

**REQUEST FOR PROPOSAL**  
**On Provision**  
**of “Freespace Fest” Production Services for**  
**the West Kowloon Cultural District Authority**

**TABLE OF CONTENTS**

SECTION 1 – THE BRIEF .....	2
1. PURPOSE .....	2
2. BACKGROUND .....	2
3. SCOPE OF SERVICES .....	2
4. PROJECT TEAM .....	3
5. MILESTONES AND IMPLEMENTATION SCHEDULE .....	4
6. ACCEPTANCE CRITERIA .....	4
7. FEE PROPOSAL PAYMENT SCHEDULE .....	4
8. SUBMISSION OF PROPOSALS .....	6
9. METHOD OF ASSESSING PROPOSALS .....	8
10. PROBITY AND ANTI-COLLUSION .....	9
11. DISCLOSURE OF FEES PAYABLE TO THE CONTRACTOR .....	11
12. PERSONAL DATA PRIVACY .....	11
 SECTION 2 – GENERAL TERMS AND CONDITIONS .....	 12
13. INSPECTION AND ACCEPTANCE .....	12
14. CONTRACTOR’S ROLE .....	12
15. NO SUB-CONTRACTING OR ASSIGNMENT .....	13
16. RELATIONSHIP .....	13
17. CHANGES IN THE SCOPE OF THE SERVICES .....	13
18. CONFIDENTIALITY OF INFORMATION .....	14
19. INTELLECTUAL PROPERTY RIGHTS .....	14
20. DECLARATION OF INTEREST .....	15
21. LIABILITY FOR DAMAGES OR COMPENSATION .....	15
22. INSURANCE .....	16
23. TERMINATION OF CONTRACT .....	17
24. GOVERNING LAW AND ARBITRATION .....	18
25. COMPLIANCE WITH LAW .....	19
26. CONTROL OF THE SERVICES .....	19

**REQUEST FOR PROPOSAL**  
**On Provision of**  
**“Freespace Fest” Production Services for**  
**the West Kowloon Cultural District Authority**

## **SECTION 1 – THE BRIEF**

### **1. PURPOSE**

1.1 The West Kowloon Cultural District Authority (“**Authority**”) intends to invite tenderers to submit proposals for the provision of “Freespace Fest” Production Services for the period up to 16 December 2012 from the date of acceptance of the proposal.

### **2. BACKGROUND**

2.1 The West Kowloon Cultural District (“**WKCD**”) project is a major initiative to implement the Government of the Hong Kong Special Administrative Region’s policy on arts and culture by meeting the long-term infrastructural and development needs of Hong Kong’s arts and culture.

2.2 The Authority is established by Section 3 of the West Kowloon Cultural District Authority Ordinance (Cap 601) (“**Ordinance**”) as an independent statutory body. The Board of the Authority is the governing and executive body of the Authority. The functions and objectives of the Authority are stipulated in Sections (4) (1) and (4) (2) of the Ordinance respectively. In brief, the Authority is responsible for the planning, development, operation and maintenance of the core arts and cultural facilities (“**CACF**”) and related facilities including retail/dining/entertainment (“**RDE**”) facilities to be provided in the West Kowloon Cultural District (“**WKCD**”).

2.3 The Authority will organize the “Freespace Fest” at WKCD from 15 to 16 December 2012. Several overseas and local music groups, solo performers, street performers will be invited to join this free event offering an array of activities to the public.

### **3. SCOPE OF SERVICES**

3.1 The appointed tenderer (“**Contractor**”) shall from the date of appointment provide the services specified below (“**Services**”)

Services Required	To provide “Freespace Fest” Production Services at the Authority’s request
Period of	Up to 16 December 2012 from the date of the

Services	acceptance letter issued by the Authority
Event date:	15 and 16 December 2012 (Sat and Sun)
Event Venue	Performance venue: the parts of WKCD known as the West Kowloon Waterfront Promenade (section 1) and the temporary event zone C
Requirements	Please refer to the detailed specifications at Annex 2
Conditions	Appointed service provider to grant intellectual property rights licence over all works created for the Services to the Authority. (Please see Clause 19)

3.2 The Contractor shall deliver the Deliverables in accordance with the Time Schedule as follows:

<b>Time Schedule</b>	<b><u>Items to be submitted to the Authority</u></b> <b><u>("Deliverables")</u></b>
14-16/11/12	Site Visit
19-26/11/12	Confirmed Production Timeline and Floor Plan
27/11- 7/12/12	Adaptation of Designs, Confirmation of Production and Logistical Arrangements
10/12/12	Move-in and Preparation
15-16/12/12	Providing required Services on Event dates
16-20/12/12	Dismantle, Unpack and Move-out

#### **4. PROJECT TEAM**

4.1 The Contractor shall deploy persons with relevant expertise, experience and qualification ("**Project Team**") to perform the Services as set out in Clause 3 (Scope of Services).

