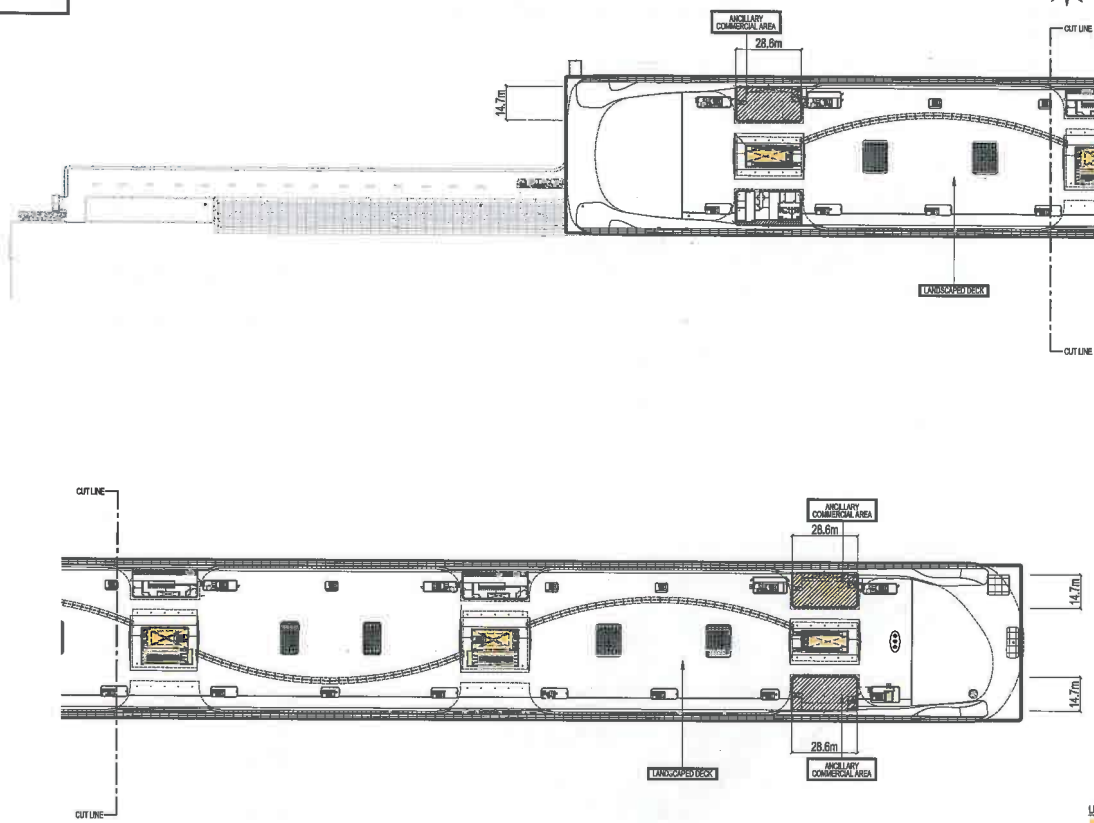
GROUND FLOOR PLAN

LEGENDS:

-  TENANCY AREA WITHIN CRUISE TERMINAL BUILDING
-  ON-SHORE POWER SUPPLY PLANT ROOM
-  HOTEL ACCOMMODATION
-  ALTERNATIVE EVA WITHIN APRON AREA (AEVA)
-  VEHICULAR ACCESS POINT

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BY LANDLORD

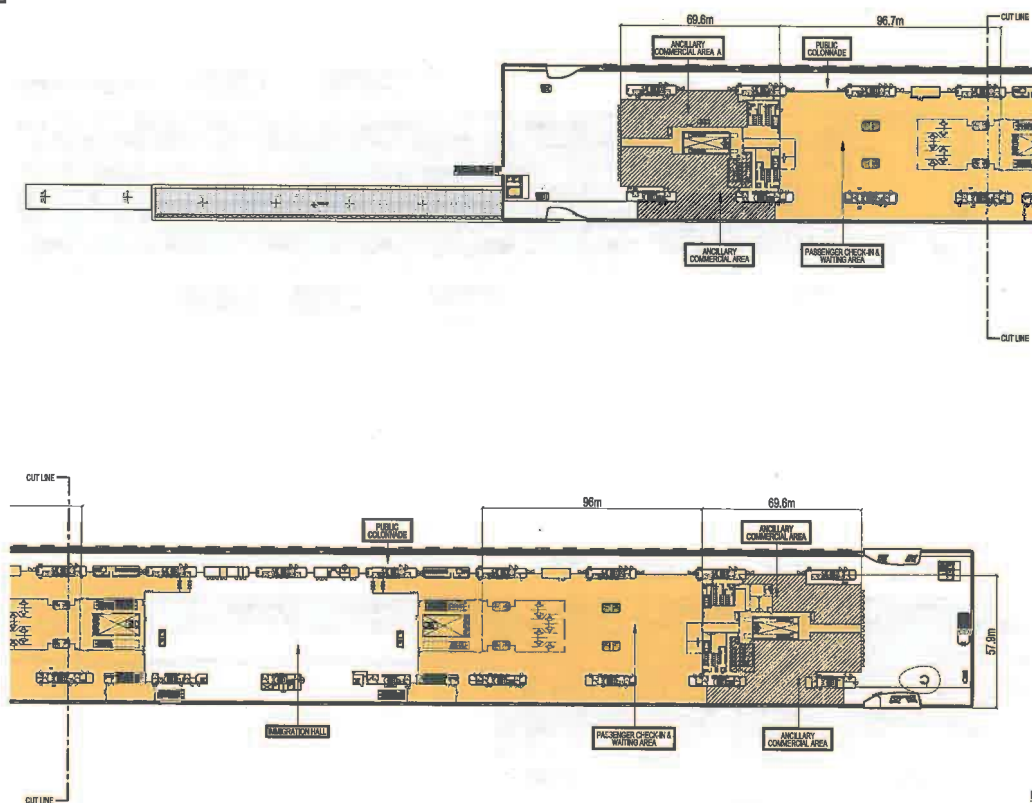
ANNEX I



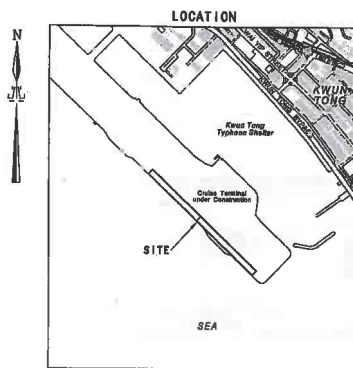
ROOF PLAN

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ANNEX I

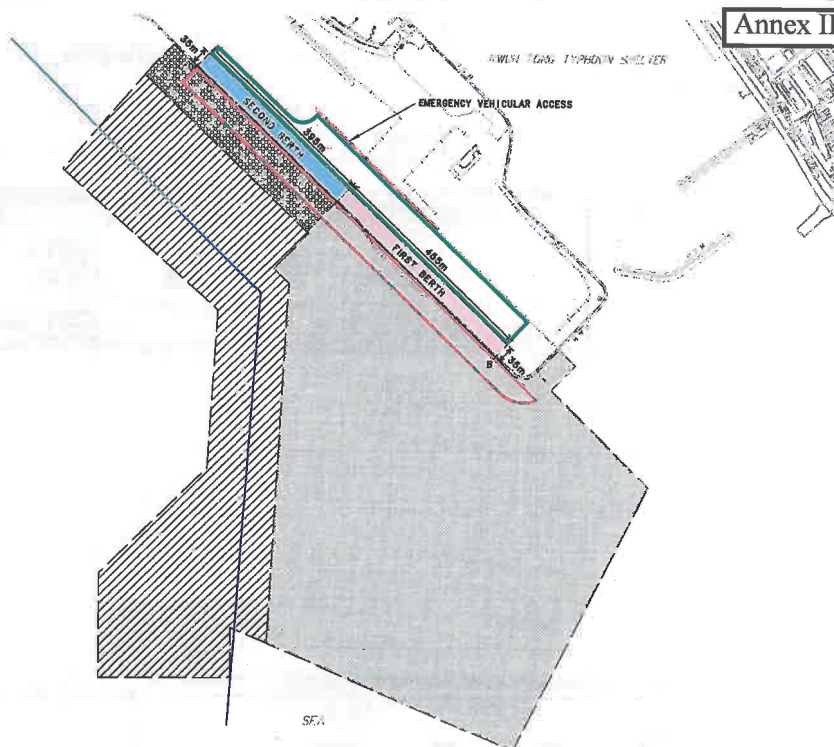


SECOND FLOOR PLAN



B, C AND D CLAUSES REFER

-  DREDGING ZONE A
(TO BE DREDGED DOWN TO -12m CHART DATUM)
-  DREDGING ZONE B
(TO BE DREDGED DOWN TO -12m CHART DATUM)
-  DREDGING ZONE C
(TO BE DREDGED DOWN TO -12m CHART DATUM)
-  AREA ALONGSIDE OF THE BERTH STRUCTURE
IN DREDGING ZONE A AND DREDGING ZONE B
(TO BE DREDGED DOWN TO -13m CHART DATUM)
-  THE EXTENT OF CRUISE TERMINAL BUILDING
-  SUBMARINE GAS PIPELINE



FOR IDENTIFICATION PURPOSES ONLY

Plan Prepared by District Survey Office, Kowloon
Lands Department

NEW CRUISE TERMINAL

File No. (72) in DSO/K 005/2007 II
Survey Sheet No. 11-NE-22A, 22B, 22C, 22D
Layout Plan No.
Reference Plan No.
PLAN No. KMB181a

