

TENDER FORM

THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT

TENDER FOR
THE GRANT OF LICENCE TO OPERATE THE GIFT SHOP
AT THE HONG KONG HERITAGE MUSEUM

(Tender Ref.: LCSD/HMM(R)/1/2018)

LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this invitation to tender as shown in Part I below, which must also be properly completed as required in triplicate, in a sealed plain envelope

Marked “**Tender for the Grant of Licence to Operate the Gift Shop at the Hong Kong Heritage Museum**”
and addressed to the Chairman, Government Logistics Department Tender Opening Committee,
must be deposited in the Government Logistics Department Tender Box situated at Ground Floor,
North Point Government Offices, 333 Java Road, North Point, Hong Kong

Before 12:00 noon (time) on 4 December 2018 (date). Late tenders will not be accepted.

Dated this 30 October 2018

Vikki LAM
Government Representative

Part I — Tender Documents

These documents under the tender reference LCSD/HMM(R)/1/2018
consist of three (3) complete sets of :

- (a) Tender Form;
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 5);
- (d) Terms of Tender (Sheets 6 to 28);
- (e) Conditions of Contract (Sheets 29 to 70);
- (f) Contract Schedules 1 to 5 (Sheets 71 to 93);
- (g) Form of Security Deposit Election (Sheet 94);
- (h) Articles of Agreement (Sheets 95 to 97); and
- (i) Annexes A to E (Sheets 98 to 110)

Part II — Offer to be Bound

- 1. Having read the Tender Documents, I/we agree to be bound by all of the terms and conditions as stipulated therein.
- 2. I/We do agree to carry out the Business and pay the Monthly Licence Fee quoted by me/us in Contract Schedule 1, subject to and in accordance with the terms and conditions stipulated in the Contract.
- 3. I/we warrant that all information given in or attached to my/our Tender are true, complete and correct.
- 4. In the case the Tenderer is a company/corporation/firm, the Tenderer is required to complete 4(a) to 4(c). In the case the Tenderer is a sole proprietor, the Tenderer is required to strike out 4(a) to 4(c).

(a) The authorized representative named below has been duly authorised to bind the company or corporation hereafter mentioned by his signature.

– or –

The authorized representative named below is a partner signing in the name of the firm hereafter mentioned and duly authorized to bind the said firm and the partners therein .

(b) The name of the Tenderer being a company/corporation/firm*
is

(c) The registered office of the company is situated at
.....

– or –

The names and residential addresses of partners of the firm are as follows :-

.....
.....
.....

Name of Tenderer _____
(Name in block letters)

Signature of Tenderer/Authorized Representative for
and on behalf of the Tenderer* _____
(Signature) (with firm/company chop, if applicable)

Name of the Authorised Representative*: _____
Title of Authorised Representative*: _____
Address of Authorised Representative*: _____
Date : _____

NOTE : (i) All the particulars required above must be provided.
(ii) Strike out clearly alternatives which are not applicable.

* Delete as appropriate

TENDER LABEL
(Complete Tender Submission)

THE CHAIRMAN
GOVERNMENT LOGISTICS DEPARTMENT
TENDER OPENING COMMITTEE

Government Logistics Department Tender Box,
Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong

Tender for the Grant of Licence to Operate
the Gift Shop at the Hong Kong Heritage Museum

Tender Ref.: LCSD/HMM(R)/1/2018

Tender Closing Date: 4 December 2018 (12:00 noon Hong Kong Time)

Note: “The Price Submission” and “The “Technical Submission” of the Tender must be enclosed in sealed and separate envelopes with the labels provided (Labels 1 and 2) affixed outside the relevant envelope and inserted into one big envelope with this label affixed outside. Please remember to complete and submit the following documents in triplicate:

- Documents for Price Submission in sealed envelope
- Documents for Technical Submission in sealed envelope

TENDER LABEL 1
Price Submission

THE CHAIRMAN
GOVERNMENT LOGISTICS DEPARTMENT
TENDER OPENING COMMITTEE

Government Logistics Department Tender Box,
Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong

Tender for the Grant of Licence to Operate
the Gift Shop at the Hong Kong Heritage Museum

Tender Ref.: LCSD/HMM(R)/1/2018

Tender Closing Date: 4 December 2018 (12:00 noon Hong Kong Time)

Please remember to complete and submit the following document in triplicate for price submission:-

- Contract Schedule 1 ONLY**

TENDER LABEL 2
Technical Submission
(without any indication on the Monthly Licence Fee)

THE CHAIRMAN

GOVERNMENT LOGISTICS DEPARTMENT

TENDER OPENING COMMITTEE

**Government Logistics Department Tender Box,
Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong**

**Tender for the Grant of Licence to Operate
the Gift Shop at the Hong Kong Heritage Museum**

Tender Ref.: LCSD/HMM(R)/1/2018

Tender Closing Date: 4 December 2018 (12:00 noon Hong Kong Time)

Please remember to complete and submit the following document in triplicate for technical submission:-

- Tender Form
- Contract Schedule 2
- Contract Schedule 3
- Contract Schedule 4
- Form of Security Deposit Election
- All remaining information and documents required in the Invitation to Tender

(without any indication on Monthly Licence Fee)

INTERPRETATION

1. In the Tender Documents and the Contract (as defined below), unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Authorised Merchandise” has the meaning given to the term in **Clause 24.2** of the Conditions of Contract and includes Museum Licensed Items but excluding Consignment Items.

“Business” has the meaning given to the term in **Clause 3** of the **Conditions of Contract**.

“Conditional Acceptance of Tender” has the meaning given to the term in **Clause 14.2** of the **Terms of Tender**.

“Consignment Items” has the meaning given to the term in **Clause 45.1** of the Conditions of Contract.

“Contract” means the contract entered into between the Government and the Contractor comprising the following parts of the Tender Documents and other items as specified below:

- (a) the “Articles of Agreement”;
- (b) the “Terms of Tender”;
- (c) the “Conditions of Contract”;
- (d) the “Contract Schedules” (or “Schedules”) in the form as appearing in the Tender Documents and those which were submitted by the Contractor as part of its Tender, and accepted by the Government Representative;
- (e) the “Annexes” A to E;
- (f) all other schedules, plans, drawings and other documents which form part of the Contractor’s Tender or are incorporated by reference herein or in any of the above documents,

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

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

“Contract Period”	means the period specified in Clause 2.1 of the Conditions of Contract as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.
“Contractor”	means the Tenderer whose tender is accepted by the Government Representative.
“Free Decoration Period”	means a period of up to two months commencing from the commencement of the Contract Period for the Contractor to perform fitting out work.
“Gift Shop”	means the shop to be operated at the Licence Area.
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.
“Government Representative”	means the Director of Leisure and Cultural Services or any other officer of the Government authorized to act on her behalf for the purpose of the Contract.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.

“Inspection Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Business carried out by the Contractor under the Contract.
“Intellectual Property Rights” or “IPR”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Invitation to Tender”	means the invitation issued by the Government Representative to invite tender for the Contract on the terms set out in the Tender Documents.
“LCSD”	means the Leisure and Cultural Services Department.
“Licence Area”	means the area within the Museum as shown in Annex C .
“Monthly Licence Fee”	means the amount payable by the Contractor to the Government at the monthly rate specified in Contract Schedule 1 subject to any adjustment in accordance with the applicable provisions of the Contract.
“Museum”	means the Hong Kong Heritage Museum, located at 1 Man Lam Road, Sha Tin, New Territories, Hong Kong as indicated in Annex B .
“Museum Licensed Items”	has the meaning given to the term in Clause 47.1 of the Conditions of Contract.
“Original Tender Closing Date”	means the latest date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently.

“Security Deposit”	means the sum of money deposited by the Contractor by cash or in the form of banker’s guarantee referred to in Clause 27 of the Terms of Tender .
“Tender” (upper or lower case)	means a tender submitted in response to this Invitation to Tender.
“Tender Closing Date”	means the latest date and time specified in the Tender Form as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	means the documents as specified in Clause 1 of the Terms of Tender .
“Tenderer”	means the person, organization, firm or company submitting this tender.
“Tender Validity Period”	means the period of time as described in Clause 8 of the Terms of Tender during which the tender is to remain open.

2. In the Tender Documents or the Contract, unless the content otherwise requires, the following rules of interpretation shall apply –
 - 2.1 References to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes.
 - 2.2 Words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporated (wherever established or incorporated); references to company include corporation.
 - 2.3 Headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract.

- 2.4 References to a document shall:
- (i) include all schedules, appendices, annexures and other materials attached to such documents; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract.
- 2.5 References to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them.
- 2.6 Where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
- 2.7 The expressions “public body” and “public officer” have the meanings given to them in the General Clauses and Interpretation Ordinance (Cap. 1). The expression “officer” has the meaning given to it in the Companies Ordinance (Cap. 622). A reference to a public officer shall include a reference of any person for the time being lawfully discharging the functions of that office, or any part of such functions, and any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being.
- 2.8 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or the Government Representative or any public officer.
- 2.9 All rights and powers of the Government under the Contract may be exercised by the Government Representative.
- 2.10 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.
- 2.11 References to **Contract Schedule 2 or 3** or any plan or proposal contained therein shall mean such Contract Schedule or such plan or proposal in the final form as approved by the Government before or after the award of the Contract.