4.2 Interested tenderers shall provide details of the experience of their key staff members who will be engaged in delivery of Services, indicating their experience with and expertise in providing services similar to the scope of services required under this Brief.

4.3 For overseas Contractor, it shall during the term of the Contract (as defined in Clause 13.2) maintain an office in Hong Kong and have at its

disposal sufficient back-up resources in Hong Kong to undertake the Services. The Project Team leader shall be stationed in Hong Kong during the term of the Contract and be easily contactable locally.

## **5. MILESTONES AND IMPLEMENTATION SCHEDULE**

5.1 The Contractor shall commence the Services immediately after the award of the Contract and complete the entire Services on or before the time schedule in Clause 3. In the event that the Contractor fails to provide any of the Deliverables within the required time schedule set out in Clause 3, then notwithstanding anything else contained in the Contract, the Authority may, on giving the Contractor three (3) days written notice of such failure, and if such failure is not immediately remedied, or if such failure is repeated at any time thereafter, immediately terminate the Contract forthwith and the Authority shall be entitled to recover from the Contractor the amount of all damages and loss suffered by the Authority resulting from such failure on the part of the Contractor.

## **6. ACCEPTANCE CRITERIA**

6.1 The Authority will only confirm acceptance of the Services if –

- a) the Contractor completes the Services in compliance with all the requirements as specified in this Brief to the satisfaction of the Authority; and
- b) the Contractor completes and submits all the Deliverables as specified in Clause 3 to the satisfaction of the Authority.

## **7. FEE PROPOSAL PAYMENT SCHEDULE**

7.1 Interested tenderers shall propose a fixed lump sum cost in Hong Kong Dollars (“HK\$”) for the Services in the Fee proposal. Interested tenderers are advised not to indicate any separate discount. Any discount should be merged with the quoted prices.

7.2 A breakdown of costs as follows shall be provided in the Fee Proposal.

	Item	Price (in HK\$)
1	Licence payment	
2	Power Supply/ Cabling	
3	Audio and Lighting Equipment	
4	Transportation	
5	Marquee and furniture	

6	Manpower	
7	Others: (Please specify)	
	<b>Total :-</b>	

7.3 Subject to the acceptance criteria being met as specified and upon acceptance to the satisfaction of the Authority of all the Deliverables and Services required, payment of the Services fee will be made in the following manner –

<b>Project Milestone</b>	<b>%</b>
a) 1 <sup>st</sup> installment: within two weeks after the Contract is awarded	<b>30%</b> of the Services fee
b) 2 <sup>nd</sup> installment: upon confirmation of the production timeline, adaptation of production/logistic arrangement	<b>30%</b> of the Services fee
c) 3 <sup>rd</sup> installment: on the event day by 15 December 2012	<b>20%</b> of the Services fee
d) 4 <sup>th</sup> installment: within 30 days after satisfactory completion of the Event	<b>20%</b> of the Services fee

7.4 Each installment payment will be made within thirty (30) days after examination and acceptance by the Authority's Representative (as defined in Clause 26) of the specified Deliverables and completion by the Contractor of all the services required for that period. Should there be any defect in a Deliverable or amendment(s) are required to be made in a Deliverable submitted by the Contractor, the Authority may require the Contractor to amend and re-submit the Deliverable at no extra cost or expense to the Authority immediately until the Authority finally accepts the Deliverable.

7.5 The Authority shall be entitled to withhold the payment of any portion of the Contractor's Services fee in the event that:

- any work or services is not performed to the satisfaction of the Authority or any Deliverable is not to the satisfaction of the Authority;
- that portion of the Contractor's Services fee is disputed by the Authority on reasonable grounds;
- the Authority has reasonable grounds to believe that the Contractor is or will be liable to the Authority under the indemnity clause for loss or damages suffered by the Authority; or
- the withholding is required by any applicable law.