Date : 08/03/2011

Annex III

Basic Design Parameters of Cruise Terminal

I	Cruise Terminal	
(a)	Number of Berths	2
(b)	Length of Apron Area	850 metres (Please refer to Clause 20 for details)
(c)	Water Depth	12 metres to 13 metres for dredging (Please refer to Plan at Annex II for details)
(d)	Air draft restriction	Nil
(e)	Custom, Immigration and health quarantine operation	To clear 3000 passengers per hour
II	Cruise Vessel that can berth at Cruise Terminal	
(a)	Displacement Tonnage	110,000
(b)	Gross Tonnage	220,000
(c)	Length Overall	360 metres

**Handover Conditions of the Premises within the Cruise Terminal Building
(Subject to change made by the Landlord)**

Item No.	Areas	Finishes	Fixtures and Furniture	Air Conditioning & General Mechanical Ventilation	Power/ Telecommunication/ IT provision/ Lighting	Domestic Appliances	Standard Fire Services Installation in compliance with FSD Requirements	Plumbing, Drainage & Town Gas Installation
Terminal Operation Area								
1	Passenger Check-in Areas	Floor: granite tile Wall: curtain wall Ceiling: false ceiling /acoustic decorative panel	N/A	A/C provided General mechanical ventilation	13A Power sockets LAN points General lighting	N/A	Yes	N/A
2	Passenger Waiting Areas	Floor: granite tile Wall: curtain wall Ceiling: false ceiling /acoustic decorative panel	N/A	A/C provided General mechanical ventilation	13A Power sockets General lighting	N/A	Yes	N/A
3	Office at Check-in area	Floor: carpet tile Wall: curtain wall Ceiling: false ceiling /decorative acoustic panel	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
4	Security Area	Floor: granite tile Wall: emulsion paint Ceiling: acoustic decorative panel	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone/LAN points General lighting	N/A	Yes	N/A
5	Concourse	Floor: carpet tile Wall: curtain wall Ceiling: aluminum panels	N/A	A/C provided General mechanical ventilation	13A power sockets General lighting	N/A	Yes	N/A
6	Baggage Laydown Area	Floor: concrete with hardener Wall: emulsion paint Ceiling: acrylic paint /decorative acoustic panels	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone points General lighting	N/A	Yes	N/A
7	Baggage Thru Area	Floor: concrete with hardener Ceiling: emulsion paint	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone points General lighting	N/A	Yes	N/A
8	Exit Waiting Area	Floor: granite tile Wall: granite stone or aluminum Ceiling: false ceiling /aluminum panels	N/A	A/C provided General mechanical ventilation	13A power sockets General lighting	N/A	Yes	N/A
9	Data Room	Floor: carpet tile/raised floor system Wall: emulsion paint Ceiling: false ceiling	N/A	A/C provided	13A power sockets LAN points General lighting	N/A	Yes	N/A
10	Store Room	Floor: concrete with hardener Wall: emulsion paint Ceiling: emulsion paint	Shelves	General mechanical ventilation	13A power sockets General lighting	N/A	Yes	N/A
11	Toilets	Floor : tiles Wall: Tiles	Toilet provisions based on	General mechanical ventilation	General lighting	N/A	Yes	Wash basin with water supply,

Item No.	Areas	Finishes	Fixtures and Furniture	Air Conditioning & General Mechanical Ventilation	Power/ Telecommunication/ IT provision/ Lighting	Domestic Appliances	Standard Fire Services Installation in compliance with FSD Requirements	Plumbing, Drainage & Town Gas Installation
		Ceiling: false ceiling	requirements of the Building (Standard of Sanitary Fittings, Plumbing, Drainage Works and Latrines) Regulations					Drainage outlets
Ancillary Office Area								
12	Secondary Security Operations Centre	Floor: carpet tile/raised floor system Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Window blinds	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
13	Primary Security Operations Centre	Floor: carpet tile/raised floor system Wall: emulsion paint Ceiling: emulsion paint	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
14	Forklift Station Room	Floor: concrete with hardener Ceiling: emulsion paint	N/A	General mechanical ventilation	13A power sockets Special power supply for battery charging General lighting	N/A	Yes	N/A
15	Stevedore Office Reception Area	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Windows blinds Reception-counter	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN/ TV points General lighting	N/A	Yes	N/A
16	Stevedore Office	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Window blinds	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
17	Stevedore office Staff Restroom and Pantry	Floor: vinyl Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board	A/C provided General mechanical ventilation	13A power sockets General lighting	Wall clock Refrigerator	Yes	Wash basin with cold/hot water supply Drainage outlets
18	Maintenance Staff Restroom and Pantry	Floor: vinyl Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board	A/C provided General mechanical ventilation	13A power sockets Telephone points General lighting	Wall clock Refrigerator Electric tea urn	Yes	Wash basin with cold/hot water supply Drainage outlets
19	Maintenance Office	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Window blinds Shelves	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
20	Terminal Operator Staff Restroom and Pantry	Floor: vinyl Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board	A/C provided General mechanical ventilation	13A power sockets Telephone point General lighting	Wall clock refrigerator	Yes	Wash basin with cold/hot water supply Drainage outlet
21	Terminal Operator Office - Reception Area	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Window blinds	A/C provided General mechanical ventilation.	13A power sockets Telephone/Fax/LAN/TV points	N/A	Yes	N/A

Item No.	Areas	Finishes	Fixtures and Furniture	Air Conditioning & General Mechanical Ventilation	Power/ Telecommunication/ IT provision/ Lighting	Domestic Appliances	Standard Fire Services Installation in compliance with FSD Requirements	Plumbing, Drainage & Town Gas Installation
22	Terminal Operator Office	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	Tack board Wyte board Window blinds	A/C provided General mechanical ventilation	General lighting 13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
23	Toilets at Terminal Operator's office	Floor: ceramic tile Wall: ceramic tile Ceiling: acrylic paint	Wash basins Soap dispenser Cubicle partition, Countertop Mirror	General mechanical ventilation	General lighting	Face/Hand dryer	Yes	Wash basin with cold water supply Drainage outlets
24	Changing and Lockers Rooms	Floor: ceramic tile Wall: ceramic tile Ceiling: acrylic paint	Steel lockers A bench	General mechanical ventilation	13A power sockets General lighting	N/A	Yes	N/A
25	Storage Room	Floor: vinyl/concrete with hardener Wall: emulsion paint Ceiling: emulsion paint	Windows blinds/Shelves	General mechanical ventilation	13A power sockets General lighting	N/A	Yes	N/A
26	Provisioning Security Booth 1,2,3	Floor: vinyl Wall: emulsion paint Ceiling: false ceiling	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone/Fax/LAN points General lighting	N/A	Yes	N/A
Ancillary Commercial Area								
27	Ancillary Commercial Areas	Floor : concrete flooring Wall: glass wall/cement plaster Ceiling: no false ceiling	N/A	Chilled water supply with isolating valves Provisions for general mechanical ventilation	13A power sockets Telephone/LAN/ Fax line/TV socket points General lighting	N/A	Yes	Fresh water supply points Drainage system Gas supply point
27a	Ancillary Commercial Area A (with provisions for changing to a commercial kitchen for banqueting operations)	Floor: concrete flooring Wall: glass wall/cement plaster Ceiling: no false ceiling	N/A	Chilled water supply with isolating valves General mechanical ventilation	13A power sockets Telephone/LAN/ Fax line/TV socket points General lighting	N/A	Yes	Fresh water supply points Drainage system Gas supply point
28	Hong Kong Tourism Board Accommodation	Floor: granite tile Wall: granite or aluminum panel Ceiling: false ceiling/aluminum panel	A counter with roller shutter and built-in literature stands for publications	A/C provided General mechanical ventilation	13A power sockets Telephone/LAN/Fax points General lighting	N/A	Yes	N/A
29	Money Exchange Office	Floor: carpet tile Wall: emulsion paint Ceiling: false ceiling	N/A	A/C provided General mechanical ventilation	13A power sockets Telephone/LAN/FAX points General lighting	N/A	Yes	N/A
30	Toilets	Floor : tiles Wall: Tiles Ceiling: false ceiling	Toilet provisions based on requirements of the Building (Standard of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations	General mechanical ventilation	General lighting	N/A	Yes	Wash basin with water supply Drainage outlets

Annex V
(Tender Addendum No. 1)

Schedule of the Premises
(Subject to change made by the Landlord)

(a) **Apron Area (Please refer to the plan at Annex I, II and VIII)**

Berths	Dimensions
First Berth	35 m (width) x 455 m (length)*
Second Berth	35 m (width) x 395 (length)*

* Subject to those government parking spaces marked on the plan at Annex I and VIII.

(b) **Premises within Cruise Terminal Building**

Items	Floor Area#
Terminal Operation Area	30,685 m ²
Ancillary Commercial Area	5,600 m ²
Ancillary Office Area	843 m ²
Transportation Area	50,215 m ²
Parking Area	4,795 m ²
	92,138 m ²

The figures are subject to final measurement of the as-built drawings of the Premises.