PART 1
TERMS OF TENDER

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**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
LEISURE AND CULTURAL SERVICES DEPARTMENT**

PART 1

TERMS OF TENDER

ALL TENDERERS ARE ADVISED TO READ THE TENDER DOCUMENTS CAREFULLY PRIOR TO PREPARING THEIR SUBMISSION. ANY SUBMISSION WHICH DOES NOT FOLLOW THE INSTRUCTIONS CONTAINED WITHIN THE DOCUMENTS WILL BE CONSIDERED INCOMPLETE AND MAY BE DISQUALIFIED.

ALL RIGHTS AND POWERS OF THE GOVERNMENT UNDER THE TENDER DOCUMENTS ARE EXERCISABLE BY THE GOVERNMENT REPRESENTATIVE.

1. Tender Documents

The Tender Documents consist of a complete set of:

- (a) Tender Form (Parts I and II);
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 5);
- (d) Terms of Tender (Sheets 6 to 28);
- (e) Conditions of Contract (Sheets 29 to 70);
- (f) Contract Schedules 1 to 5 (Sheets 71 to 93);

Contract Schedule 1 – Monthly Licence Fee;

Contract Schedule 2 – List of Proposed Merchandise for Sale at the Licence Area;

Contract Schedule 3 – Experience and Business Plans;

Contract Schedule 4 – Information of the Tenderer; and

Contract Schedule 5 – Marking Scheme for Tender Evaluation.

- (g) Form of Security Deposit Election (Sheet 94);
- (h) Articles of Agreement (Sheets 95 to 97); and
- (i) Annexes A to E (Sheets 98 to 110)
 - Annex A – General Information of the Hong Kong Heritage Museum;
 - Annex B – Location Map of the Hong Kong Heritage Museum;
 - Annex C – The Licence Area;
 - Annex D – Enrolment Form for the Tender Briefing Session; and
 - Annex E – Form of Bank Guarantee.

2. **Invitation to Tender**

Tenders are invited for the grant of a licence to operate the Gift Shop at the Licence Area within the Hong Kong Heritage Museum for a Contract Period of six (6) years on such terms and conditions as set out in the Tender Documents. General information of the Hong Kong Heritage Museum and the Licence Area is at **Annexes A to C**.

3. **Tender Submission**

- 3.1 All Tender Documents shall be completed and submitted in **TRIPLICATE (i.e. one original and two photocopies)** and put in two envelopes (as more particularly described in **Clause 5**) in the manner stipulated under “Lodging of Tender” of the **Tender Form**.
- 3.2 Tenders shall be written in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for tender evaluation.
- 3.3 Tenderers shall sign (where appropriate), complete and submit the following parts of the Tender Documents and provide all information/documents requested therein and in the remainder of the Tender Documents.
 - (a) **Tender Form** – “Offer to be Bound”
(in technical submission envelope)

Tenderers should print a softcopy of the Tender Form obtained from the Government or photocopy the Tender Form, and not reproduce by other means (e.g. by retyping).
 - (b) **Contract Schedule 1** – Monthly Licence Fee
(Sheets 72 to 73) (in price submission envelope)

- (c) **Contract Schedule 2** – List of Proposed Merchandise for Sale at the
(Sheet 74) Licence Area
(in technical submission envelope)
 - (d) **Contract Schedule 3** – Experience and Business Plans
(Sheets 75 to 81) (in technical submission envelope)
 - (e) **Contract Schedule 4** – Information of the Tenderer
(Sheets 82 to 84) (in technical submission envelope)
 - (f) **Form of Security Deposit Election** – (in technical submission envelope)
(Sheet 94)
- 3.4 When completing the Tender Documents, any alteration in figures or words shall be effected by striking through the incorrect figures or words and inserting the corrected ones above the original ones. All such amendments shall be initialed by the Tenderer in ink. Any unauthorized alteration or erasure to the text of the Tender Documents may cause the tender to be disqualified.
- 3.5 “Offer to be Bound” of the Tender Form shall be duly signed by:
- (a) if the Tenderer is a sole proprietorship, the Tenderer;
 - (b) if the Tenderer is a partnership, a partner of the Tenderer; or
 - (c) if the Tenderer is a body corporate, one or more persons who are duly authorised by the Tenderer to sign and submit the Tender for and on behalf of the Tenderer.
- 3.6 A Tenderer shall submit a copy of the relevant document (e.g. board resolutions of the Tenderer if it is a company) showing that the authorised person(s) who sign(s) the Offer to be Bound (whether in paper form or electronically) has/have the authority to sign it for and on behalf of the Tenderer.
- 3.7 **Tenders will be assessed according to the assessment criteria stipulated in Contract Schedule 5.**

4. Preparation

4.1 Tenders must complete (if applicable) and submit the following documents together with all necessary information including documentary evidence in **triplicate**:-

- (a) “Offer to be Bound”;
- (b) **Contract Schedule 1** – Monthly Licence Fee;
- (c) **Contract Schedule 2** – List of Proposed Merchandise for Sale at the Licence Area;
- (d) **Contract Schedule 3** – Experience and Business Plans;
- (e) **Contract Schedule 4** – Information of the Tenderer;
- (f) Form of Security Deposit Election; and
- (g) documentary proof to evidence the Tenderer possesses the requisite experience meeting the essential requirement in **Clause 6**.

4.2 Any failure to complete or submit the documents and/or information required under **Clause 4.1** may, at the absolute discretion of the Government, render a Tender non-conforming and not to be further considered. However, a Tenderer should note that its Tender will **not be considered further** if, by the Tender Closing Date, the Tenderer fails to submit:

- (a) a duly signed “Offer to be Bound”;
- (b) a **Contract Schedule 1** with a quotation of the Monthly Licence Fee duly completed;
- (c) a **Contract Schedule 3** with Clause 1 (Trade Experience) duly completed; and
- (d) **Contract Schedule 3** - Facilities and Decoration Plan, Merchandise Plan, Marketing Plan for Promoting the Image and Functions of the Museum, Marketing Plan for Promoting the Sale of the Consignment Items of Museum, Operation and Staff Plan, and Customer Services Plan.

5. Two Envelopes System in Submission of Tender

- 5.1 Tenderers should note that a marking scheme (as more particularly described in **Clause 10** and **Contract Schedule 5**) will be used for the assessment of their tenders. Completed Tender Documents shall be submitted separately in two sealed envelopes, the outside of which **should not** bear any price information or indication which may relate the tender to the Tenderer, as set out under (a) and (b) below:
- (a) **“The Price Submission” (the original copy and two (2) copies of Contract Schedule 1 - Monthly Licence Fee, fully completed, signed, stamped with the firm/company chop and dated) must be enclosed in a sealed envelope clearly marked “Tender Ref.: LCSD/HMM(R)/1/2018- Tender for the Grant of Licence to Operate the Gift Shop at the Hong Kong Heritage Museum – Price Submission” (Tender Label 1 provided); and**
 - (b) **“The Technical Submission” (the original copy and two (2) copies of all other remaining information and documents required in this tender as stipulated in Contract Schedules 2, 3, and 4 as well as the Form of Security Deposit Election and the Tender Form, fully completed, signed, stamped with the firm/company chop and dated, but without any indication on the Monthly Licence Fee) must be enclosed in another sealed envelope clearly marked “Tender Ref.: LCSD/HMM(R)/1/2018 - Tender for the Grant of Licence to Operate the Gift Shop at the Hong Kong Heritage Museum – Technical Submission” (Tender Label 2 provided).**
- 5.2 Completed Tender Documents, i.e. the two sealed envelopes as described in **Clause 5.1** above, shall be enclosed in another sealed envelope and addressed to the **Chairman, Government Logistics Department Tender Opening Committee** by using the Tender Label as provided. They must be deposited in the Government Logistics Department Tender Box located at Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong **before 12:00 noon (Hong Kong time) on the Tender Closing Date** specified in the **Lodging of Tender** at the **Tender Form**. **Late tenders will not be considered.**
- 5.3 In the case a black rainstorm warning signal is issued or typhoon signal No. 8 or above is in effect for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date, the closing time of this tender will be extended to 12:00 noon (Hong Kong time) on the immediately following working day when the black rainstorm warning signal or typhoon signal No. 8 or above is cancelled any time before 9:00 am on that day.
- 5.4 The Government Representative will not accept any tender submitted by methods other than as indicated in **Clause 5.2**.

6. Essential Requirement

6.1 Tenderer must meet the following essential requirement:

A Tenderer must have at least TWO (2) CONTINUOUS years of experience*^{Notes} in selling as owner of the business on a retail basis gifts or souvenirs or publications or art products or audio visual products or novelty products within the ten (10) years immediately prior to the Original Tender Closing Date in the same brick and mortar shop.

Notes:

- (i) The Tenderer's experience must be gained as an owner of the business.
- (ii) Experience gained within or outside Hong Kong will be counted.
- (iii) If the Tenderer is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the participants to the partnership will be counted.
- (iv) The Original Tender Closing Date will be the cut-off date for calculation of years of experience. Experience obtained in different contracts/venues during overlapping periods will be counted once only.
- (v) Documentary proof such as a copy of lease agreement for the shop premises showing the contract description, the contract commencement and expiry date shall be provided by the Tenderer to substantiate the past experience claimed in the tender. Otherwise, the relevant claimed past experience will not be taken into account.