7.6 Interested tenderer's proposed Services fee shall be inclusive of all fees, costs, charges and disbursements incurred by the tenderer in the performance of the Services including tax liability to any governments such as VAT and GST, etc. The Services fee is also inclusive of any and all fees, costs, charges and disbursements that may be incurred by the agents, experts and / or advisors of the tenderer. Save and except for increases in the amounts of payments to be made in respect of changes in the scope of the Services agreed in accordance with Clause 17, no additional fees on top of the tenderer's proposed Services fee shall be paid by the Authority.

## **8. SUBMISSION OF PROPOSALS**

8.1 Proposals for the Services shall be submitted in accordance with the requirements set out in this Clause. Five (5) sets each of a Technical Proposal and a Fee Proposal shall be submitted in separate sealed envelopes marked "Request for Proposal for the Provision of "Freespace Fest" Production Services for West Kowloon Cultural District Authority – Technical Proposal" and "Request for Proposal for the Provision of "Freespace Fest" Production Services for West Kowloon Cultural District Authority – Fee Proposal". The separate sealed envelopes containing the Technical Proposal and the Fee Proposal shall be placed in a third sealed envelope marked "Request for Proposal for the Provision of "Freespace Fest" Production Services for West Kowloon Cultural District Authority" and shall be placed in the Tender Box of the West Kowloon Cultural District Authority located at 29/F, Tower 6, The Gateway, 9 Canton Road, Tsimshatsui, Kowloon at or before 11am on 9 November 2012.

8.2 Technical Proposal envelope should include the following information:

- a) relevant experience, track record and documentary evidence of capabilities in providing services of Production Services for organizations of similar standing and in related fields;
- b) a detailed description of the methods proposed to be employed in undertaking the Services;
- c) names of individual employees to join the Project Team (Clause 5) who will be responsible for the Services together with the curriculum vitae of each of such individuals;
- d) whether the tenderer would require engagement of sub-Contractors to complete the Services, and if so, details of the proposed sub-Contractors and a detailed proposal on how the service provider intends to work with the sub-Contractors;

- e) declaration of involvement or interest that may give rise to actual, potential or perceived conflict with the Services to be provided, and declaration of litigation or lawsuits and records of convictions as per the proforma in Appendix B;
- f) the name, address, email address, and telephone/fax numbers of the contact person;
- g) any other information the tenderer considers relevant to the Services;
- h) a detailed production timeline;  
and
- i) other support and suggestions

8.3 The Fee Proposal envelope should include the **Quotation in Appendix A**. A breakdown of costs shall be provided strictly as per the proforma in Appendix A. Tenderers are advised not to indicate any separate discount. Any discount should be merged with the quoted prices.

8.4 If a black rainstorm warning, or typhoon signal No. 8 or above is hoisted between 7:00 am and 12:00 noon on the proposal closing date, the proposal closing time will be extended to 12:00 noon (Hong Kong Time) on the next weekday (i.e. except Saturday, Sunday or public holiday) after the black rainstorm warning or typhoon signal No. 8 or above is lowered.

8.5 Late submissions and proposals not submitted in accordance with the aforesaid requirements will not be considered.

8.6 The Authority reserves the right to suspend, not to proceed with or to cancel this Request for Proposal at any time without prior notice. No compensation or payment will be made to parties who submitted proposals. The Authority is at liberty to decline to accept any submission and it will not be responsible for any costs incurred by any person or firm in preparing such proposal. The Authority is under no obligation to discuss the evaluation result of any proposal with any person. Please also note that documents submitted in response to this Request for Proposal will not be returned.

8.7 The Authority reserves the right to amend, vary or change any of the terms of this Request for Proposal at any time.

8.8 All information in this Request for Proposal provided by the Authority is for reference only. No guarantee is given that they are exhaustive, accurate or

reliable. Tenderers are advised to seek independent evaluation of all conditions and circumstances in undertaking the Services.

## 9. METHOD OF ASSESSING PROPOSALS

9.1 An Assessment Panel will be set up to evaluate the Technical and Fee Proposals received. The Proposals will be assessed in accordance with the assessment criteria below, based on the information submitted as required under this Brief.

### 9.2 Assessment Criteria

Selection of the Contractor to undertake the Services will be based on:

- a) completeness and conformity to the specification, and
- b) technical assessment and price ranking.