Annex VI

Schedule of Parking Area
(Subject to change made by the Landlord)

(I) **Parking Spaces**

Item	Category	Number
(a)	Private Vehicles (Dimension 5m x 2.5m x 2.4m)	120
(b)	Good Vehicles (Dimension 7 m x 3.5 m x 3.5m)	5
(c)	Good Vehicles (Dimension 11m x 3.5m x 4.7m)	2
(d)	Motor Cycles	5

(II) **Loading/Unloading Spaces**

Item	Category	Number
(a)	Private Vehicles (Pick Up/Drop Off Space)	1
(b)	Good Vehicles (Dimension 7 m x 3.5 m x 3.5m)	6
(c)	Good Vehicles (Dimension 11m x 3.5m x 4.7m)	3
(d)	Container Vehicles (Dimension 16m x 3.5m x 4.7m)	1

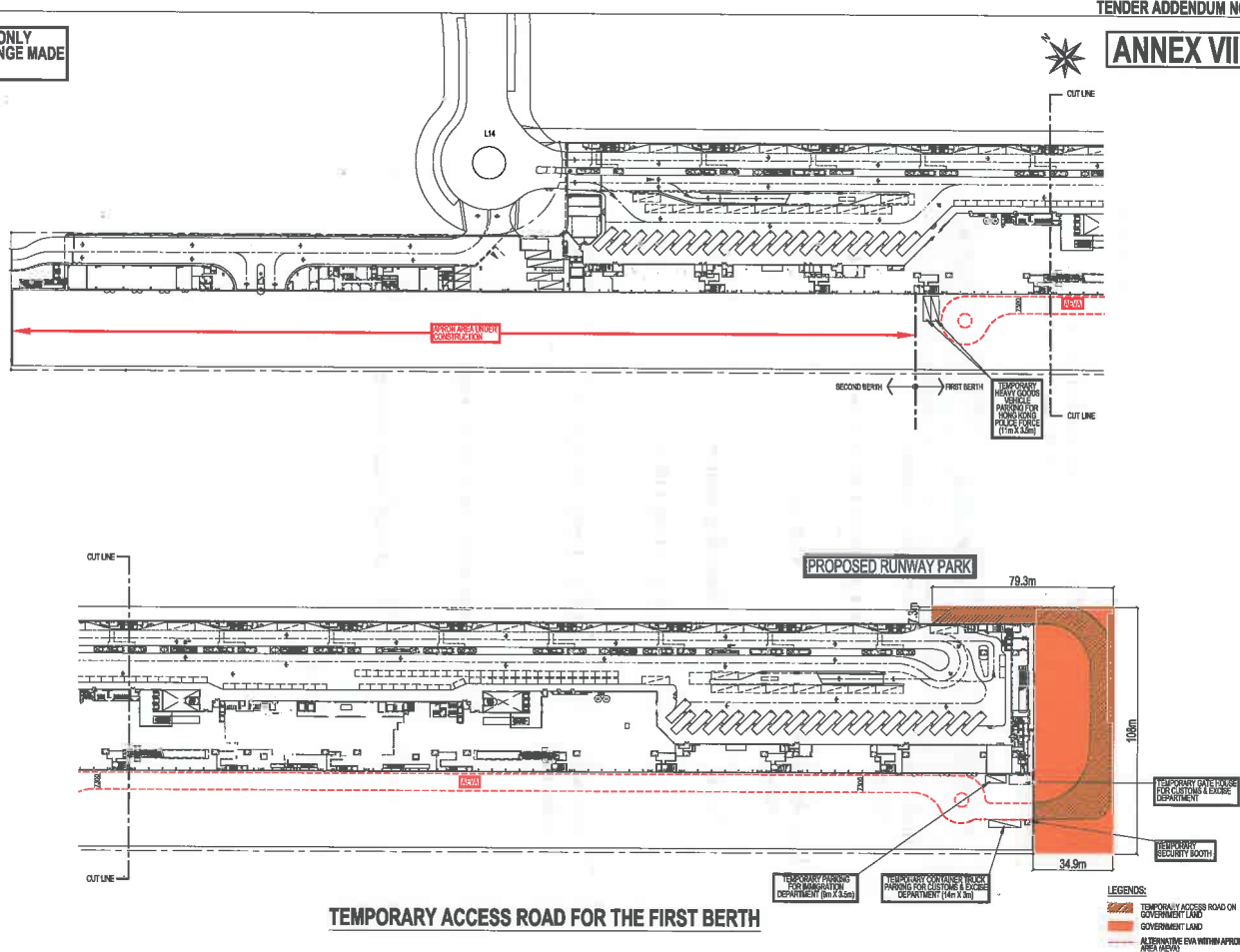
Annex VII
(Tender Addendum No. 1)

Schedule of Transportation Area
(Subject to change made by the Landlord)

Vehicles	Category	Number
Single-Deck Buses	Queuing Spaces	30
	Pick Up/ Drop Off Spaces	40
Double-Deck Bus	Lay-bys	2
Taxis	Queuing Spaces	72
	Pick Up / Drop Off Spaces	36
Private Vehicles	Pick Up / Drop Off Spaces	30
	Driveway and Circulation Area	
	Plant Room and Meter Room	

ANNEX VIII

FOR REFERENCE ONLY
SUBJECT TO CHANGE MADE
BY LANDLORD



TEMPORARY ACCESS ROAD FOR THE FIRST BERTH

Annex IX

Schedule of Monthly Fixed Rent and Annual Turnover Rent

A. The MONTHLY FIXED RENT

	Period from Commencement Date of the Term	Monthly Fixed Rent Payable by the Tenant
1.	For the first 12 months of the Term	HK\$ [] per calendar month
2	For the next 12 months of the Term	HK\$ [] per calendar month
3	For the next 12 months of the Term	HK\$ [] per calendar month
4	For the next 12 months of the Term	HK\$ [] per calendar month
5	For the next 12 months of the Term	HK\$ [] per calendar month
6	For the next 12 months of the Term	HK\$ [] per calendar month
7	For the next 12 months of the Term	HK\$ [] per calendar month
8	For the next 12 months of the Term	HK\$ [] per calendar month
9	For the next 12 months of the Term	HK\$ [] per calendar month
10	For the next 12 months of the Term	HK\$ [] per calendar month

B. ANNUAL TURNOVER RENT

The Tenant shall pay Annual Turnover Rent to the Landlord. The stipulated percentages for the calculation of the Annual Turnover Rent payable by the Tenant throughout the Term shall be:

	Annual Gross Receipt	Annual Turnover Rent payable by the Tenant
1	Such Part of Annual Gross Receipt not exceeding HK\$ 30,000,000.00; plus	[]% of Annual Gross Receipt not exceeding HK\$ 30,000,000.00; plus
2	Such Part of Annual Gross Receipt exceeding HK\$ 30,000,000.00 but not exceeding HK\$ 60,000,000.00; plus	[]% of Annual Gross Receipt exceeding HK\$ 30,000,000.00 but not exceeding HK\$ 60,000,000.00; plus
3	Such Part of Annual Gross Receipt exceeding HK\$60,000,000.00 but not exceeding HK\$90,000,000.00 plus	[]% of Annual Gross Receipt exceeding HK\$ 60,000,000.00 but not exceeding HK\$ 90,000,000.00; plus
4	Such Part of Annual Gross Receipt exceeding HK\$90,000,000.00	[]% of Annual Gross Receipt exceeding HK\$90,000,000.00.

Annex X

Landlord's Provisions (Subject to change made by Landlord)

	Item	Description	Quantity
(I)	Apron Area		
(a)	On-shore sewage collection system	The system comprises an on-shore sewage pumping station complete with sewer, valves, manholes etc for collection of sewage from the berthing vessels.	1 lot
(b)	On-shore fresh water supply system	The system comprises a network of water pipes, valves and accessories for supplying fresh water to the berthing vessels.	1 lot
(c)	Low voltage power supply system	The system comprises 2 sets of low voltage switchboards complete with power cables and accessories for supplying electricity at 8 underground electric service pits in Apron Area	1 lot

	Item	Description	Quantity
(d)	Seaport passenger boarding bridges	Movable seaport passenger boarding bridge connecting the cruise terminal building to the berthing vessels for passenger embarkation and disembarkation	5
(e)	On-shore fire services installations	The system comprises a 250 m ³ underground water tank and pumping station, 9 number of street hydrants complete with water pipes, valves and accessories for supplying fresh water for fire fighting on Apron Area	1 lot
(f)	Apron lighting system	The system comprises a floodlighting system and a street lighting system for providing general lighting to the Apron Area	1 lot
(g)	Piled quay deck structure inclusive of paving, trunk/branch troughs, covers mooring bollards, fender panel system,		

	Item	Description	Quantity
	navigation lights		
(II)	Premises within Cruise Terminal building		
(a)	Magnetometers (Gate type)	The equipment serve to detect concealed metallic objects for security screening	15
(b)	Shipping schedule indicator system	The systems provide video information including but not limited to shipping schedules inside the cruise terminal building.	2 LED display panel and LCD monitors
(c)	Baggage X ray scanner at security area	The equipment serve to examine passengers' hand-carried (smaller) baggages for security screening.	15
(d)	Baggage X ray scanner at baggage hall	The equipment serve to examine passengers' checked-in (bigger) baggage for security screening.	13
(e)	Baggage handling equipment	The device serves to facilitate transport of baggage using gravity rollers.	13
(f)	Consoles for central control of surveillance	The systems provide control terminal and	2

	Item	Description	Quantity
	system, lighting, security and others	display at Primary Security Operations Centre and Secondary Security Operations Centre for central control and monitoring of such systems as CCTV, Public Address, Shipping Schedule Information Display etc.	
(g)	Public address system	The system serves to make audio announcement at selected areas within the Cruise Terminal Building.	1
(h)	Access control system (including card readers system, intercom system, drop-arm barrier, watchman patrol system)	The system consists of card readers system, door locks, intercom system, drop arm barrier, watchman patrol system. It serves to allow the control on entry and exit of specific locations at the Cruise Terminal for security purpose.	1