6.2 **Failure to comply with the above essential requirement will render the Tender invalid and Tenderer's tender will not be considered further.**

7. Monthly Licence Fee

7.1 In return for the right to operate the Gift Shop at the Licence Area, apart from in respect of the Free Decoration Period, the Contractor is required to pay to the Government Representative a Monthly Licence Fee to be quoted by Tenderers in **Contract Schedule 1**. Such Monthly Licence Fee shall be denominated in Hong Kong dollars.

7.2 The Monthly Licence Fee quoted by Tenderers shall remain valid and binding throughout the duration of the Contract Period. No request for price variation will be considered. A Tenderer who proposes any price variation mechanism may be disqualified and its Tender will not be considered further.

- 7.3 The Monthly Licence Fee does not include the installation costs, costs and deposits of electricity, telephones and data lines and water consumed, rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons. Apart from the Consignment Items, all assets required, and all liabilities to be incurred from carrying out the Business at the Licence Area, shall be the responsibility of the Contractor with no recourse against the Government or the Government Representative.
- 7.4 Tenderers should make certain that the Monthly Licence Fee tendered is accurate before submitting their Tenders. Without prejudice to the powers of the Government Representative to seek clarification or to negotiate with a Tenderer, the Government Representative is not obliged to accept any request for price adjustment on whatsoever ground including that a mistake has been made in the Monthly Licence Fee tendered.
- 7.5 Should it be found on evaluation by the Government after the Tender Closing Date that a Tenderer has made unintentional errors in the figures stated in its Tender, the Government, may but is not obliged, seek clarification from the Tenderer or request the Tenderer to confirm in writing whether it is prepared to abide by what the Government considers should be the correct figures.
- 7.6 The first payment of the Monthly Licence Fee shall be effected by the successful Tenderer immediately after the signing of the Articles of Agreement in accordance with **Clause 5** of the **Conditions of Contract** or at such time as shall be directed by the Government Representative.

8. Tenders to Remain Open

- 8.1 A Tender must remain valid and open for acceptance for not less than 150 days after the Tender Closing Date. If a Tenderer does not state in its Tender the period for which the Tender is to remain valid and open for acceptance, the Tender Validity Period of that Tender will be 150 days after the Tender Closing Date.
- 8.2 If a Tenderer offers in its Tender a Tender Validity Period that is shorter than 150 days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with **Clause 8.1** of the **Terms of Tender** within five (5) working days or such other period as specified by the Government. If the Tenderer fails to confirm compliance with **Clause 8.1** of the **Terms of Tender** within the specified deadline, its Tender will not be considered further.
- 8.3 Without prejudice to the Government's rights and claims vis-à-vis any Tenderer who withdraws its Tender during the Tender Validity Period, due notice will be taken of any withdrawal during the Tender Validity Period and without prejudice to any other rights and remedies that the Government may have against the Tenderer, such withdrawal may prejudice the Tenderer's future status as a Government supplier or service provider.

9. Request for Information

In the event that the Government determines that:

- (a) clarification in relation to any tender is necessary; and/or
- (b) a document or a piece of information, other than the document or information set out in **Clause 4.2**, is missing from the tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A tender may not be considered further (or will not be considered further where it is expressly stated to be the case in the relevant provision of the Tender Documents) if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the tender further or may proceed to evaluate the tender on an “as is” basis.

10. Marking Scheme for the Assessment of Tenders

- 10.1 Before submitting their tenders, Tenderers are advised to note the marking scheme set out in **Contract Schedule 5** for assessment of their tenders. Offers failing to meet the essential requirement under Stage 1 will not be considered further. Those meeting the essential requirement will be marked according to the Marking Scheme consisting of technical assessment of the quality attributes of Tenderers at Stage 2, and price assessment on the Monthly Licence Fee offered by Tenderers at Stage 3. The weighting of the quality score in Stage 2 and the price score in Stage 3 is 50:50.
- 10.2 Tenderers failing to obtain the passing mark of 15 for Criterion 1 or the passing mark of 5 for Criterion 2.1 or the passing mark of 3 for any of the Criteria 3 and 4, or the passing mark of 1 for any of the Criteria 5 and 6 will not be considered further.
- 10.3 A maximum weighted quality score of 50 will be allocated to the Tenderer with the highest quality score, while the score for other Tenderers will be calculated by the following formula:

$$\text{Weighted Quality Score} = 50 \times \frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark amongst the tenders which pass Stage 2 technical assessment}}$$

- 10.4 A maximum weighted price score of 50 will be allocated to the Tenderer with the highest offer of the Monthly Licence Fee which has passed the technical assessment, while the score for other Tenderers who have passed the technical assessment will be calculated based on the following formula:

$$\text{Weighted Price Score} = 50 \times \frac{\text{Monthly Licence Fee Offered by the Tenderer}}{\text{Highest Offer of the Monthly Licence Fee Amongst the Offers Which Have Passed Stage 2 technical assessment}}$$

- 10.5 The respective weighted scores awarded to a particular tender under the technical assessment and price assessment will be added together to give the combined score.

11. **Selection of Tender**

Without prejudice to other rights and powers of the Government not to consider a tender under other applicable provisions in the Tender Documents, the selection of Tenderers will be conducted in accordance with **Contract Schedule 5** as referred to in **Clause 10**. The tender with the highest combined score (weighted quality score plus weighted price score) will normally be recommended for acceptance.

12. **Basis of Acceptance**

- 12.1 The Government Representative is not bound to accept the highest or any tender. Without prejudice to the generality of the foregoing, in the case the Monthly Licence Fee with the highest overall combined price and quality score is unreasonably low with reference to the advice of the Commissioner of Rating and Valuation, the Government may refrain from awarding the Contract to the relevant Tenderer.
- 12.2 Tenderers should note that their offers will be considered on an overall basis. Tenders with only partial offers will not be considered.

13. **Negotiation**

The Government reserves the right to negotiate with any or all Tenderer(s) about the terms and conditions in the Tender Documents and of the Contract.

14. **Award of the Contract**

- 14.1 Unless and until the Articles of Agreement has been executed by both the successful Tenderer and the Government Representative, there shall be no Contract between the Government Representative and any Tenderer. References to award of the Contract mean the signing of these Articles of Agreement.

- 14.2 The successful Tenderer will be notified within the Tender Validity Period (such notification is referred to as “**Conditional Acceptance of Tender**”). Upon receipt of the Conditional Acceptance of Tender, the successful Tenderer shall be obliged to fulfill all of the following conditions to the satisfaction of the Government Representative within twenty-one (21) days from the date of the notification, or any other later date as required by the Government Representative:
- (a) the provision of the Security Deposit as required under **Clause 27**;
 - (b) the payment of the Monthly Licence Fee in respect of the third (3rd) month of the Contract Period; and
 - (c) such other conditions as the Government Representative may stipulate in the Conditional Acceptance of Tender.
- 14.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Tenderer specified in **Clause 14.2** above to the satisfaction of the Government Representative, the Government Representative will, subject to its other rights and powers, enter into the Contract with the successful Tenderer by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government Representative, the Tender submitted by the successful Tenderer (subject to such other changes as the Government Representative may stipulate in exercise of its powers under the Tender Documents or such changes as the parties may agree). If a Tenderer fails to fulfill all or any of the conditions mentioned in **Clause 14.2** above (unless and save to the extent they are waived by the Government Representative in writing, if any), or fails to enter into the Articles of Agreement upon notification by the Government Representative (“**defaulting Tenderer**”), the Conditional Acceptance of Tender will become void and be of no further force.
- 14.4 The Government Representative will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and remedies of the Government, the defaulting Tenderer shall be responsible for the difference in the total Monthly Licence Fee submitted by that defaulting Tenderer and the eventual Contractor who will be granted the Contract whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise. On the other hand, notwithstanding anything in the Tender Documents or in the Conditional Acceptance of Tender to the contrary, in the event that the Government exercises any of its discretion under **Clause 19**, the Government Representative shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a Conditional Acceptance of Tender and fulfilled all the conditions specified in **Clause 14.2**.
- 14.5 Tenderers who do not receive any notification of acceptance within the Tender Validity Period shall assume that their tenders have not been accepted.

15. Offers to be Binding

All parts of the Tender Documents submitted and offered by the Tenderer will be binding on the Tenderer after granting the licence. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before Tender Closing Date. Without prejudice to the Government to seek clarification or negotiate with any Tenderer, no request from the Tenderer for adjustment or variation whatsoever will be allowed or entertained after the Tender Closing Date.

16. Counter-proposals

16.1 Tenderers must not submit any proposal that has the effect of varying or modifying:

- (a) any essential requirement specified in the Tender Documents; and
- (b) the provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and the grant of the Contract.

16.2 If a Tenderer fails to comply with **Clause 16.1**, subject to any clarification which the Government may, but is not obliged to, make under **Clause 9**, **its Tender will be disqualified and will not be considered further by the Government.**

16.3 Tenderers must not submit counter-proposals to provisions other than those as specified in **Clause 16.1 or 16.4**. Upon contravention of this Clause, the Government may disqualify the Tenderer, unless the Government in its absolute discretion elects to negotiate with the Tenderer concerning such counter-proposal. Following such negotiation, if the Tenderer is unwilling to withdraw such counter-proposal, or revises it on terms acceptable to the Government, the Government may still disqualify the Tenderer. Any accepted counter-proposal following a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

16.4 Without prejudice to **Clause 16.1**, any Tenderer who submits a tender that directly or indirectly attempts to preclude or limit the effect of any provisions of these Terms of Tender may also be disqualified.