9.3 A 60% technical weighting and a 40% fee weighting will be used in the computation of Price-Technical score.

Price-Technical Score = Technical Score + Price Score

Where Technical Score	= 'technical score'	x 60%
	-----	
	highest 'technical score'	
Price Score	= lowest 'price'	x 40%
	-----	
	'price'	
<ul style="list-style-type: none"><li>• 'technical score' is the technical score attained by the Proposal of the tenderer.</li><li>• Highest 'technical score' is the highest technical score among all completed and conforming Proposals received from interested tenderers for the Services.</li><li>• 'price' is the price for the Proposal of the tenderer.</li><li>• Lowest 'price' is the lowest price among all completed and conforming Proposals received from interested tenderers for the Services.</li></ul>		

9.4 The 'technical score' of a Proposal consists of the following assessment criteria in response to the specific requirements of the Services as below –

- a) Understanding of the objectives and scope of the Services



Relative marks will be given to how the Proposal responds to and matches the overall objectives and scope of the Services.

- b) Project management and experience: track record and number of years of experience in organizing and managing events in similar nature and scale
- c) The Tenderer's proposed approaches and methodology in undertaking the Services
- d) Design of action plan and detailed production timeline for the Services
- e) The Tenderer's proposed resources allocation (number of staff and services to be provided)
- f) Other support and suggestions

The technical scoring structure is given below –

<b>Assessment Criteria</b>	<b>Percentage score</b>
(a) Understanding of the objectives and scope of the Services; Project management and experience: track record and number of years of experience in organizing and managing events in similar nature and scale	60%
(b) The Tenderer's proposed approaches and methodology in undertaking the Services; Design of action plan and detailed production timeline for the Services	25%
(c) Other support and suggestions (e.g. proposed resources allocation (number of staff and services to be provided))	15%
Total	100%

#### **(D) PROBITY AND ANTI-COLLUSION**

10.1 Interested tenderers are also reminded to comply with the following matters relating to probity and anti-collusion requirements regarding this Invitation for Proposal.

## 10.2 Offering Gratuities

- a) Interested tenderers shall not, and shall procure that his employees and agents shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance, (Cap 201) in connection with this Invitation for Proposal exercise.
- b) Failure to so procure or any act of offering, soliciting or accepting advantage referred to in a) above committed by an interested service provider or by his employee or agent shall, without affecting the tenderer's liability for such failure and act, result in his proposal being invalidated.

## 10.3 Anti-collusion

- a) Interested tenderers shall not communicate to any person other than the Authority the amount of any fee proposal, adjust the amount of any fee proposal by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not submit a proposal or otherwise collude with any other person in any manner whatsoever in the fee proposal process until the expiry of the validity period of the tenderer's proposal. Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer's liability for such breach or noncompliance, invalidate his proposal.
- b) Sub-clause a) of this paragraph shall have no application to the tenderer's communications in strict confidence with his own insurers or brokers to obtain an insurance quotation for computation of the fee proposal (if appropriate) and communications in strict confidence with his employees and agents to solicit their assistance in preparation of the proposal submission.
- c) By their submission of a proposal, interested tenderers shall be deemed to have given the Authority the following Warranty and Undertaking:

### Warranty and Undertaking:

As at the time of submission of the proposal and other than the Excepted Communications referred to in the last paragraph hereof we have not communicated to any person other than the Authority the

tender price nor any other detail of our proposal , nor have we adjusted the amount of our tender by arrangement with any other person, made any arrangement with any other person about whether or not we or any other person would tender, or otherwise colluded with any other person in any manner whatsoever AND we undertake that at no time after the submission of our proposal until after the tender award by the Authority, or until the tender is cancelled, whichever is first, and other than the Excepted Communications referred to in the last paragraph hereof we will not communicate to any person other than the Authority our tender price or any other detail of our proposal , nor shall we adjust the amount of our tender by arrangement with any other person or otherwise collude with any other person in any manner whatsoever.

In this Warranty and Undertaking, the expression “Excepted Communications” means our communications in strict confidence with our own insurers or brokers to obtain an insurance quotation for the purposes of our proposal and communications in strict confidence with our sub-contractors to solicit their assistance in preparation of our tender submission and the computation of our tender price.

- d) The Warranty and Undertaking shall be irrevocable and shall be binding upon us until the tender award or until the tender is cancelled, whichever is first.