	Item	Description	Quantity
(i)	Closed circuit television system (CCTV cameras and monitors)	The system serves to allow real-time surveillance and image recording on selected areas within the Cruise Terminal.	1
(j)	Wireless communication system between cruise vessel and cruise terminal building (including base station and antenna)	The vessel / building system serves to allow wireless communication between the cruise vessel and the Tenant via radio. Another radio system allows designated personnel to communicate within the Cruise Terminal.	2
(k)	Telecommunication system (PABX system, IT configuration between IT room and check in area, IT configuration between IT room and concourse)	The PABX system allows occupants of the cruise terminal building to make internal /external telephone calls. The IT configuration is the basic cabling for the wired and wireless computer networks to be installed by the Tenant.	3
(l)	Parking related system	The system serves to control the access to the carpark and to facilitate the	1

	Item	Description	Quantity
		calculation and logging of parking fees.	
(m)	Escalators		26
(n)	Elevators		27
(o)	Travelators		22
(p)	Charging facilities for electric cars		5
III Furniture			
(a)	Check-in counters		100
(b)	Seats for check-in counters		100
(c)	Seating at waiting/check in areas		5,500
(d)	Partitions for terminal operation		1 lot
(e)	Security Booths		3

Annex XI

**Items to be provided and maintained by the Tenant
(Indicative list)**

	Item
(a)	Forklift ⁽¹⁾
(b)	Forklift charging facilities
(c)	Stanchion
(d)	Baggage Trolley
(e)	Baggage Cage
(f)	Trash Bins
(g)	Mobile Lighting
(h)	Walkie Talkie and Charging Facilities
(i)	Telephone Handset
(j)	Office furniture/equipment/computers/servers

(1) At least 8 forklifts will be available on or before the delivery of the First Berth to the Tenant and other 8 forklifts will be available on or before the delivery date of Second Berth to the Tenant.

Annex XII

Landlord's Maintenance Schedule

	Items of Work that are installed or provided by the Landlord	Government Departments
(I)	Apron Area	
(a)	Piled quay deck structure inclusive of pile foundation, reinforced concrete front panel in front of the pipe pile wall	CEDD
(b)	Fender panel system	CEDD
(c)	Mooring bollards	CEDD
(d)	Resurfacing of full width of Apron Area for continuous length of 70 metres or more	CEDD
(e)	Sloping seawall under quay deck	CEDD
(f)	Navigation light post (excluding E & M parts)	CEDD
(g)	Boundary wall at both ends of the Apron Area	CEDD
(h)	Corrosion monitoring system in pile quay deck structure	CEDD
(i)	Troughs and pits (excluding the covers)	CEDD
(j)	Drainage outfalls and pit/manhole structure (excluding covers) for fire services installation/fresh water supply system/sewerage	CEDD
(k)	Seaport passenger boarding bridges and bridge rails	EMSTF
(l)	On-shore sewage collection system(including associated	EMSTF

	Items of Work that are installed or provided by the Landlord	Government Departments
	piping)	
(m)	On-shore fresh water supply system (including associated piping)	EMSTF
(n)	On-shore fire services installations (including associated piping)	EMSTF
(o)	Apron lighting system (excluding replacement of fluorescent tubes and lamp bulbs of all lighting installations)	EMSTF
(p)	Low voltage power supply system (including switchboards, wires, cables, sockets)	EMSTF
(q)	Navigation lights (E & M Parts)	MD
(II)	Premises within Cruise Terminal Building	
(a)	Roof and foundation	ArchSD
(b)	Structural walls, beams columns floor slab, ceiling slabs and roof slabs (excluding flooring, tiles, interior plaster, carpet, interior painting, cladding and other finishing materials and rendering to walls, floors and ceilings)	ArchSD
(c)	Maintenance and replacement of glass walls, window walls, glass windows, curtain walls and their panels forming part of the external façade of the building and including openable panels and external glass doors.	ArchSD/EMSTF
(d)	External wall of Cruise Terminal Building (excluding rendering or	ArchSD

	Items of Work that are installed or provided by the Landlord	Government Departments
	other decoration finishes on the internal side of the external wall)	
(e)	Resurfacing to driveway, circulation areas, drop off/pick up spaces, lay-bys, queuing spaces (excluding maintenance and patch repair)	ArchSD
(f)	Main fresh water pipes, flush water pipes, drainage pipes (excluding those exclusively served the Premises)	ArchSD
(g)	Electrical supply and distribution system	ArchSD /EMSTF#
(h)	Electrical installations (including low voltage switchboards, emergency generator set)	EMSTF
(i)	Gas System (main trunk pipe up to gas meter)	EMSTF
(j)	Escalators, elevators and travelators	EMSTF
(k)	Magnetometers	EMSTF
(l)	Shipping schedule indicator system and associated cabling	EMSTF
(m)	Baggage X ray scanner at security area	EMSTF
(n)	Baggage X ray scanner at baggage hall	EMSTF
(o)	Baggage handling equipment	EMSTF
(p)	Fire services installations	EMSTF

	Items of Work that are installed or provided by the Landlord	Government Departments
(q)	Consoles for central control of surveillance system, lighting, security and associated cabling	EMSTF
(r)	Public address system and associated cabling	EMSTF
(s)	Access control system (including card readers system, intercom system, drop-arm barrier) and associated cabling	EMSTF
(t)	Closed circuit television system, monitors for surveillance system, uninterrupted power supply system and associated cabling	EMSTF
(u)	Air conditioning installations (including fan coil units, air handling plant, air conditioning ductings and fan coil pipes)	EMSTF
(v)	Wireless communication system (including base station and antenna) and associated cabling	EMSTF
(w)	Telecommunication system (PABX system, IT configuration between IT room and check in area, IT configuration between IT room and concourse) and associated cabling	EMSTF
(x)	Light fitting (excluding replacement of fluorescent tubes and lamp bulbs of all lighting installations)	EMSTF
(III)	Furniture	

	Items of Work that are installed or provided by the Landlord	Government Departments
(a)	Check-in counters	EMSTF
(b)	Seats for check-in counters	EMSTF
(c)	Seating at waiting/check in areas	EMSTF
(d)	Partitions	EMSTF
(e)	Security booths	EMSTF
(IV)	Dredging Zone	
(a)	Maintenance dredging within Zones A, B and C (Please refer to Plan at Annex II)	CEDD*
(b)	Light buoys (including buoy and E & M parts)	MD

Note: Abbreviation of Government Departments used in this Schedule

CEDD: Civil Engineering and Development Department

ArchSD: Architectural Services Department

EMSTF: Electrical and Mechanical Services Trading Fund

MD: Marine Department

EMSTF is responsible for daily corrective maintenance and ArchSD is responsible for periodic inspection, testing and certification.

* The Landlord's obligation is subject to the completion of dredging works for respective zones under Clauses 35.1(a) and 35.1(b).

Annex XIII

Tenant's Maintenance Schedule (Indicative List)

	Items of Works
(I)	Apron Area
(a)	Maintenance and repair of the paving (excluding resurfacing of full width of Apron Area for continuous length of 70 metres or more)
(b)	Repainting of road markings
(c)	Maintenance and replacement of traffic signages and directional signages
(d)	Manhole covers, trough covers and pits covers
(e)	Replacement of fluorescent tubes and lamp bulbs of all lighting installations of Apron lighting system
(II)	Premises within Cruise Terminal Building
(a)	Maintenance and replacement of flooring, tiles, interior plaster, carpet, interior painting, cladding and other finishing materials and rendering to walls, floors and ceilings
(b)	Maintenance and replacement of glass, windows, doors (both interior and exterior) and their panels and frames
(c)	Maintenance and replacement of electrically operated roller shutters and electrically operated auto door
(d)	Maintenance and patch repair of driveway, circulation areas, drop off/pick up spaces, queuing spaces

(e)	Maintenance and replacement of fences, rails and gates
(f)	Maintenance and replacement of sanitary and water apparatus (including urinals, cubicles, wash basins, water taps, soap dispensers, tissue dispensers, hand dryers)
(g)	Maintenance and replacement of clogged and/or leaking drains exclusively served the Premises
(h)	Replacement of fluorescent tubes and lamp bulbs of all lighting installations
(i)	Maintenance and replacement of traffic signage
(j)	Repainting of road makings
(k)	Ironmongeries
(l)	Parking related system (including entry/exit barriers, entry ticket stations, entry/exit readers, paying stations)
(m)	Maintenance and replacement of domestic appliances (including wall clocks, refrigerator, electric tea urn)
(n)	Maintenance and replacement of charging facilities for electric cars
(III)	Temporary Access Road referred to in Clause 4.1(q) and as shown on the plan annexed hereto as Annex VIII (subject to revision)

Berth-Allocation Guidelines

Open-to-all principle

1. The Cruise Terminal is developed to serve the needs of the cruise industry as a whole. The Tenant shall not operate the Cruise Terminal in such a way to restrict the use of the berths to any particular customer or customers exclusively.

First Berth

2. The Tenant shall set up an advance booking system to allow cruise line operators or their shipping agents to make booking of berthing slots in advance.

3. The Tenant shall open a booking period of berthing slots for not less than 18 months and not more than 24 months and 1-month application period of about 12 months to 18 months in advance shall be provided.

4. All applications for the berthing slots will be decided after the close of 1-month application period.

5. Applications received after the close of 1-month application period will not be considered.

6. In the event that there is only one booking for berthing slot, the berth will be allocated to the only one application.

7. In the event that there is an overlap of booking period of berthing slot, the Tenant shall allocate the berthing slot in accordance with the following priority.

Category	Cruise Vessel	Priority
(a)	Homeport with itineraries /turnaround operation	First
(b)	Port-of-Call	Second
(c)	Other cruise vessels not falling within the categories (a) and (b)	Third

8. In the event that the competing cruise vessels are of the same priority, the Tenant shall allocate the berthing slot to the mega cruise vessels⁽¹⁾. In the event that the competing vessels are not mega cruise vessels, the Tenant shall allocate the berthing slot to the cruise vessel with higher frequency of calls in the booking period and greater volume of passengers.