17. Costs of Preparation of Tender

Tenderers shall submit their Tenders at their own costs and expenses. Neither the Government nor the Government Representative shall be liable for any costs and expenses whatsoever incurred by Tenderers in connection with the preparation or submission of their Tenders, including all costs and expenses relating to:

- (a) communication or negotiations with the Government Representative; or
- (b) attending briefings, document inspections, site visits or surveys made by the Tenderer, whether before or after the Tender Closing Date.

18. Tenderer's Commitment

The entire Tender, any subsequent clarification, and permitted submissions from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government Representative, be incorporated into and made part of the Contract in such manner as the Government Representative considers appropriate and become binding on the Tenderer.

19. Government Discretion

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

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the award of the Contract or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or its related person;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) in the event of a claim or allegation made any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract or the Government having grounds to believe that any thing(s), service(s) or material(s) supplied or previously supplied by the Tenderer or its related person infringes or will infringe any Intellectual Property Rights of any person;
- (d) any time during the twenty-four (24) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer was in significant or persistent default(s) in the performance of any substantive requirement or obligation under any other Government contract awarded by the Director of Leisure and Cultural Services regardless of whether the default(s) led to the actual termination of the relevant Government contract or whether such default(s) has been remedied (a “**Contract Default**”);
- (e) the Tenderer or a related person or a director or management staff of the Tenderer has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the award of the Contract) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract;

- (f) in the event of any professional misconduct or any act or omission having been committed during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract that adversely reflects on or casts doubt on the commercial integrity of the Tenderer or a related person or a director or management staff of the Tenderer; or
- (g) any failure of the Tenderer or its related person to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of the award of the Contract.

The grounds specified in **Clauses 19.1(a) to 19.1(g)** are separate and independent, and shall not be limited by reference to or inference from the other of them.

19.2 For the purposes of **Clause 19.1**, each Tenderer shall provide in **Contract Schedule 4** at the time of submission of its Tender (and thereafter up to the time of the award of the Contract in relation to any event occurring between the time of submission and the time of grant) all information at least in relation to itself and those information in relation to its related person or its director or management staff which it has knowledge that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:

- (a) details of any petition or proceeding mentioned in **Clause 19.1(a)**;
- (b) details of conviction as mentioned in **Clause 19.1(e)** in Hong Kong or any overseas jurisdiction;
- (c) details of all infringement claims or allegations and/or settlement agreement as mentioned in **Clause 19.1(c)**;
- (d) details of all Contract Defaults as mentioned in **Clause 19.1(d)**;
- (e) details of any professional misconduct or act or omission that adversely reflects or casts doubt on the commercial integrity of the Tenderer or a related person as mentioned in **Clause 19.1(f)**; and
- (f) details of any failure to pay taxes as mentioned in **Clause 19.1(g)**.

If none of the events as mentioned in **Clauses 19.2(a) to 19.2(f)** above has ever occurred within the applicable period as mentioned in the relevant sub-clause in **Clause 19.1**, the Tenderer shall provide a statement to that effect by completing the relevant part of **Contract Schedule 4** at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification.

19.3 In addition to the information mentioned in **Clause 19.2**, the Government reserves the right to request from a Tenderer or from other sources and take into account all information about:

- (a) the Tenderer itself (viz in relation to any information relevant to any of the events mentioned in **Clause 19.1**);

- (b) any of the directors or management staff of the Tenderer (viz information relevant to the event mentioned in any of **Clauses 19.1(e) and (f)** applicable to any such person);
- (c) any of the related persons of the Tenderer (viz information relevant to any of the events mentioned in any of **Clauses 19.1(a) to (g)** applicable to any such person);

and such other information which is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under **Clause 19.1**.

- 19.4 Such information relating to any of the aforesaid persons may include, without limitation, details of any claim or allegation of infringement or settlement agreement as referred to in **Clause 19.1(c)**; details of any Contract Default referred to in **Clause 19.1(d)**; details of any conviction of serious offences referred to in **Clause 19.1(e)**; details of any professional misconduct, acts or omissions referred to in **Clause 19.1(f)** and of any failure to pay taxes to the Government referred to in **Clause 19.1(g)** above.
- 19.5 If the Tenderer fails to comply with the request made by the Government pursuant to **Clause 19.3** above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to **Clause 9**. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to **Clause 19.1(b)** above.
- 19.6 In providing the information required under **Clauses 19.2 and 19.3** above, the Tenderer may show cause to satisfy the Government that the petition, proceeding, conviction record, infringement claim or allegation, or Contract Default, any professional misconduct or act or omission as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 19.7 If the Tenderer is a company, the expression "**related person**" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("**majority shareholder**"); or
 - (b) a holding company or a subsidiary of the Tenderer; or
 - (c) a holding company or a subsidiary of a majority shareholder of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

- 19.8 If the Tenderer is a sole proprietor or partnership, the expression “**related person**” includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership); or
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child of both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- 19.9 References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in any of **Clauses 19.1(c), 19.1(d), 19.1(e), 19.1(f), or 19.1(g)**.

20. Cancellation of the Invitation to Tender

- 20.1 Notwithstanding anything to the contrary in the Tender Documents, if it is in the public interest to do so, (a) the Government reserves the right to cancel this Invitation to Tender, and not award the Contract; or (b) re-conduct the evaluation specified in **Contract Schedule 5** which is referred to in **Clause 10** to identify the successful Tenderer.
- 20.2 After cancellation pursuant to **Clause 20.1** above, if and when it considers fit, the Government Representative reserves the right to re-issue the Invitation to Tender on such terms and conditions as the Government Representative considers appropriate.

21. Undisclosed Agency

The person who signs a Tender as Tenderer shall be deemed to be acting as a principal unless he discloses therein that he is acting as an agent only, in which case he shall also disclose therein the name and address of his principal.

22. Consent to Disclosure

- 22.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, particulars (including the nature and quantity) of the Business to be provided by the successful Tenderer, the date of the award of the Contract, the name and address of the successful Tenderer, the total Monthly Licence Fee for the entire Contract Period, and the commission payable to the Contractor for the Consignment Items.
- 22.2 Nothing in **Clause 22.1** above shall prejudice the Government’s power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in **Clause 22.1** above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or a tribunal with competent jurisdiction; or
- (e) without prejudice to the power of the Government under **Clause 22.1** above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

23. Personal Data Provided

- 23.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, award of the Contract and resolution of any dispute arising from this Invitation to Tender). In the case of the successful Tenderer, the purposes shall be extended to include enforcement and management of the Contract, and resolution of disputes arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- 23.2 By submitting a Tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, its consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in **Clause 22.1** above.
- 23.3 An individual to whom personal data belongs or a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 23.4 Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Leisure and Cultural Services Department.

24. New Information

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

25. Commencement Date of the Contract Period

Subject to the confirmation by the Government Representative in the Articles of Agreement, the tentative commencement date of the Contract Period is specified in **Clause 2** of the **Conditions of Contract**. Notwithstanding the aforementioned tentative commencement date, the Government Representative shall have absolute discretion to determine the commencement date of the Contract Period in the Articles of Agreement and the Contract Period shall commence from the date as specified in the Articles of Agreement.

26. Free Decoration Period

The successful Tenderer may, upon the commencement of the Contract Period, be allowed a Free Decoration Period of not more than two (2) months for fitting out the Licence Area. Subject to **Clause 5.2** of the **Conditions of Contract**, no Monthly Licence Fee will be payable during the Free Decoration Period but the successful Tenderer shall pay and bear all outgoings and charges, including but not limited to water charges, electricity charges and rates, in respect of the Licence Area. Notwithstanding the aforementioned, the Monthly Licence Fee shall be immediately payable on a pro-rata basis in accordance with the Monthly Licence Fee if the successful Tenderer commences Business or any part thereof during the Free Decoration Period.

27. Security Deposit

27.1 The successful Tenderer shall, within twenty-one (21) days after the date of the Conditional Acceptance of Tender, or any other later date as required by the Government Representative, deposit with the Government Representative a deposit (hereinafter referred to as '**Security Deposit**') as security for the due and faithful performance of the Contract either in cash or in the form of a bank guarantee and to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155) and both form and the bank guarantor shall be approved by the Government Representative and in accordance with **Clause 7** of the **Conditions of Contract**. Tenderers are therefore required to state their option in the Form of Security Deposit Election.

27.2 In the event that a Tenderer fails to elect the method of paying a Security Deposit in the Form of Security Deposit Election, it will be assumed that the Tenderer will pay the Security Deposit by way of cash in accordance with **Clause 7** of the **Conditions of Contract**.

28. Licence, Permit and/or Certificate

Tenderers are strongly advised to examine and assess the site conditions in advance to determine all necessary licences, permits and certificates which are required under all applicable laws and regulations to run the Business at the Licence Area. The award of the Contract to a Tenderer is conditional on the Tenderer's obtaining of all such licences, permits and certificates. The responsibility for applying the necessary licences, permits and certificates and fulfillment of the requirements stated therein lies with the Contractor. Neither the Government nor the Government Representative shall be held responsible in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits and certificates. Nothing contained in the Tender Documents or in the Contract shall be construed to fetter the discretion of any public officer or authority as the licensing authority.

29. State of Premises

Tenderers are strongly advised to visit the Licence Area before submitting their tenders and the successful Tenderer shall accept the Licence Area in the state and condition in which it is at the date on which the possession is given (i.e. on the first date of the Contract Period).