## **11. DISCLOSURE OF FEES PAYABLE TO THE CONTRACTOR**

11.1 The Authority shall have the right to disclose to any person, whenever it considers appropriate or upon request by any third party (written or otherwise), and in such form and manner as it deems fit -

- a) The fees, costs and expenses payable by the Authority for engaging the Contractor; and
- b) The quotation submitted by the interested tenderers.

11.2 By submission of their Proposals the interested tenderers shall waive and forego any right to make any claim against the Authority for any loss, damage, cost, charge, liability, demand, proceeding or action that may arise out of or in consequence of such disclosure by the Authority.

## **12. PERSONAL DATA PRIVACY**

12.1 Tenderer's personal data provided in the Proposal will be used for the evaluation of the Proposal and for Contract award purposes. If insufficient and inaccurate information is provided, the proposal may not be considered.

12.2 Interested tenderer acknowledges and consents to the Authority disclosing its personal data provided in the Proposal to such Government departments and bureaux and the Legislative Council as may have an interest or right in respect of the overseeing and governance of the Authority whether pursuant to the Ordinance or pursuant to any other ordinance, regulation, by-law, or statutory rule.

12.3 Tenderers shall have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the tenderer's personal data provided in the Proposal.

12.4 Enquiries concerning the personal data collected by means of the Proposal, including the making of access and corrections, should be addressed to the Authority.

## **SECTION 2 – GENERAL TERMS AND CONDITIONS**

The Contractor, i.e. the appointed tenderer shall be obliged to observe the following general terms and conditions.

### **13. INSPECTION AND ACCEPTANCE**

13.1 The Services performed in pursuance of the Contract shall be subject to inspection by the Authority. The Services shall not be deemed to have been accepted unless the Authority shall so certify in writing.

13.2 The Contractor shall receive as an indication of acceptance a fax or a letter of acceptance from the Authority. The fax or letter of acceptance together with this Request for Proposal and the Fee Proposal shall constitute a binding contract ("**Contract**"). Tenderers which do not receive any notification within the validity period (not less than 90 calendar days) of their offer shall assume that their proposals have not been accepted.

### **14. CONTRACTOR'S ROLE**

14.1 The Contractor is required to be the main Contractor and fully engaged in the whole Services. Subject to Clause 15, should the Contractor need to engage

other sub-Contractors and business partners for the Services after obtaining approval of the Authority's Representative, the Contractor shall act as a single coordinator responsible for coordination among its sub-Contractors and business partners throughout the whole Contract period.

14.2 The Contractor is required to conduct meetings with the Authority's Representative periodically, and to report any risks / potential risks / delay and proposed solutions etc.

14.3 No change of the Project Team leader shall be allowed after the award of the Contract, unless prior written approval from the Authority is obtained. The replacement shall have equivalent qualifications and experience to the outgoing person. The Authority reserves the right to interview the nominated replacement and also reserves the right to terminate the Services and the Contract if the Contractor, within a reasonable time, is not able to provide a replacement who meets the requirements of the Authority.

14.4 For the avoidance of doubt, nothing in this Contract shall oblige the Authority to adopt the whole or any part of the Deliverables submitted by the Contractor under this Brief.

## **15. NO SUB-CONTRACTING OR ASSIGNMENT**

15.1 The Contractor shall not assign, or otherwise dispose of or transfer, or sub-contract any of their duties, obligations, interests, rights or benefits in the Contract, in whole or in part, without the prior written approval of the Authority. If any part of the Services is sub-contracted to any person, the Contractor shall remain liable for any act or omission of such person as if such acts or omissions were its own.

## **16. RELATIONSHIP**

16.1 The Contractor is an independent contractor only and the Contractor or any person employed or engaged by him or any sub-Contractors or person concerned with the same shall not be deemed to be the employee, servant, or agent of the Authority.

## **17. CHANGES IN THE SCOPE OF THE SERVICES**

17.1 The Authority retains the right to make changes to the scope of the Services any time at its absolute discretion and to issue instructions to the Contractor to make such changes. The change may be in the form of additions to, reductions of or alteration to the scope of the Services. The Authority shall

advise the Contractor of any change so contemplated. In the event that the Contractor believes that any amount of the Contractor's service fee payable by the Authority stipulated in the Payment Schedule shall be rendered unfair or unreasonable as a result of the Authority's proposed change in the scope of the Services notified to it pursuant to this Clause, the Contractor shall promptly notify the Authority of such and so soon as may be practicable shall prepare and provide to the Authority a detailed estimate of the additional costs and expenses that the Contractor will incur as a consequence of such change together with the effect such change may have on the time schedule for execution of the Services and delivery of the Deliverables. The Authority shall review this estimate with the Contractor with the intention of arriving at a mutually acceptable addition or reduction to the Contractor's Services fee.