9. When there are unreserved berthing slots within the booking period, these slots would be open for booking by the cruise line operators or their shipping agents on a first-come-first-served basis.

10. When the berthing slot is allocated to a cruise vessel based on the berth-allocation guidelines, the Tenant cannot cancel the reserved berthing slot even if there is another priority vessel call afterwards.

11. The Tenant shall upload the booking results on the Website within 7 days after the close of the 1-month application period.

12. The above guidelines are applicable for the First Berth throughout the tenancy period and the Second Berth prior to completion of dredging work within zone C.

Note

(1)	Mega cruise vessels are the new generation of cruise vessels with displacement tonnage over 50,000 tonnes.
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Second Berth

13. When the Second Berth can accommodate mega cruise vessel, the Tenant is allowed to enter into long term contracts with cruise line operators for using the Second Berth. Despite such long term contracts for the Second Berth, the Tenant shall ensure that the Second Berth will accommodate homeport with itineraries/turnaround operations if such operations cannot be accommodated in the First Berth.

Annex XV

Maximum Dockage Fee and Passenger Fee

Items	Maximum Fees
Dockage Fee	HK\$[] per metre per hour (a), (b), (c), (d) and (e)
Passenger Fee	HK\$[] per passenger ^(f)

(a)	Dockage Fee shall be based on the overall length of the cruise vessel. "Overall Length" is the linear distance, as expressed in metres, of the extreme length of a cruise vessel.
(b)	Lloyd's Register, when available, shall be used in determining the overall length of a cruise vessel.
(c)	If all cruise vessels for which the overall length is not available in the register described in (b) above or vessel documents, it shall be measured by the Tenant for determining the length of a cruise vessel for assessment of Dockage Fee.
(d)	The official berthing time for which dockage shall be assessed against a cruise vessel shall commence when the first line is received and the cruise vessel is made fast to an allocated berth or moored, and shall continue until such vessel is wholly and completely freed from and has vacated such berth. All time is counted and no deduction are allowed because weather or other conditions.
(e)	The Tenant has the discretion to decide on the number of hours on the basis of which the Dockage Fee will be applied to suit the berthing needs of different cruise vessels, provided that the actual Dockage Fee per metre per hour to be charged by the Tenant shall not exceed the Dockage Fee in the above table.

(f)	Passenger fee is charged for each embarking, disembarking and in-transit passenger.
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Annex XVI

Scope of the Market Consultation Forum

- (i) To discuss the key operation and management issue related to the Premises;
- (ii) To consult the cruise market and tourism industry on proposed changes to arrangement for fee and charges and berthing slots allocation;
- (iii) To discuss co-operation efforts with the Hong Kong Tourism Board and the tourism industry for marketing the facilities and services offered by the Cruise Terminal;
- (iv) To share with the cruise market and tourism industry regularly non-commercially sensitive information relating to the operation of the Cruise Terminal;
- (v) To discuss matters of common interests concerning development of the cruise market and inform the market of latest development/improvement plans for the Cruise Terminal; and
- (vi) To discuss any other matters related to the cruise market

Annex XVII

(To be completed after award of Tender)

Management Team

Name of the Full Time Member	Post	Duties to be undertaken in the Cruise Terminal

Annex XVIII

Technical Schedule

1. Technical Proposal

- 1.1 Six sets of complete technical proposal (including perspective drawings, detailed drawings, electrical schematic drawings, specifications and other design information as required by the Landlord) or such other number as required by the Landlord shall be submitted to the landlord for approval prior to the commencement of any fitting out works or AA & I works.
- 1.2 The fitting out plan or AA & I plan shall be prepared by an Authorized Person.
- 1.3 The Authorized Person of the Tenant shall
 - (i) design, co-ordinate and supervise all fitting-out works or AA & I works from plan submission to completion of works;
 - (ii) implement the fitting out works or AA & I works which shall fully comply with the Buildings Ordinance and other relevant statutory requirements;
 - (iii) certify completion of works in accordance with current legislation, regulation and the fitting-out plan or AA & I plan.
 - (iv) bear the full responsibility of his/her design, planning and supervision of the fitting out works or AA & I works; and
 - (v) ensure that no part of the works may have any adverse effect, structurally or in any other ways, on the Cruise Terminal.

- 1.4 The Tenant shall engage an independent checker who shall be an Authorised Person independent of the Authorized Person stated in para.1.2 to verify, demonstrate and certify that the fitting-out works or AA & I works is in full compliance with the Buildings Ordinance and other relevant statutory requirements and no part of the works may have any adverse effect, structurally or in any other ways, on the Cruise Terminal.
- 1.5 The Landlord shall be entitled to examine the technical proposal for 21 working days or a longer period as the Landlord deems necessary. The approval of the Landlord does not in any way imply the landlord's endorsement of the specifications upon which the proposal has been based nor guarantee the performance under all condition of the plant and material used.
- 1.6 Prior to commencement of the works, the Tenant shall provide a certificate for insurance for third party liability during the fitting out period of the Premises with a sufficient coverage for each single claim to be advised by an insurance adviser.
- 1.7 Upon completion of fitting-out works or AA & I works, the Authorized Person shall provide a "Work Completion Certificate" attached with schematics and text reports (if any) to the Landlord for retention.
- 1.8 The Tenant shall at its own cost and expense undertake to rectify any works that do not comply with the legislative requirements and/or approved technical proposal.

2. GENERAL

- 2.1 The design shall comply with all applicable statutory requirements, all applicable requirements set out in relevant standards, specifications, rules and code of practice and the prevailing edition of General Specification for Building

published by the Architectural Services Department.

- 2.2 The design shall allow for sufficient access to and from the services and fixture within the Premises for regular maintenance without detriment to the Tenant's decoration and installation.
- 2.3 All fitting-out works or AA & I works must be carried out in a good and proper workmanlike manner using good quality material and in all respects commensurate, reaches, matches to a standard which does not fall below the standard of decoration, finish, fitting and facilities of the Premises as a first class cruise terminal and ancillary commercial complex.
- 2.4 The interior design, layout and appearance of the fitting-out area or AA & I area shall be consistent and harmonious with the overall interior design of the Cruise Terminal Building.
- 2.5 All materials used for fitting-out works or any AA & I work must not contain asbestos in any form.
- 2.6 The Tenant shall indicate his design loading in the technical proposal and liaise with ArchSD for structural checking of the floor loading.
- 2.7 The maximum superimposed load within Apron Area shall be restricted to 20kN/m².

3. E&M Facilities

- 3.1 All fitting-out work or AA & I works on E & M facilities shall be carried out in accordance with the applicable requirements laid down in the latest edition of, but not limited to, the following Ordinances and their subsidiary regulations, specifications, rules and codes of practice:

(A)	Air Pollution Ordinance (Cap. 311)
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(B)	Building Ordinance (Cap. 123);
(C)	Construction Workers Registration Ordinance (Cap. 583);
(D)	Electricity Ordinance (Cap. 406);
(E)	Factories and Industrial Undertakings Ordinance (Cap. 59);
(F)	Fire Services Ordinance (Cap.95);
(G)	Occupational Health and Safety Ordinance (Cap. 509);
(H)	Ozone Layer Protection Ordinance (Cap. 403)
(I)	Place of Public Entertainment Ordinance (Cap. 172);
(J)	Public Health and Municipal Services Ordinance (Cap. 132);
(K)	Telecommunication Ordinance (Cap 106);
(L)	Waste Disposal Ordinance (Cap. 354)
(M)	All General Specifications issued by Architectural Services Department and Electrical and Mechanical Services Department
(N)	The Supply Rules of CLP Power Hong Kong Ltd.;
(O)	Code of Practice for the Electricity (Wiring) Regulations issued by Electrical and Mechanical Services Department
(P)	Code of Practice for Installation of Electrically Operated Sliding Gates, Sliding Glass Doors and Rolling Shutters issued by Electrical and Mechanical Services Department
(Q)	Codes of Practice for Minimum Fire Service Installations

	and Equipment and Inspection, Testing and Maintenance of Installations and Equipment issued by Fire Services Department
(R)	Code of Practice for Metal Scaffolding safety issued by the Labour Department;
(S)	Code of Practice for Safety and Health at Work for Manual Electric Arc Welding issued by Labour Department
(T)	Code of Practice for Safety and Health at Work for Gas Welding and Flame Cutting issued by Labour Department; and
(U)	Code of Practice on the Packaging, Labeling and Storage of Chemical Wastes issued by Environment Protection Department

4. Competent Contractors

4.1 All fitting-out work or AA & I works shall be carried out by competent contractors in the relevant discipline/trades.

(a) All electrical installation works shall be carried out by Registered Electrical Contractors/Registered Electrical Workers under the Electricity (Registration) Regulations (Cap. 406D).

(b) All installation works of gas appliances and town gas supply system shall be carried out by registered gas contractor under the Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap 51).

(c) All fire services installation works shall be carried out by Registered Fire Services contractors under Fire Service (Installation Contractors) Regulations, Chapter 95A.

(d) All installation works of tubing and piping and all other water supply works shall be carried out by licensed plumbers licensed under Waterworks Regulation.

(e) All fitting out work and AA & I works shall be carried out by Registered General Building Contractors registered under the Buildings Ordinance (Cap.123)

4.2 The Landlord may impose additional qualification requirements of the contractors in the approval of technical proposal.

4.3 After completion of the works, the Tenant shall provide a copy of the Work Completion Certificate together with schematics and test reports issued by the Registered Contractors/Workers to the landlord for retention.