30. Restrictions on Assignment and Sub-contracting

The Tender will only be accepted from any Tenderer who shall occupy the Licence Area for the operation of the Business by that Tenderer. There shall be no assignment, underletting, sub-contracting or parting with the possession of the whole or any part of the Licence Area or transfer of any of its right or obligations under the Contract unless with the prior approval in writing by the Government Representative.

31. Contractor's Performance Monitoring

If a Tenderer is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future tenders are evaluated.

32. Tender Addenda

Should the Government Representative require any amendments, clarifications or adjustments to be made to the Tender Documents, the Government Representative will issue to every person who is known to have collected the Tender Documents numbered addenda giving full details of such amendments. The Tenderer shall acknowledge receipt of these addenda. These addenda shall form a part of the Tender Documents and shall take priority over the documents previously issued.

33. Disclaimer

33.1 Tenderers should study all attachments to the Tender Documents (including the Annexes, Appendices, Attachments and Contract Schedules) carefully before submitting their tenders. Tenderers should note that all information and statistics provided by the Government in connection with this tender are for reference only.

- 33.2 Forecast or estimation and all other information, statistics and forecast set out in the Tender Documents or any information or clarification provided from time to time or given at the briefing session (collectively “**briefings**”), are provided purely for the Tenderer’s information on an “as is” basis without warranty of any kind. Neither the Government nor the Government Representative gives any warranty, representation or undertaking that any information, statistics and forecast provided in the Tender Documents or any information or clarification provided from time to time or the briefings or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever.
- 33.3 To the maximum extent permitted by laws, neither the Government nor the Government Representative accepts any liability or responsibility for (a) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), (b) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (c) any cost or expense, suffered or incurred by any Tenderer arising from the use of, or reliance on, any information, statistics or forecast provided in the Tender Documents, or any information or clarification provided from time to time or in the briefings, or otherwise that the profits derived from the Business do not meet the expectation or projection of the successful Tenderer or do not recoup the investment cost incurred or by any margin.

34. Authentication of Documents

By submitting a tender in response to the Invitation to Tender, each Tenderer authorizes the Government to obtain from

- (a) any person whose particulars are set out in the tender submitted by the Tenderer, and
- (b) any issuing body of any of the certificates or documentary evidence required in the Tender Documents,

all information which the Government considers appropriate and relevant to the evaluation of the tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer represents that such consent has been duly obtained.

35. Intellectual Property Rights in respect of the Tender

A Tender once submitted will become the property of the Government. The Government shall have the right to do any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Cap. 528) in respect of all written materials submitted by the Tenderer through the tendering exercise for purposes including but not limited to tender evaluation, contract management, the disclosure made pursuant to **Clause 22** of this Part of the Contract and all other purposes incidental thereto.

36. Tender Documents of the Unsuccessful Tenderers

Tender Documents of unsuccessful Tenderers will be destroyed three (3) months after the Articles of Agreement signed by the successful Tenderer and the Government Representative.

37. Communications with the Government

- 37.1 All communications given or made by the Government Representative or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in **Clause 49** of the **Conditions of Contract**, save that the Government Representative may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. The Tenderer should note that the Government Representative will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- 37.2 All communications in relation to the Invitation to Tender shall be conducted directly between the Government Representative and the Tenderer.
- 37.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or prospective Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

38. Offering Gratuities

The Tenderer shall not, and shall ensure that its agents and employees shall not, offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government Representative. Any breach of or non-compliance with this Clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its tender, and if the Contract has been awarded to the Tenderer without knowing the breach, the Government Representative shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred.

39. Tenderer's Enquiries

- 39.1 Any enquiries concerning the Tender Documents up to the date of lodging of its tender with the Government Representative shall be in writing and submitted to Manager (Heritage Museum), Hong Kong Heritage Museum, 1 Man Lam Road, Sha Tin, Hong Kong, or by facsimile to (852) 2180 8111.

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

40. Tender Briefing Session/Site Visit

40.1. Tenderers are invited to attend a tender briefing session/site visit to be held by the Government Representative on **15 November 2018 (Thursday) at 10:30am at the Hong Kong Heritage Museum** before submitting their tenders in order to acquaint themselves with the requirements of the Government Representative.

40.2 Each Tenderer may send no more than three (3) representatives to attend the tender briefing session/site visit.

40.3 Tenderers are required to fill in the **“Enrolment Form for the Tender Briefing Session - Annex D”** and send it to Assistant Manager (Heritage Museum) Patron Services and Public Relations by facsimile at (852) 2180 8111 or by email at amhmpspr@lcsd.gov.hk on or before **14 November 2018 (Wednesday)** for registration.

41. Anti-collusion

41.1 In submitting a tender, the Tenderer represents and warrants that in relation to the tender:

- (a) it has not communicated and will not communicate to any person other than the Government the amount of the Monthly Licence Fee;
- (b) it has not fixed and will not fix the amount of any Monthly Licence Fee submitted in its tender by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

41.2 In the event that the Tenderer is in breach of any of the representations and/or warranties in **Clause 41.1** above, the Government shall be entitled to, without compensation or liability whatsoever to the Tenderer or to any person on the part of the Government to:

- (a) reject the tender;
- (b) if the Government has accepted the tender, withdraw its acceptance of the tender; and
- (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.

- 41.3 By submitting a tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government and the Government Representative, and their respective assigns and successors-in-title against all losses, damages, costs or expenses whatsoever arising out of or in relation to any breach of any of the representations and/or warranties in **Clause 41.1** above.
- 41.4 Any breach of any of the representations and/or warranties in **Clause 41.1** above by the Tenderer may prejudice the Tenderer's future standing as a Government contractor.
- 41.5 **Clause 41.1** shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the tender price, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of tender submission.
- 41.6 The rights of the Government under **Clauses 41.2 to 41.4** above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

42. Complaints About the Tendering Process or Grant of Contract

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

43. Survival

All rights, powers and licences of the Government under the Tender Documents or granted pursuant to any terms thereof may be exercised by the Government in accordance with their terms notwithstanding the grant of the Contract or cancellation of this Invitation to Tender.

PART 2**CONDITIONS OF CONTRACT**

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PART 2

CONDITIONS OF CONTRACT

1. Nature of Contract

It is expressly agreed between the parties that this Contract creates no tenancy or lease or any form of legal rights on land whatsoever between the parties except the right to use the Licence Area in accordance with the provisions of the Contract. This Contract is granted by the Government Representative to entitle the Contractor to operate the Business at the Licence Area.

2. Contract Period

2.1 Subject to all rights and powers of the Government Representative under the Contract, and any early termination or extension pursuant to any applicable provisions of the Contract, the Contract Period shall be for a term of six (6) years to commence from the date specified in **Clause 2.2**, inclusive of a Free Decoration Period not exceeding two (2) months for fitting out the Licence Area upon the commencement of the Contract Period.

2.2 The commencement date of the Contract Period shall be **17 June 2019** unless a different date is specified in the Articles of Agreement (which may be any date earlier or later than the aforesaid date as determined by the Government Representative at her sole and absolute discretion).

2.3 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 23 hereof** exceeds thirty (30) days, notwithstanding **Clauses 2.1 and 2.2**, the Contract Period will be extended accordingly by the same number of days equivalent to the accumulated period of suspension or closure with the other terms and conditions of the Contract remaining unchanged. Partial closure of some part(s) but not the entire Licence Area will not lead to any extension of the Contract Period.

3. The Business

3.1 Subject to the terms and conditions of the Contract, the Government Representative grants to the Contractor during the Contract Period the right to supply and sell Authorised Merchandise, Consignment Items and Museum Licensed Items at the Licence Area in compliance with all terms and conditions set out in the Contract ("**Business**"). In consideration of the opportunity being given by the Government Representative for operating the Business at the Licence Area for the Contract Period, the Contractor undertakes to carry on the Business in compliance with all requirements set out in the Contract no later than two months after the date of commencement of the Contract Period.

- 3.2 The Contractor shall carry on the Business at the Licence Area at all times when the Museum is open to the public as set out in Annex A except with prior authorization of the Government Representative in writing, and at such additional or alternative opening hours as may be approved or prescribed by the Government Representative in writing. The Gift Shop shall remain open throughout the aforesaid time and period whilst some parts of the Museum may be under renovation or temporary closure.
- 3.3 The Business shall be operated by the Contractor as the principal and except in relation to Consignment Items and Museum Licensed Items, all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative.

4. Conduct of Business

- 4.1 This Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other premises in the Museum or otherwise.
- 4.2 The Contractor shall use the Licence Area only for the Business and shall not use, cause, suffer or permit to be used the Licence Area or any part thereof for any other purpose.
- 4.3 The Contractor shall conduct its Business only in the Licence Area and shall not use, cause, suffer or permit to be used any area of the Museum except the Licence Area without the prior written consent of the Government Representative for such purpose or for any other purpose.
- 4.4 The name of the Gift Shop shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government Representative at its absolute discretion may consider reasonable to prescribe, at any time and from time to time. Save and except as permitted or directed by the Government Representative, such name shall not be changed.

5. Payment of Monthly Licence Fee

- 5.1 In consideration for the entitlement to operate the Business at the Licence Area, in respect of each month of the Contract Period (apart from the Free Decoration Period), the Contractor shall pay to the Government Representative in advance a Monthly Licence Fee (exclusive of rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs of utilities incurred in the operation of the Business including water and electricity) on or before the first day of each and every calendar month without any deduction or set-off whatsoever. The first payment of the Monthly Licence Fee in respect of the third (3rd) month shall be effected by the Contractor immediately after the signing of the Articles of Agreement or at such time as shall be directed by the Government Representative.