## **18. CONFIDENTIALITY OF INFORMATION**

18.1 The Contractor shall not disclose any confidential information in connection with the Services or concerning the Authority to any third party. Furthermore, it shall not publish any photographs, advertising or publicity material relating to the Services or the Authority without the prior written approval of the Authority..

## **19. INTELLECTUAL PROPERTY RIGHTS**

19.1 By submission of its proposal the Contractor agrees and warrants that in relation to the intellectual property rights –

- a) No material supplied under this Contract (as defined in Clause 13.2) nor the composition, compilation and manufacturing thereof shall infringe the intellectual property rights (including without limitation any patent, design or trade mark, any copyright or trade secret or confidential information protected under the laws of Hong Kong or elsewhere in the world) of any third party.
- b) Subject to sub-clause d)ii) hereof, the Authority shall have the right to adapt, modify, maintain and apply any Deliverable at any time following completion of this Contract.
- c) Subject to sub-clause d)ii) upon completion of the Services, the Authority shall become the absolute and exclusive owner of all Deliverables and all intellectual property rights subsisting therein free from all encumbrances.
- d) The Contractor hereby undertakes and warrants to the Authority that:

- i) they are either the sole legal and beneficial owner of all intellectual property rights in all components of all Deliverables hereunder and have the right to pass ownership in the same to the Authority; or
- ii) that they are able to provide the Authority with an irrevocable, assignable, non-exclusive, royalty-free license to use such intellectual property for all of the purposes of this Contract, including the adaptation, maintenance, modification and application of all materials utilized by the Contractor for the purposes of this Contract; and
- iii) save where the intellectual property in such material is the property of the Contractor, the Contractor declares and warrants that all materials used by the Contractor in the delivery of the Services are licensed to the Contractor and under such license the Contractor has the right to use such material in the delivery of the Services.

The Contractor hereby indemnifies the Authority against all claims, proceedings, actions, damages and losses incurred or sustained by the Authority arising from either any of the Contractor's breach of the warranty in Clause d) or from the Authority's use of the Deliverables and the intellectual property rights subsisting therein. The indemnity herein shall survive termination of the Contract.

## **20. DECLARATION OF INTEREST**

20.1 During the performance of the Services, the Contractor must declare any interest if it is considered to be in potential or actual conflict with the duties to be performed. The Contractor shall not, without the written consent of the Authority, undertake any services which could give rise to conflict of interest.

## **21. LIABILITY FOR DAMAGES OR COMPENSATION**

21.1 The Authority and its employees or agents shall not be under any liability whatsoever for or in respect of –

- a) any loss of or damage to the Contractor's property or that of its employees or agents however caused (whether by any negligence of the Authority or any of its employees or agents or otherwise); or
- b) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the gross negligence of the Authority or any of its employees or agents.

21.2 The Contractor shall indemnify the Authority and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Authority or any of its employees or agents in respect of -

- a) any loss, damage, injury or death referred to paragraph 21.1 (save and except injury or death caused by the gross negligence of the Authority or any of its employees or agents); and
- b) any loss or damage sustained by or any injury to or death of any third party in consequence of any negligence of the Contractor or any of their employees or agents.

21.3 The Contractor shall indemnify the Authority against any loss of or damage to any property of the Authority or of any of its employees or agents or any injury to any employee or agent of the Authority arising out of the negligence of the Contractor or any of its employees, sub-Contractors or agents.