5. FITTING OUT or AA & I METHOD

5.1 All fitting-out works or AA and I work must be carried out in such a way that cruise terminal building including its services installations, the passengers, public and other users are protected from excessive risk, noise and dirt. Protective hoarding must be erected to enclose the works area. Unless otherwise approved, the working process and all materials and debris must be confined within area earmarked on the drawing.

5.2 All building debris and rubbish must be regularly carted away from time to time as directed by the landlord or property manager. Only the services lift may be used for transportation of material and debris.

5.3 All wiring must be of concealed type and enclosed in metal conduits, trunking or ducting.

5.4 The Tenant shall protect all the existing services or installation during the fitting out period and shall indemnify and keep indemnified the Landlord, its officers and servants from and against all actions, suits, costs, expenses, claims and demands whatsoever brought or taken in respect of any damage or loss arising directly or indirectly out of or in connection with the carrying out of the fitting-out works or AA & I works by the Tenant.

6. WORKING HOURS FOR FITTING OUT or AA & I

6.1 The Tenant shall submit a time schedule of its fitting out works or AA & I works to the Landlord for written approval prior to commencement of any fitting-out work within the Premises.

6.2 The Landlord shall reserve its right to halt any fitting-out works or AA & I works undertaken by the tenant at any time during the period of the fitting-out works if such works are deemed to have impaired or interrupted the operation or use of the Cruise Terminal or the activities of the users and occupiers of the Cruise Terminal.

6.3 During the fitting-out period, all workmen shall register at the building management office before they start to work on the Premises each day.

Annex XIX

Conditions of Erecting and Displaying Advertising Signs

(a)	The Tenant shall at its own cost and expense design, erect and provide such display cases, features advertisements and other advertising display forms hereinafter collectively referred to as ("the Advertising Display Systems ") in the interior of the Premises (excluding Apron Area) for the display of advertisements therein and to provide the power supply system thereto; and thereafter maintain and keep at the Tenant's own cost and expense the same and all display and advertising fixtures, fittings, materials and other articles and things associated therewith at all times in good condition and repair, and in a clean, tidy and attractive condition all to the satisfaction of the Landlord.
(b)	Moving electronic message or occult signs are not allowed except with the prior written approval of the Landlord.
(c)	There shall be no sound generated from the Advertising Display Systems except with the prior written approval of the Landlord.
(d)	The Tenant shall obtain all necessary licences and permits as may be required for the exercise of the rights herein granted.
(e)	The Tenant shall at its own cost and expense reposition or alter any advertising display if required so to do by the Landlord in its sole discretion whether or not such repositioning or alteration results in a reduction or an increase or change in the number of or the size of the display areas or show cases.
(f)	The Tenant shall indemnify and keep indemnified the Landlord against any and all claims, actions and liabilities for violation or infringement of any patent, copyright or trade mark arising out of or by reason of the

	display of advertisement on or in the interior of the Premises (excluding the Apron Area) whether or not the same may have been previously approved by the Landlord under this Agreement.
(g)	The security of the Advertising Display Systems shall be the sole responsibility of the Tenant.

Annex XX

Conditions of Operating the Video Wall

(a)	The Tenant shall at its own cost and expense operate and maintain the video wall for the display of advertisements thereon and provide the power supply system thereto; and thereafter maintain and keep at the Tenant's own cost and expense the same and all display and advertising fixtures, fittings, materials and other articles and things associated therewith at all times in good condition and repair, and in a clean, tidy and attractive condition all to the satisfaction of the Landlord.
(b)	There shall be no sound generated from the video wall except with the prior written approval of the Landlord.
(c)	The Tenant shall obtain all necessary licences and permits as may be required for the operation and maintenance of the video wall.
(d)	The Tenant shall indemnify and keep indemnified the Landlord against any and all claims, actions and liabilities for violation or infringement of any patent, copyright or trade mark arising out of or by reason of the display of advertisement on the video wall whether or not the same may have been previously approved by the Landlord under this Agreement.
(e)	The security of the video wall system shall be the sole responsibility of the Tenant.

Annex XXI

Property Damage Insurance for Government Assets

(a)	On-shore sewage collection system
(b)	On-shore fresh water supply system
(c)	Low voltage power supply system
(d)	Seaport passenger boarding bridges
(e)	On-shore fire services installations
(f)	Apron lighting system
(g)	Fender panel system, navigation lights
(h)	Magnetometers (Gate type)
(i)	Shipping schedule Indicator System
(j)	Baggage X ray scanner at security area
(k)	Baggage X ray scanner at baggage hall
(l)	Baggage handling equipment
(m)	Consoles for central control of surveillance system, lighting, security and others
(n)	Public address system
(o)	Access control system (including card readers system, intercom system, drop-arm barrier, watchman patrol system)

(p)	Closed circuit television system (CCTV cameras, monitors)
(q)	Wireless communication system between cruise vessel and cruise terminal building (including base station and antenna)
(r)	Telecommunication system (PABX system, IT configuration between IT room and check in area, IT configuration between IT room and concourse)
(s)	Parking related system
(t)	Escalators
(u)	Elevators
(v)	Travelators
(w)	Charging facilities for electric cars
(x)	Check-in counters
(y)	Seats for check-in counters
(z)	Seating at waiting/check in areas
(aa)	Partitions for terminal operation
(bb)	Security booths

Annex XXII

Shareholding Structure of Tenant

(To be completed after award of the Tender)

Annex XXIII

Form of Bank Guarantee

Form of Bank Guarantee

THIS GUARANTEE is made the day of..... 201	
BYof, a licensed bank within the meaning of the Banking Ordinance (Cap. 155 of the Laws of Hong Kong) ("Guarantor").	
IN FAVOUR OF	
The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Government").	
WHEREAS	
(A)	By a Agreement (hereinafter called the "Agreement") to be entered into between of (hereinafter called the "Tenant") of the one part and the Government of the other part, the Tenant shall take up the tenancy of the Cruise Terminal.
(B)	The Tenant has procured or will procure a performance guarantor ("Performance Guarantor") to provide a performance guarantee ("Performance Guarantee") in favour of the Government as security for the due performance of the Agreement.
(C)	It is a condition precedent to the Government agreeing to enter into the Agreement that the Guarantor executes this Guarantee in favour of the Government.
Now the Guarantor HEREBY AGREES with the Government as follows:-	
(1)	Where applicable, words and expressions used in this Guarantee (including the

	recitals) shall have the meaning assigned to them in the Agreement.
(2)	<p>In consideration of the Government agreeing to enter into the Agreement with the Tenant:-</p> <p>(a) The Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not as a surety, and as a continuing security, the due and punctual performance and observance by the Tenant of all of its obligations under the Agreement and the Guarantor shall pay to the Government immediately on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Tenant to or in favour of the Government under or in connection with the Agreement together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government by reason or in consequence of any default on the part of the Tenant in performing or observing any of its obligations under the Agreement.</p> <p>(b) The Guarantor, as a principal obligor and not as a surety, and as a separate and independent obligation and liability from its obligation and liabilities under sub-clause(a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government from and against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Tenant to perform or observe fully or punctually any of its obligations under the Agreement.</p> <p>The Guarantor acknowledges that the Government shall not be required to prove or to show grounds or reasons for its demand under sub-clause (a) or (b) above.</p>
(3)	This Guarantee shall not be affected by any change or name or status or any change in shareholders or directors of the company, firm or individual described as "the Tenant" or where the Tenant or the Performance Guarantor is a partnership, any change in the partners or in its constitution.

(4)	The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Tenant or the Performance Guarantor or by any change in obligations of the Tenant under the Agreement or by any waiver or forbearance granted by the Government to the Tenant or the Performance Guarantor as to payment, time, performance or otherwise whether or not such arrangement, change, waiver or forbearance may have been or is made or granted with or without knowledge or consent of the Guarantor.
(5)	<p>Without prejudice to Clause (4) above, the obligation of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:-</p> <p>(a) any suspension, termination, amendment, variation, novation or supplement of or to the Agreement or the Performance Guarantee from time to time (including without limitation extension of time for performance);</p> <p>(b) any provision of the Agreement or the Performance Guarantee being or becoming illegal, invalid, void, voidable or unenforceable;</p> <p>(c) any forbearance, variation, extension, discharge, compromise, dealing with, exchange, waiver or renewal in respect of any right of action or remedy, that the Government may have, now or after the date of this Guarantee, against the Tenant or the Performance Guarantor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege or remedy available to the Government in relation to the obligations of the Tenant set out in the Agreement or those of the Performance Guarantor under the Performance Guarantee;</p> <p>(d) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganization arrangement, composition, or other proceedings of or affecting the Tenant or the Performance Guarantor or its assets, or any change in the constitution of the Tenant or the Performance Guarantor;</p> <p>(e) any assignment, novation or sub-contracting by the Tenant of any or all of its obligations set out in the Agreement;</p>

	<p>(f) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligation by the Government; and</p> <p>(g) any form of release or waiver or variation of bond, security or guarantee of any kind held or obtained by the Government for any obligation of the Tenant under the Agreement.</p>
(6)	This Guarantee shall extend to all obligations of the Tenant under the Agreement, any agreements supplemental thereto, or any of them may from time to time be amended, novated or supplemented and the Guarantor hereby authorizes the Government and the Tenant to make any such amendment, variation, novation or supplement which may be made to the Agreement without the Guarantor's notice or assent.
(7)	This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Tenant under the Agreement and shall remain in full force and effect and irrevocable until the later date of either (1) the date falling seven (7) months after the expiry or sooner termination of the Agreement, or (2) the date on which all the obligations and liabilities of the Tenant under the Agreement have been duly carried out, completed and discharged in accordance with the terms of the Agreement. For the avoidance of doubt, reference to the Agreement shall mean the Agreement as extended (where applicable).
(8)	This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold including the Performance Guarantee (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Tenant or the Performance Guarantor, and notwithstanding any release, waiver or invalidity of the Other Security.
(9)	Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of

	this Guarantee shall be conclusive and binding on the Guarantor.
(10)	The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
(11)	The Guarantor hereby waives the necessity of the Government making a demand on the Tenant before presenting it with the demand.
(12)	If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law or any other jurisdiction shall in any way be affected or impaired.
(13)	This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the Courts of Hong Kong.
(14)	<p>All documents arising out of or in connection with this Guarantee shall be served:-</p> <p>(a) upon the Government, at Tourism Commission of 2/F, East Wing, Central Government Office Building, Central, Hong Kong.</p> <p>(b) upon the Guarantor, at, Hong Kong, marked for the attention of, facsimile number</p>
(15)	Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if dispatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
(16)	Notwithstanding anything therein to the contrary, the aggregate amount of the Guarantor's liability under this Guarantee shall not exceed HK\$ XX million (Hong Kong Dollars XXX).