- 5.2 In respect of the Free Decoration Period:
- (a) the Monthly Licence Fee shall be payable immediately on a pro-rata basis upon the Contractor carrying on the Business in whole or in part during the Free Decoration Period (where applicable); and
 - (b) without prejudice to the obligation of the Contractor to start the Business no later than two months after the date of commencement of the Contract Period, the Monthly License Fee shall remain payable beyond the Free Decoration Period even if the fitting out works continue beyond the Free Decoration Period.
- 5.3 If the Contractor fails to pay a Monthly Licence Fee by the due date specified in the demand note issued by the Government Representative or any other amount payable by the Contractor under the Contract, the Contractor shall pay a surcharge on the Monthly Licence Fee or such other amount calculated at a rate equivalent to the average of the best lending rates from time to time of all of the note-issuing banks in Hong Kong plus two percent (2%) per annum to accrue from the day on which the payment falls due until actual payment in full is made. For the avoidance of doubt, the surcharge shall apply to the Monthly Licence Fee payable pursuant to **Clause 5.2(a)**.
- 5.4 No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in individual provisions of the Contract.
- 5.5 In the event that the first day of the third (3rd) month of the Contract Period does not start on the 1st day of a calendar month, there shall be adjustment of the Monthly Licence Fee for that month. In the event that the remaining period of the Contract Period after the last complete month is not a complete month, there shall be adjustment of the Monthly Licence Fee for such remaining period. The adjustment shall be arrived at by multiplying the daily rate with the actual number of days of the relevant period. The daily rate shall be arrived by dividing the Monthly Licence Fee by the actual number of days for the month.
- 5.6 Before the expiry of the fourth (4th) year of the Contract, the Government Representative will conduct an assessment to determine whether or not the prevailing Monthly Licence Fee is acceptable taking into account of all relevant matters including but not limited to the latest open market rental of the Licence Area. Subject to the result of the review assessment, the Monthly Licence Fee for the period for the fifth (5th) year and the sixth (6th) year may either remain unchanged as offered by the Contractor in **Contract Schedule 1** or be increased. If the prevailing Monthly Licence Fee is to be increased, the open market rental assessed by the Government Representative ("**Revised Amount**") shall be

adopted as the new Monthly Licence Fee for the period including the fifth (5th) year and the sixth (6th) year of the Contract. The Government Representative shall issue a written notice to the Contractor and request the Contractor to confirm its acceptance of the Revised Amount within such time as specified by the Government Representative (“**Specified Deadline**”). Notwithstanding **Clause 39.4** hereof, should the Contractor refuse to or otherwise fail to confirm its acceptance of the Revised Amount before the Specified Deadline, the Government may by notice in writing terminate the Contract pursuant to **Clause 39** hereof without giving the Contractor six (6) months’ notice period and the Contract shall be effectively terminated on such date as may be determined by the Government.

5.7 During the Contract Period (including the Free Decoration Period), the Contractor shall pay and bear all outgoings and charges, including but not limited to water charges, electricity charges and rates, in respect of the Licence Area.

6. Non-exclusive Rights of the Contractor

6.1 The Contractor shall have, during the continuance of the Contract Period, but subject always to all rights and powers of the Government Representative under the Contract, the non-exclusive, non-transferable, non-assignable right to access and to occupy the Licence Area for the operation of the Business within the Licence Area and performance of all other obligations under the Contract which are required to be performed at the Licence Area.

6.2 The Government as the owner of the Licence Area, whether acting through the Government Representative or otherwise, reserves all rights and powers to enter into the Licence Area for any purpose whatsoever without any notice or reference or consent from the Contractor.

6.3 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Museum.

6.4 Nothing in this Contract shall be regarded as in any way negating, prejudicing or otherwise restricting the right of the Government Representative to authorize any person to bring into the Museum for use or sell or distribute freely therein any merchandise. The Contractor is not entitled to claim for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorizations. The Contractor shall continue to carry on its Business on any day covered by such permission if it is not required to suspend its Business.

7. Security Deposit

- 7.1 The Contractor shall, within twenty-one (21) days from the notification of the Conditional Acceptance of Tender, or any other later date as required by the Government Representative, deposit with the Government Representative in cash or in the form of bank guarantee in the form set out in **Annex E** to be issued by a bank with a valid banking licence issued under the provisions of the Banking Ordinance (Cap. 155), a sum equivalent to four (4) times the quoted Monthly Licence Fee as specified in **Contract Schedule 1** as security for the due and proper performance of the Contract.
- 7.2 The Security Deposit, if in the form of cash, shall be retained by the Government Representative, or if in the form of a bank guarantee, shall remain in force, in either case, from the date of commencement of the Contract Period until the date specified in (a) or (b) below, whichever is applicable:
- (a) the date falling six (6) months after the expiry or early termination of the Contract Period; or
 - (b) upon early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract, or there is any outstanding right or claim of the Government or the Government Representative, the date on which all such obligations, liabilities and rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

The aforesaid period (depending on whichever is applicable) is hereinafter referred to as the “**Guarantee Period**”.

- 7.3 Only upon the expiry of the Guarantee Period, will the Security Deposit (if in the form of cash and if any is remaining) be refunded to the Contractor without interest; or, if in the form of a bank guarantee, be discharged or released.
- 7.4 The Government Representative shall have the right to deduct from time to time from the Security Deposit in cash or call on the bank guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government Representative under the Contract (regardless of whether the amount is payable under any indemnity or is payable as a debt) but which remains outstanding, in such order as the Government Representative in its absolute discretion deems fit. The Security Deposit (whether in cash or in the form of the bank guarantee) may be deducted or called on, without the Government Representative first having recourse to any other security or rights

or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government Representative.

- 7.5 If any deduction is made by the Government Representative from the Security Deposit in cash or a call is made on the bank guarantee during the Guarantee Period, the Contractor shall, within fourteen (14) days on demand in writing by the Government Representative, deposit a further sum or reinstate the level or extent of the bank guarantee or procure the issuance of a fresh bank guarantee in a sum equal to the amount so deducted or so called, which shall be added to the residue of and form part of the Security Deposit and, where applicable, the additional security amount required under **Clause 7.1**.
- 7.6 In the event that this Contract is terminated early under **Clause 39.1**, notwithstanding anything herein to the contrary, the Security Deposit will be wholly forfeited by the Government Representative upon such termination without prejudice to the Government Representative's claims and demands under the Contract which cannot be satisfied by the Security Deposit.

8. Restriction on Assignment and Sub-contracting

- 8.1 Unless otherwise with the prior written consent of the Government Representative, the Contractor shall not assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract (including without limitation the parting of the possession of the Licence Area in any manner whatsoever or the sub-contracting of the operation of the Business or any part thereof). The performance of the Contract by the Contractor shall be personal to it.
- 8.2 The Government Representative may refrain from giving any written consent under **Clause 8.1** without giving any reason. If the Government Representative agrees to give consent, any such agreement may be subject to fulfilment of conditions either by the Contractor and/or by any proposed assignee or transferee or sub-contractors.
- 8.3 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever tier), and employees, officers and agents of any such sub-contractors as if they were its own.

9. Licence, Permit and/or Certificate

- 9.1 The Contract does not confer any licence, permit, certificate, waiver or exemption which the Contractor is obliged to apply for under all applicable laws and regulations of Hong Kong in order to operate the Business in the Licence Area. Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.
- 9.2 Without affecting the generality of the foregoing, the Contractor shall make no claim of any kind whatsoever against the Government or the Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits and/or certificates.
- 9.3 Without prejudice to other rights and claims of the Government for any failure by the Contractor to commence the Business no later than two (2) months after the commencement of the Contract Period, the Contractor agrees and accepts that there will be no abatement or reduction of the Monthly Licence Fee notwithstanding that the Contractor cannot operate its Business pending the consideration of its applications and issuance or renewal of the relevant licences, permits and/or certificates. The non-issuance of any of the relevant licences, permits and/or certificates by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 9.4 The Contractor shall produce copies of all requisite licences, permits and/or certificates including but not limited to Business Registration Certificate, from time to time upon demand by the Government Representative.

10. Warranties and Undertakings

- 10.1 The Contractor warrants and undertakes to the Government Representative that:
- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business in the Licence Area in accordance with the terms and conditions of this Contract and any other transactions as provided for or contemplated under this Contract;
 - (b) this Contract constitutes the binding obligations of the Contractor in accordance with its terms;
 - (c) the entry into this Contract, the performance by the Contractor of its obligations under it and the operation of the Business will not conflict with or result in the breach of:
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum (if any) and articles of association);

- (ii) any contract or arrangement to which the Contractor is a party or by which it is bound;
 - (iii) any order, judgment or decree of any court or government agency to which the Contractor is a party or by which it is bound; or
 - (iv) any applicable laws and regulations.
- (d) it will comply with and observe all applicable laws and regulations in the operation of the Business in the Licence Area;
- 10.2 (a) The Contractor shall, within fifteen (15) days after the expiry of each calendar month during the continuance of the Contract Period and within fifteen (15) days after the termination or expiry of the Contract, howsoever caused, submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the gross monthly turnover generated from the Business in the Licence Area.
- (b) The Contractor shall keep and maintain proper books and records in respect of the Business including *inter alia* records of gross monthly turnover and cause all such books and records to be made up on a monthly basis and retain the same throughout the Contract Period plus three years. The Contractor shall allow such person or persons as may be authorized by the Government Representative at all reasonable times upon prior notice access to all such books and records of the Contractor, and if required, to make copies of the same.
- (c) The Contractor shall allow the Government Representative to disclose whenever it considers appropriate or upon request (in writing or otherwise) by any third party all or any information of the Business, including but not limited to releasing information related to the gross monthly turnover and other financial information relating to the Business obtained from the Contractor including disclosure to prospective tenderers for the contract following this Contract or any other contract.