21.4 For the purposes of this clause 'negligence' shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap 71).

## **22. INSURANCE**

22.1 Without limiting the Contractor's obligations and responsibilities nor their liability to indemnify the Authority, the Contractor shall effect and maintain with a well established insurer of repute indemnity insurance for a minimum amount HK\$20,000,000 in respect of all risks arising from the Services to be provided by the Contractor (including but not limited to contractor's all risks for the installation and removal of stage and packing works and third party legal liability to cover any death or injury or damage to third party property that occurs during the event, employees compensation insurance (to cover employees of service provider), for any one occurrence or series of occurrences arising out of any one event, or each and every claim, from the date of commencement of the Contract until twelve months after its expiry (i.e. from the date of notification of completion of the Services in writing issued by the Authority). The insurance shall be effected with an insurer acceptable to the Authority. The Contractor shall immediately inform the Authority in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable. The policy shall be issued for the benefit of and in the joint names of the "West Kowloon Cultural District Authority", and its subsidiaries, associated companies and affiliated companies that may appear from time to



time and the Government of the Hong Kong Special Administrative Region as landlord of the venue and the Contractor and its sub-contractors of any tiers and shall be incorporated with “Cross Liability” clause and “Waiver of Subrogation” clause.

## **23. TERMINATION OF CONTRACT**

23.1 The Authority may terminate the Contract forthwith by giving written notice to the Contractor if –

- a) the Contractor shall be in breach of any term, condition, warranty or undertaking of the Contract on the part of the Contractor to observe and perform which –
  - i) in the case of a breach capable of being remedied, shall not have been remedied by the Contractor within 3 days or within such other time as may be specified by the Authority of the receipt of a written notice from the Authority’s Representative requiring the breach be remedied; or
  - ii) is fundamental to the Contract;
- b) the Contractor shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction, which shall have been previously advised to the Authority.) or the Contractor shall pass a resolution or the court shall make an order for the liquidation of its assets or a receiver or manager shall be appointed over any of the Contractor's business or assets or circumstances shall have arisen for such an appointment or a distress or execution shall be levied or enforced upon any of the Contractor’s chattels, properties or assets and shall not be discharged or stayed within 30 days thereafter;
- c) the Contractor shall stop payment to creditors generally or shall be unable to pay any of its debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or shall cease or threaten to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction); or
- d) the Contractor assigns, transfers, sub-contracts or purport to assign, transfer, sub-contract any of its benefits, interests or obligations under this Contract without prior written consent of the Authority.

23.2 If the Contract is terminated under any of Sub-clauses a) to d) of Clause 23.1, the Authority shall have no further obligation to the Contractor under the Contract. Without thereby releasing the Contractor from any of its obligations or liabilities under the Contract, or affecting the rights and powers conferred upon the Authority by the Contract, the Authority may itself complete the work in relation to the Services or (at the option of the Authority) may engage, use or employ any other tenderer to complete the Services without any liability to the Contractor therefore for loss or damage, whether in contract or tort or any other head of loss or damage of whatsoever description and howsoever caused.

23.3 The Authority may at any time at its sole discretion terminate the Contract by giving the Consultant 7 days' prior written notice. The Authority may at any time at its sole discretion suspend with immediate effect the performance of the Contract by giving the Consultant notice in writing.

23.4 The expiry or termination of the Contract under Clause 23.3 shall be without prejudice to any antecedent rights or obligations of either party and any provisions of the Contract capable of being performed or observed notwithstanding such expiry or termination shall survive the same and shall continue to be binding on the parties and shall remain in full force and effect.

23.5 Any provisions of the Contract which are required by the context or are capable of being observed and performed after the expiry or early termination of the Contract shall continue in force and effect notwithstanding such expiry or termination.

## **24. GOVERNING LAW AND ARBITRATION**

24.1 The Contract shall be governed by and construed in accordance with the laws of Hong Kong and subject to Clause 24.2, the parties agree to submit to the jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

24.2 Any dispute between the parties arising out of or in connection with the Contract shall first be referred to mediation to be administered by the Hong Kong International Arbitration Centre ("HKIAC") and in accordance with the HKIAC's Mediation Rules which are current at the time of the reference to mediation; and if the mediation is abandoned by the mediator or is otherwise concluded without the dispute being resolved within 28 days, the dispute shall be referred for arbitration in Hong Kong by a single arbitrator appointed jointly

by the parties failing which such arbitrator shall be nominated by the HKIAC. The Arbitration shall be conducted in English, in accordance with the Arbitration Rules of the HKIAC which are current at the time of the reference to arbitration. The arbitrator's decision shall be final and binding and not subject to appeal and save as provided herein, the matters listed in Schedule 2 of the Arbitration Ordinance (Cap 609) shall apply to the arbitration.