IN WITNESS whereof the Guarantor has caused its Common Seal to be hereunto affixed the day and year first above written.		
*	The [Common Seal/Seal] of the said Guarantor was hereunto affixed and signed by duly authorized by its board of directors:)))))
@	Signed Sealed and Delivered for and on behalf of and as lawful attorney of the Guarantor under power of attorney date and deed of delegation dated by..... and in the presence of))))))
*	Please delete as appropriate	
@	See Powers of Attorney Ordinance (Cap. 31)	
Note: When a bank guarantee is executed under power of attorney, a photocopy of the power of attorney, certified on each page and at the end of the power of attorney by a Hong Kong solicitor that it is a true and complete copy of the original should be submitted.		

Annex XXIV

Form of Performance Guarantee

Form of Performance Guarantee

The Government reserves the right to make further modification when relevant information about the proposed Performance Guarantor(s) is available

This Performance Guarantee is dated day of 201 and is made BETWEEN:-	
(1)	[insert name(s) of the guarantor(s)] whose registered office is at (hereinafter (collectively) referred to as "the Guarantor"); and
(2)	THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (hereinafter referred to as "the Government")
WHEREAS:-	
(A)	The Government has invited tender for the tenancy for the Cruise Terminal in accordance with the terms and conditions set out in the Tender Documents, which [each of] the Guarantor (s) has read and understood.
(B)	[insert name of the Successful Tenderer] (hereinafter referred to as "the Tenant") has submitted a tender in response to the above-mentioned invitation; and the Government is willing to accept the said tender on the condition that the Guarantor(s) shall enter into this Performance Guarantee with the Government on the terms as hereinafter appearing.
NOW in consideration of the premises, IT IS HEREBY AGREED AS FOLLOWS:-	
1.	(a) All words and expressions defined or used in the tenancy agreement to be entered into between the Government and the Tenant (hereinafter referred to as "the Agreement") shall, unless specifically defined or redefined herein or the context otherwise requires, have the same meaning when used in this Performance Guarantee. The bank guarantor to the Bank Guarantee (as defined in the Agreement) shall be referred to herein as "Bank Guarantor".

	(b)	Reference in this Performance Guarantee to any Ordinance and regulation shall (except where the context otherwise requires) be deemed to include any statutory re-enactment thereof or any statutory modification thereof having substantially the same legal effect.
	(c)	Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing persons shall include firms and corporations and vice versa.
	(d)	Unless otherwise stated, references to Clauses are to Clauses of this Performance Guarantee.
	[(e)	For the purpose of this Performance Guarantee, each representation, warranty, declaration, agreement, undertaking and covenant by and the obligation of the Guarantor(s) shall be joint and several, or is deemed to have been given by them jointly and severally and shall be binding on the Guarantor(s) jointly and severally.]
2.	(a)	At the request of the Tenant, [each of] the Guarantor(s) hereby [jointly and severally] irrevocably and unconditionally guarantees to the Government, as a primary obligor and not merely as a surety and as a continuing security, the due and punctual performance by the Tenant of all of its obligations set out in the Agreement.
	(b)	[Each of the/The] Guarantor(s) hereby [jointly and severally] irrevocably and unconditionally covenants and undertakes that:-
	(i)	[each of] the Guarantor(s) will ensure and procure that the Tenant will at all times duly and punctually perform its obligations under the Agreement; and
	(ii)	in the event of any failure by the Tenant to perform its obligations set out in the Agreement after being called upon by the Government or its duly authorized representative to do so, or in the event of any breach by the Tenant of any of the terms and conditions contained in the Agreement, or if the Government is reasonably of the opinion that the Tenant is unlikely to be able to fulfill its obligations and covenants thereunder, the Government may given written notice of the same to

		[any of] the Guarantor(s) and [each of] the Guarantor(s) shall be deemed, upon the Government giving written notice of such effect to [any of] the Guarantor(s), to have assumed all the obligations of the Tenant under and in respect of the Agreement as if the terms, conditions and covenants therein contained were given by [each of] the Guarantor(s) itself. The Government's notification as aforesaid shall be conclusive and binding on [each of] the Guarantor(s).
	(c)	[Each of the/The] Guarantor(s) acknowledges that if it fails, neglects or refuses to perform its obligations under Clause 2(a) and/or (b) above, or if at any time [any of] the Guarantor(s) is deemed (by reason of the foregoing provisions) to have assumed the Tenant's obligations under the Agreement and it fails, neglects or refuses to perform such obligations, the Government shall be at liberty to apply to the Hong Kong Court for a mandatory order declaring [each of] the Guarantor(s) to be liable as aforesaid and ordering [any of] the Guarantor(s) to specifically perform its contractual obligations hereunder.
3	(a)	[Each of the/The] Guarantor(s) agrees and acknowledges that all losses, costs and expenses incurred or suffered by the Government by reason of [any of] the Guarantor's failing, neglecting or refusing to perform its obligations under Clause 2 above may, without limiting the right of the Government to apply by way of primary remedy for a mandatory order as mentioned in Clause 2(c), be recoverable as damages from [each of] the Guarantor(s) on a full indemnity basis. Without limiting the foregoing, if by reason of the failure, neglect or refusal to perform its obligations by [any of] the Guarantor(s) under Clause 2 above, the Government elects to incur expenses whether by making payment to any other third parties to ensure performance of the obligations contained in the Agreement following a breach by [any of] the Guarantor(s) of its obligations, such expenses shall forthwith be recoverable from [each of] the Guarantor(s) as damages.
	(b)	The Government shall be at liberty to claim damages from the Guarantor(s) either by way of primary remedy (without seeking a mandatory order as aforesaid) or (in case the Government does seek a mandatory order as aforesaid but the Courts shall decline to make such order) as an alternative to a mandatory order.

4	Time is of the essence of the Guarantor(s)'s obligations under this Performance Guarantee.	
5.	[Each of the/The] Guarantor(s) agrees that the Government may from time to time without discharging or in any way affecting the liability of [any of] the Guarantor(s) hereunder and without the assent or knowledge of [any of] the Guarantor(s) grant to the Tenant or [any of] the Guarantor(s) or the Bank Guarantor any time or indulgence, waiver, forbearance or give up, deal with, exchange, vary, realize, release or abstain from perfecting or enforcing any guarantees, liens, securities or other rights which the Government may now or hereafter have from or against the Tenant or [any of] the Guarantor(s) or the Bank Guarantor whether hereunder or otherwise may renew, determine or vary the terms or conditions in respect of any transaction with the Tenant or [any of] the Guarantor(s) of the Bank Guarantor or compound with, discharge, release or vary the liability of the Tenant or [any of] the Guarantor(s) or the Bank Guarantor or concur in accepting or varying any compromise, arrangement or settlement or omit to claim or enforce any payment or any composition or to agree to any supplement to the Agreement when and in such manner as the Government may think expedient and no such act or omission on the part of the Government shall in any way discharge or diminish the validity of this Performance Guarantee or affect the liability of [any of] the Guarantor(s) hereunder. The Government may enforce this Performance Guarantee notwithstanding that the Government may hold any other guarantee, lien or security or have any outstanding remedy against the Tenant. For the avoidance of doubt:-	
	(a)	[each of] the Guarantor(s) hereby warrants and undertakes that its obligations, duties and undertakings under this Performance Guarantee shall not in any way be adversely affected or impaired by reason of the happening, from time to time, of any of the following, whether with or without notice to or further consent of [any of] the Guarantor(s);
	(i)	any waiver, forbearance or release in whole or in part by the Government of the observance or performance of any of the obligations of the Tenant set out in the Agreement or those of the Bank Guarantor under the Bank Guarantee including the change of Bank Guarantor;
	(ii)	any extension of time for completion of the Agreement or any other variation, modification or discharge of any of the obligations of the Tenant set out in the Agreement or those of the Bank Guarantor under the Bank

		Guarantee;
	(iii)	any failure, omission, indulgence or delay on the part of the Government with respect to enforcing, asserting or exercising any right, power, privilege or remedy available to it in relation to the obligations of Tenant set out in the Agreement or those of the Bank Guarantor under the Bank Guarantee;
	(iv)	the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganization arrangement, composition, or other proceedings of or affecting, the Tenant or the Bank Guarantor or their respective assets, or any change in the constitution of the Tenant or the Bank Guarantor;
	(v)	any assignment, novation or sub-contracting by the Tenant of any or all of its obligations set out in the Agreement, whether or not any such assignment, novation or sub-contracting has been consented to; and
	(vi)	any release or waiver or variation of any kind of any bond, security or guarantee of any kind held or obtained by the Government as security for any obligation of the Tenant under the Agreement; and
	(vii)	any suspension, termination, amendment, variation, novation or supplement of or to the Agreement or the Bank Guarantee from time to time; and
	(viii)	without prejudice to the generality of foregoing any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to [any of] the Guarantor(s), other than the express release of its obligations.
	(b)	[Each of the/The] Guarantor(s) further agrees and undertakes that its obligations, duties and undertakings under this Performance Guarantee shall remain binding on [each of] the Guarantor(s) notwithstanding that all or any of the obligations of the Tenant set out in the Agreement may not be valid or binding on the Tenant by virtue of their being incapable of enforcement or not within the corporate powers of the Tenant or due to any other reason whatsoever whether related to the foregoing or not.