11. Fitting Out

- 11.1 The Contractor shall fit out the Licence Area at the Contractor's own cost and expense in accordance with such plans, drawings and specifications as shall have been first submitted to and approved in writing by the Government Representative (including the facilities and decoration plan set out in **Contract Schedule 3**) in a good and proper workmanlike fashion and in all respects in a style and manner appropriate to the Museum and to maintain the same throughout the Contract Period in good repair and condition to the satisfaction of the Government Representative. For the purposes of fitting-out, the Contractor shall observe and comply with all such procedures and stipulations as the Government Representative may specify, prior notice of which shall be given to the Contractor. The Contractor is required to renovate the Gift Shop front including the furnishing at the commencement of Contract unless otherwise approved by the Government Representative.
- 11.2 The Contractor shall submit to the Government Representative for prior written approval all such plans, drawings, specifications, and other details as the Government Representative may require of all the works which are required to be carried out by the Contractor under **Clause 11.1**. Unless otherwise approved by the Government Representative, these plans, drawings, specifications shall not deviate from the facilities and decoration plan submitted in **Contract Schedule 3** but such plan shall equally be subject to the approval of the Government even if the tender containing such plan has been accepted.
- 11.3 The Contractor shall decorate the Gift Shop front of the Licence Area with a decor previously approved in writing by the Government Representative and to a standard satisfactory to the Government Representative and to maintain the standard of décor at all times to the Government Representative's satisfaction.

12. Government Premises and Government Property

- 12.1 The Contractor shall accept the Licence Area in the state and condition in which possession is given. The Government Representative makes no warranty or representation of whatsoever nature concerning the Licence Area. The Licence Area shall be provided on an "as is" basis.
- 12.2 The Contractor shall furnish and provide all such equipment and furniture necessary for the efficient operation of the Business including those facilities as specified in the facilities and decoration plan and other plans submitted in **Contract Schedule 3**. All such equipment and furniture shall be of a design and standard to the satisfaction of the Government Representative.

- 12.3 The Contractor shall keep and maintain at all times all Government property located at the Licence Area (moveable or immovable) or otherwise from time to time provided to the Contractor for use (if any) (collectively, “**Government Property**”) in good repair, clean and serviceable conditions to the Government Representative’s satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Property in good repair, clean and serviceable condition at any time upon request by the Government Representative and/or at the end or sooner termination of the Contract.
- 12.4 The Contractor shall keep and maintain at all times the Licence Area including the internal face of structural elements such as concrete ceiling/concrete flooring/internal side of external walls, interior plaster or other finishing materials to walls, floors and ceilings and all fixtures and fittings therein including all doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatuses in good repair, clean and proper condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 12.5 If so required by the electricity company, the Contractor shall repair or replace at the expense of the Contractor all the electrical wiring installations and fittings within the Licence Area and all such electrical wiring installations and fittings of the Contractor, if any, in any other part of the Licence Area.
- 12.6 Except for the fitting-out work and other work expressly required under the Contract, the Contractor shall not make any alteration or addition to the Licence Area or any Government Property without prior permission in writing by the Government Representative and shall not carry out the repairs to the same without first obtaining the prior approval of the Government Representative. If such approval is obtained, the repair works shall be carried out by qualified persons approved by the Government Representative and of a standard acceptable to the Government Representative.
- 12.7 The Contractor shall be liable to the Government Representative for any damage or loss to the Licence Area or any Government Property. If any such Licence Area or Government Property is found damaged or lost, as the case may be in whatsoever scale and from whatsoever cause while in the occupation or possession or control of the Contractor, the Government or the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government or the Government Representative all losses, liabilities, costs and expenses that it has incurred in the execution of such repair or replacement together with all costs and expenses incurred by the Government and the Government Representative for procuring such repair or replacement service, monitoring such repair or replacement service and in taking all other necessary actions in the light of the Contractor’s breach of this **Clause 12**.
- 12.8 The Licence Area and all Government Property shall remain the property of the Government and the Government Representative reserves the right to take stock checking of the same at any time and the Contractor shall provide every assistance to the Government Representative for this purpose.

12.9 The Contractor shall be regarded as the occupier of the Licence Area under the Occupier's Liability Ordinance (Cap. 314) ("**Cap. 314**") during the continuance of the Contract. The Contractor shall indemnify each of the Government and the Government Representative fully from and against everything stated in **Clause 34.2** including claims arising from any incident occurring within the Licence Area which constitutes a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in Section 3 of Cap. 314. To the extent permitted under Cap. 314, neither the Government nor the Government Representative shall be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under section 5 of Cap. 314.

13. Operation of the Business

- 13.1 To ensure that during the continuance of this Contract and during the opening hours of the Licence Area there is provided and maintained at the Licence Area an efficient and adequate service of a style, type and quality to the satisfaction of the Government Representative, without prejudice to the generality of the foregoing, the Contractor shall at all times ensure that the goods and services provided at the Licence Area shall at all times suffice to meet the reasonable needs of the users of the Museum and its facilities including but not limited to members of the general public, persons attending the functions and activities being held in the Museum and group visitors to the Museum.
- 13.2 The Contractor shall not request or receive any charges for admission to the Licence Area or its surroundings, nor request or receive any other additional charges whatsoever whether by way of service charges or otherwise.
- 13.3 The Contractor shall accept payment for all items sold at the Licence Area by cash in Hong Kong currency, Visa and Master Card credit cards and all such other internationally recognized credit cards as the Government Representative and the Contractor may from time to time agree.
- 13.4 The Contractor shall ensure that in operating the Business, a high standard of customer service is maintained and all staff do conduct themselves in a courteous manner to the satisfaction of the Government Representative.
- 13.5 In conducting the Business, the Contractor shall observe and comply with the operation and staff plan, the marketing plans and the customer services plan as set out in **Contract Schedule 3** (viz in the final form as approved by the Government).
- 13.6 The Contractor shall establish strategies, including but not limited to providing customer services training to staff engaged for the Business, to enhance the quality of customer services to encourage repeat visits.
- 13.7 The Contractor shall set up policies on matters such as refund or exchange of substandard goods and handling of customers' complaints.

14. Other Covenants

In addition to other covenants found in the Contract, the Contractor shall comply with and observe, and shall ensure the compliance with, all of the following:

- (a) not to cause, suffer or permit the preparation, cooking, reheating or otherwise of food in, nor delivery of food to the Licence Area or any part thereof;
- (b) not to cause, suffer or permit any floor show or other entertainment whatsoever to be staged in or from the Licence Area without the prior written approval of the Government Representative which approval may be revoked at any time by the Government Representative at its absolute discretion;
- (c) not to use any gramophone, radio or television loudspeaker, musical instrument or similar apparatus or equipment in such a way that the same shall be audible outside the Licence Area, and not to use the same without obtaining the requisite licence, permit and/or certificate for playing music in the Licence Area;
- (d) not to carry on business in or from or otherwise howsoever use or cause suffer or permit to be used for any purposes whatsoever any part of the Museum outside the Licence Area without the prior written consent of the Government Representative;
- (e) not to cause suffer or permit any smoking whatsoever to take place in or at the Licence Area;
- (f) to comply with the relevant provisions of the Smoking (Public Health) Ordinance (Cap. 371), and of all regulations made thereunder and for the time being in force;
- (g) not set aside or reserve the whole or any part of the Licence Area for the exclusive use of any person or organization or for any other purpose or function, save and except where the Government Representative at its absolute discretion may permit or require;
- (h) not use the Licence Area or any part thereof, or cause, permit or suffer the same to be used for any illegal, immoral purpose, gambling or any other purpose not permitted under Contract;
- (i) not to cause suffer or permit any games to be played in the Licence Area including but not limited to mahjong and tin kau whether for gambling purposes or otherwise; and
- (j) be responsible to make good any loss or damage to the Museum or any part thereof or any facilities or other fixture or fitting therein not being the property of the Contractor which may arise as a result of the operation of the Business or any other act, neglect or default of the Contractor or any of its employees or agents.

15. Air-conditioning

Central air-conditioning has been installed in the serving area of the Licence Area. The Contractor shall be responsible, at its own cost, for the installation of an independent system if additional cooling is required subject to prior approval of the Government Representative.