## **25. COMPLIANCE WITH LAW**

25.1 The Contractor shall observe and comply with all applicable Hong Kong laws, regulations, decrees and orders in connection with the performance of the Contract.

25.2 The Contractor shall secure, obtain and maintain throughout the duration of the Contract all and any governmental authorizations, approvals, visas, permits or licenses which may be required or necessary in connection with the performance of the Contract and bear all costs, charges and expenses that may be incurred in obtaining and maintaining the permits, visas and licenses.

## **26. CONTROL OF THE SERVICES**

26.1 The Authority's Representative for the Services is Ms. Naomi Chung. The Contractor shall report to the Authority's Representative and take and comply with instructions from the Authority's Representative on matters relating to the Services. For all purposes of this Contract and the Services where the Contractor is required to obtain the approval or acceptance of the Authority, or the Authority is required to give its approval or acceptance to, any submission, deliverable, report or document or thing whatsoever the written approval or acceptance of the Authority's Representative shall serve as such acceptance or approval of the Authority. The Contractor shall have regular liaison with the Authority's Representative to discuss and explain the progress of the Services, the methodology, results of analysis and recommendations.

26.2 The Coordinator is Ms. Michelle Rocha (Tel No: 2200 0192). The Coordinator shall assist the Authority's Representative in liaison with the tenderer for the Services.

**West Kowloon Cultural District Authority**  
**5 November 2012**



**Quotation for Provision of “Freespace Fest” Production Services for the West Kowloon Cultural District Authority**

In response to your letter dated 5 November 2012, our quotation for the Provision of “Freespace Fest” Production Services for the Authority is:

	<b>Particulars</b>	<b>Rate (HK\$)</b>	<b>Please state the assumptions on which the Rate are based and calculated</b>
1)			
2)			
3)			
4)			
5)			
6)			
7)			

All the terms for the provision of the Services will be in accordance with the requirement of the Authority set out in Annex 1 attached to the said letter. I/ we understand that the Authority is not bound to accept the lowest or any quotation that it may receive.

**Name of the Authorized Person:** \_\_\_\_\_

**Job Title of the Authorized Person:** \_\_\_\_\_

**Name of the Tenderer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature of Person Authorized to sign the Quotation :** \_\_\_\_\_

**Contact phone number:** \_\_\_\_\_

**Company Chop:** \_\_\_\_\_

**Declaration**

To: **West Kowloon Cultural District Authority (“Authority”)**

From: \_\_\_\_\_ (Name of Tenderer)

Date: \_\_\_\_\_

Dear Sirs,

Re: Request for Proposal/Invitation for Quotation\*  
“Freespace Fest” Production Services (“Services”)

We refer to the above Request for Proposal/Invitation for Quotation\* for the provision of the Services.

This is to confirm that I/we\* have/do not have any\* direct or indirect financial, personal or other interests relating to or arising from the duties to be performed for the Services and which conflict or compete, or appear to conflict or compete, with any interest of the Authority. I/We\* also undertake that should such a conflict arise in future during the term of the contract for the Services with the Authority, I/we\* will inform the Authority immediately. ***(If there is such a conflict, please provide details as an attachment to this Declaration.)***

I/We\* also declare that I/we\* have/do not have\* outstanding or threatened claim, distress, legal action, litigation, proceeding, suit, prosecution, investigation, enquiry or arbitration which may have a bearing to our performance of the Services. I/We also understand that the Authority reserves the right to terminate the contract with me/us\* if it is subsequently found that I/we\* have the aforesaid instance that had not been disclosed to the Authority. ***(If there is such an instance, please provide details as an attachment to this Declaration.)***

I/We\* also declare that I/we\* have / do not have\* records of convictions under the Employment Ordinance, Employees’ Compensation Ordinance, and the Immigration Ordinance or any other relevant ordinance which may have bearing to our performance required for the Services for the 12-month period preceding the closing date for the submission of proposal/quotation\*. I/We\* also understand that the Authority reserves the right to terminate the contract with me/us\* if it is subsequently found that I/we\*

have such convictions that had not been disclosed to the Authority. ***(If there is such a conviction, please provide details as an attachment to this Declaration.)***

I/We\* consent and hereby authorize the Authority to investigate and verify information, including our declaration provided in relation to this submission of proposal/quotation\*with any third parties.

Yours faithfully,

---

(Name and position of Signatory)

*\*Delete inappropriate*