	(c)	This Performance Guarantee may be enforced without the Government first having recourse to the Bank Guarantee or any other security or rights or taking any other steps or proceeding against the Tenant, the Bank Guarantor or any other person or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities thereby secured.	
6	(a)	[Each of the/The] Guarantor(s) hereby represents and warrants to the Government that:-	
		(i)	<p>it is a company duly incorporated with limited liability and validly existing under the laws of the Hong Kong Special Administrative Region;</p> <p>AND/OR</p> <p>it is a company duly incorporated with limited liability and validly existing under the laws of the Hong Kong Special Administrative Region and whose ordinary shares are primarily listed on the Stock Exchange of Hong Kong;</p> <p>AND/OR</p> <p>..... is a company duly incorporated with limited liability and in good standing under the laws of and has been duly registered as an overseas company in Hong Kong, under Part XI of the Companies Ordinance (Cap.32) and such registration remain in full force and effect [and whose ordinary shares are primarily listed on];</p>
		(ii)	[each of] the Guarantor(s) has the necessary capacity to enter into and execute this Performance Guarantee and to perform and observe its obligations hereunder;
		(iii)	the execution, delivery and performance of this Performance Guarantee by [each of] the Guarantor(s) has been duly authorized by all necessary corporate action of [each of] the Guarantor(s) under all applicable laws and regulations of the Special Administrative Region [and] and this Performance Guarantee as

			executed and delivered, constitutes the valid and legally binding obligation of [each of] the Guarantor(s) enforceable in accordance with its terms;
		(iv)	neither the execution and delivery of this Performance Guarantee nor the performance or observance by [any of] the Guarantor(s) of any of its obligations hereunder will or would:-
		(a)	conflict with, or result in any breach of or default under, any provision of any law, order, agreement, instrument, franchise, concession, license, permit, liability, obligation or duty applicable to [each of] the Guarantor(s) or any of its assets or by which it is bound; or
		(b)	contravene any contractual restriction binding on [any of] the Guarantor(s) or any of its assets; or
		(c)	cause any limit on any of the guaranteeing, charging or other powers of [any of] the Guarantor(s) (whether imposed by Memorandum or Articles of Association of [any of] the Guarantor(s), or by agreement, instrument or otherwise), or upon any of the power of the Board of Directors of [any of] the Guarantor(s) to exercise any of such powers, or any other limit affecting [any of] the Guarantor(s), to be exceeded; or
		(d)	create or result in or (except as may be provided herein) oblige [any of] the Guarantor(s) to create, any lien, charge, security interest or other encumbrance on the whole or any part of the property, assets or revenues, present or future of [any of] the Guarantor(s).
		(v)	all necessary consents, authorities and approvals (if any) from any governmental authorities or agencies or other official bodies for [each of] the Guarantor(s) to execute this Performance Guarantee have been obtained and are in full force, validity and effect, and, as of the date of this Performance Guarantee, no further consents, authorities or approvals from any governmental authorities or

			agencies or other official bodies are necessary for the performance by [any of] the Guarantor(s) of its obligations hereunder;
		(vi)	there are no proceedings pending before any court, tribunal, arbitrator, government agency or administrative body against or, to [each of] the Guarantor(s) knowledge, threatened against [any of] the Guarantor(s) which if adversely determined would result in a material adverse change in the business or financial condition of [any of] the Guarantor(s) or the ability of [any of] the Guarantor(s) to pay, if due, any sums and/or to perform any obligations required by the terms and conditions of this Performance Guarantee;
		(vii)	the obligation of [each of] the Guarantor(s) under this Performance Guarantee are direct, general and unconditional obligations of [each of] the Guarantor(s) and rank at least pari passu with all the Guarantor(s)' other present and future unsecured and unsubordinated indebtedness and other obligations (including contingent obligations) with exception of indebtedness and other such obligations mandatorily preferred by law and not by contract;
		(viii)	[each of] the Guarantor(s) is not in material default under any statutory or other requirements applicable to [each of] the Guarantor(s) or in breach of or in default under any other provision of any indenture, deed of trust, agreement or other instrument to which it is a party and (to the best of the knowledge and belief of [each of] the Guarantor(s) no event, condition or act which with the giving of notice or lapse of time, both, would constitute an event of default under any such indenture, deed of trust, agreement or other instrument has occurred or is continuing which has not properly waived or remedied thereunder; and
		(ix)	the information contained in all documents supplied to the Government relating to the Guarantor(s) is true and accurate in all material respects, and the opinions and forecast expressed therein (if any) are honestly held and have been made on a reasonable basis,

			and there are no material facts relating to the Guarantor(s), which would affect the willingness of a reasonable party to rely on a performance guarantee from the Guarantor(s) in terms similar to the terms of this Performance Guarantee, which have not been disclosed to the Government.
	(b)	[Each of the/The] Guarantor(s) further undertakes with the Government:-	
		(i)	that [each of] the Guarantor(s) will promptly inform the Government of the occurrence of any event of which [any of] the Guarantor(s) becomes aware which, in its reasonable opinion, would materially and adversely affect the ability of the Tenant or [any of] the Guarantor(s) to fully perform their respective obligation under the Agreement and this Performance Guarantee; and
		(ii)	that [each of] the Guarantor(s) will endeavour to obtain or cause to be obtained every consent and approval and do, or cause to be done, all other acts and things which may from time to time be necessary or desirable for the continued due performance of all the Guarantor(s)' obligations hereunder.
7	(a)	Every notice, request, demand, direction or other communication under this Performance Guarantee shall be in writing, but may be given or made by letter or fax.	
	(b)	Every notice, request, demand, direction or other communication shall be sent, in the case of a letter, to the other party at its address given below or such other address of the which the other party may have previously given notice, and in the case of a fax message, to the fax number set out below:	
		(i)	The Government as represented by Tourism Commission Address: 2/F, East Wing, Central Government Office, Hong Kong. Attention: Commissioner for Tourism Fax Number:
		(ii)	The Guarantor(s):

			Address Attention: Fax Number:
	(c)	Every notice, request, demand, direction or other communication shall, except insofar as otherwise expressly provided by this Performance Guarantee, be deemed to have been received, if delivered by fax, at the time of dispatch thereof (evidenced by confirmed transaction report) (and on the next working date if the date of dispatch is a Saturday, Sunday or public holiday in Hong Kong), if delivered by post, on the expiry of seventy-two (72) hours after the same is being put into the post in Hong Kong and if delivered by hand, at the time of actual delivery.	
8.	No provision hereof may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the Government.		
9.	No failure or delay by the Government in exercising, or enforcing any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any power or right preclude any further exercise or enforcement thereof or the exercise or enforcement of any other power or right. The right and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.		
10	Any provision of this Performance Guarantee prohibited by or rendered unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from this Performance Guarantee and rendered ineffective so far as is possible without modifying the remaining provisions of this Performance Guarantee. Where however the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by such law to the end that this Performance Guarantee shall be a valid and binding agreement enforceable in accordance with its terms.		
11	(a)	This Performance Guarantee and the rights and obligations of the parties hereto shall be governed by and construed in all respect in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"), and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong	

		Courts.
	(b)	The submission of the Guarantor(s) to the jurisdiction of the Hong Kong Courts shall not restrict the right of the Government to take proceedings against [any of] the Guarantor(s) in any other courts having, claiming or accepting, jurisdiction over [any of] the Guarantor(s) or any of its assets, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
	[(c)]hereby appoints..... of Hong Kong to be its agent for the purpose of accepting service of any proceedings in Hong Kong Courts in connection with this Performance Guarantee and the Government reserves the right to serve process on the Guarantor(s) or any of them in any other manner permitted by law.]
12		The Guarantor(s) shall [jointly and severally] fully and effectually indemnify and hold harmless the Government from and against any and all reasonable losses, costs, charges or expenses (including legal expenses) which the Government may sustain or incur as a consequence of any action taken by the Government under or in connection with this Performance Guarantee.
IN WITNESS whereof this Performance Guarantee has been duly executed on the date first above written		
[SEALED with the Common Seal of]
and		
SIGNED BY		
Duly authorized by its board of directors		
In presence of:-]		

OTHER SPECIFIED USES (Cont'd)

Column 1 Uses always permitted	Column 2 Uses that may be permitted with or without conditions on application to the Town Planning Board
<u>For "Cruise Terminal to include Commercial Development with Landscaped Deck Above" only</u>	
Ambulance Depot Commercial Bathhouse/ Massage Establishment Cruise Terminal Eating Place Exhibition or Convention Hall Government Use Hotel Information Technology and Telecommunications Industries Marine Fuelling Station Office Pier Place of Entertainment Place of Recreation, Sports or Culture Public Utility Installation Radar, Telecommunications Electronic Microwave Repeater, Television and/or Radio Transmitter Installation Shop and Services Utility Installation for Private Project	Broadcasting, Television and/or Film Studio Government Refuse Collection Point Petrol Filling Station Railway Vent Shaft and/or Other Structure above Ground Level other than Entrances

Planning Intention

This zone is intended primarily for the provision of cruise terminal with commercial development and landscaped deck above.