16. Premises Hygiene and Safety

- 16.1 The Contractor shall not keep or permit or suffer to be kept in the Licence Area or any part thereof any animals or pets, and shall take all such steps and precautions to the reasonable satisfaction of the Government Representative to prevent the Licence Area or any part thereof from becoming infested by any pests or vermin.
- 16.2 The Contractor shall not do or cause or suffer or permit to be done any act or thing whereby the policy or policies of insurance on the premises of which the Licence Area forms part against damage by fire or liability to third parties for the time being subsisting may become void or voidable or whereby the rate of premium or premiums thereon may be increased, and shall repay to the Government on demand all sums paid by the Government by way of increased premium or premiums thereon and all expenses incurred by the Government in and about any renewal of such policy or policies rendered necessary by a breach of this sub-clause.
- 16.3 The Contractor shall take all reasonable precautions to protect the Licence Area from damage by fire, storm, typhoon or the like and shall at its own expense install and provide suitable equipment and systems etc., and pay all fees and charges in connection herewith. All other proposed installations, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out according to the agreed schedule as well as to the satisfaction of the Government Representative. Such installation shall thereupon become the property of the Government Representative free of any costs or charges. The Contractor shall be responsible for maintaining and repairing such installation in safe and proper condition at its own expense and to remove the same should the Government Representative so direct.
- 16.4 The Contractor shall assume full responsibility for the safety and security of the Licence Area or its surroundings of all operations and methods of operations.
- 16.5 The Contractor shall be responsible for the safety of any vehicle which it uses or brings alongside or onto the Museum and it shall indemnify the Government in respect of any losses or damages thereto as a result of the use of such vehicles.

17. Outgoings

- 17.1 The Contractor shall pay all the installation costs and costs and deposits of electricity, telephones and data lines and water consumed on or in the Licence Area (including but not limited to electricity charges for air-conditioning equipment, machinery or central air-conditioning made available to the Licence Area under **Clause 15**, all charges for telephones and data lines installed in the Licence Area and all costs of installation of all meters in connection therewith.) In the event that any such supply is not metered, such amount in respect of electricity and water consumption as shall be assessed or estimated by the Government Representative.
- 17.2 The Contractor shall pay all rates, Government rent, taxes, fees, charges and outgoings whatsoever now or hereinafter payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons.
- 17.3 The Contractor shall pay and discharge all outgoings and expenditure whatsoever which may be incurred by the Contractor arising from or in respect of or otherwise howsoever in connection with the Business.

18. Cleansing, Collection and Disposal of Refuse and Litter

- 18.1 The Contractor shall maintain the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition to the reasonable satisfaction of the Government Representative. If the Government Representative in its reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof, the Government Representative may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government Representative in its reasonable opinion may allow the necessary cleaning and servicing work in the Licence Area. In the event that the Contractor fails to carry out the works as directed, the Government Representative may without further notice close the Licence Area or any part thereof and suspend the Contractor's Business for a period or periods not exceeding seven (7) days on any one occasion to cause the Licence Area and its immediately vicinity to be cleaned and serviced, and the Contractor shall pay the costs thereof to the Government Representative on demand and shall remain liable to pay the Monthly Licence Fee to the Government Representative without any deduction.
- 18.2 The Contractor shall provide and keep in good and hygienic condition dustbins in such numbers and of such a type as shall be approved by the Government Representative and shall collect all refuse and litter therein.

- 18.3 The Contractor shall comply with the Municipal Solid Waste Charging Scheme currently in effect. The Contractor shall arrange at least once every day or at a frequency as prescribed by the Government Representative at any time and from time to time for the removal and disposal of all refuse and litter collected in the course of the Business. Such refuse and litter shall be collected in polyethylene bags, or in any other containers approved by the Government Representative and shall be properly disposed of at least once every day to such a refuse collection point inside or outside the Licence Area nominated by the Government Representative at any time and from time to time in such manner as approved or prescribed by the Government Representative.
- 18.4 In the event of failure to comply with this **Clause 18**, the Contractor shall pay the Government on demand the costs and expenses incurred by the Government Representative in the removal and disposal of such refuse and litter or in cleansing and clearing the Licence Area due to the act, default or negligence of the Contractor or any of its employees or agents.
- 18.5 The Contractor shall, solely at its cost, employ or use only such cleaner or cleansing agent within the Licence Area as the Government Representative shall approve or prescribe, provided always that such approval may be withdrawn by the Government Representative upon notifying the Contractor that it has reasonable grounds for such withdrawal.

19. Electricity Supply

- 19.1 The Government shall provide one (1) 100A TP&N MCB Board for general lighting and power at the Licence Area. The Contractor shall be responsible for the wiring from the main power point there to the desired locations within the Licence Area and making application to the China Light and Power Company Limited for the installation of its own meter and the cost thereof.
- 19.2 The Contractor, if so permitted by the Government Representative, may consume electricity from supply points which are available at the Licence Area to operate its Business and shall pay all deposits, fees and charges incurred and, in the event that any such supply is not metered, such amount in respect of electricity consumption as shall be reasonably assessed or estimated by the Government Representative. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatuses associated therewith in or serving the Licence Area in safe and proper condition and comply in all respects with the Electricity Ordinance (Cap. 406) and its subsidiary legislations and/or the Government Representative with respect to the utilities.
- 19.3 If electricity supply is not available at the Licence Area, or permission to use available supply is not granted or withdrawn, the Contractor shall at its own expense install and provide its own source of electricity supply required for its Business and pay all fees and charges in connection herewith.

19.4 Any installation of wiring and lighting fittings, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out by a Registered Electrical Contractor (REC)/Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406D) and to the satisfaction of the Government Representative. The Contractor shall maintain and repair such installation in safe and proper condition at its own expense as well as remove the same should the Government Representative so direct. A copy of the Work Completion Certificate (WR1) issued under Regulation 1.9 of the Electricity (Wiring) Regulations (Cap. 406E) attached with schematics and test reports shall be submitted to the Government Representative for retention.

20. Contractor's Employees and/or Agents

20.1 In deploying staff for operating the Business, the Contractor shall comply with the operation and staff plan submitted in **Contract Schedule 3** which shall be in the final form as approved by the Government.

20.2 The Contractor shall ensure that a total of two (2) staff shall be in attendance at the Licence Area at all times during which the Licence Area is open.

20.3 The Contractor shall be responsible for the good conduct of its employees or agents while they are in the Licence Area, and shall ensure that they will behave accordingly.

20.4 The Government Representative shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any of the Contractor's employees or agents.

20.5 The Government Representative shall be entitled to refuse to admit to the Licence Area or any part thereof any person employed by the Contractor, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.

20.6 Any removal demanded or refusal made under **Clauses 20.4** and **20.5** shall not be construed as a breach of the Contract by the Government Representative and the Contractor shall continue to carry out its obligations under the Contract.

20.7 The Government Representative shall in no circumstances be liable either to the Contractor or to its employees or agents in respect of any liabilities, losses or damages occasioned by such removal as stipulated in **Clauses 20.4** and **20.5** and the Contractor shall fully indemnify the Government Representative against any claim made by such employees or agents.

20.8 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of its Business and of a type approved by the Government Representative for the use of its employees at the Licence Area.

- 20.9 The Contractor shall ensure that at all times when its employees or agents are at work or on duty in the Licence Area they will wear such uniforms in a clean and tidy manner.
- 20.10 The Contractor shall ensure that all persons employed by it in carrying out the Contract shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 20.11 The Contractor shall provide quality customer services to customers and therefore ensure the ability of all the front-line staff to communicate with customers in a courteous manner.
- 20.12 The Contractor shall maintain a proper current and accurate record of all its employees or agents employed for the carrying out of the Business. Such record shall include the name, the Hong Kong Identity Card number and a photograph of such employees or agents and shall be produced for inspection by the Government Representative on request. All personal data submitted by the Contractor will be used by the Government Representative for the purpose of this Contract only.
- 20.13 The Contractor shall not employ any persons who are forbidden under the laws of Hong Kong or not entitled for whatever reasons to undertake any employment in Hong Kong. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, if there is any breach of this **Clause 20.13** by the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)**.
- 20.14 The Contractor shall comply with the Employment Ordinance (Cap. 57). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)** if the Contractor is convicted of any offence under the Employment Ordinance.
- 20.15 The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)** if the Contractor is convicted of any offence under the Minimum Wage Ordinance.
- 20.16 The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)** if the Contractor is convicted of any offence under the Employees' Compensation Ordinance.

- 20.17 The Contractor shall comply with the Immigration Ordinance (Cap. 115). If the Contractor is convicted of an offence under the Immigration Ordinance for employing a person who is not lawfully employable to perform the Contract, or is convicted of an offence for aiding and abetting another person to breach its condition of stay, without prejudice to any other rights or remedies which the Government Representative has or may have, the Government Representative may terminate the Contract under **Clause 39.1(g)**.
- 20.18 The Contractor shall comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509), and any other legislation pertaining to the health and safety of its own staff, the employees or agents of the Government and/or the Government Representative and any other parties who may be affected by the Contractor's operation of its Business. Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)** if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance .
- 20.19 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Without prejudice to any other rights or remedies which the Government Representative has or may have against the Contractor, the Government Representative may terminate the Contract under **Clause 39.1(g)** if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes.
- 20.20 Any conviction mentioned in **Clauses 20.14 to 20.19** or any other provision of this Contract does not have to relate to this Contract. The conviction of a related person (as defined in **Clause 19.7 and 19.8 of the Terms of Tender**) or officer of the Contractor or any person being such officer during any part of the Contract Period may also be taken as the conviction of the Contractor and gives the same rights and remedies including the power to terminate under **Clause 39.1(g)**.

21. Arrangement during Epidemic Illness

In the event of illness of any epidemic nature breaking out or situations related to suspected or confirmed communicable disease cases, the Contractor shall comply with all such orders, arrangements or regulations as may be issued by the Government with a view to stamping out the same. The Contractor shall comply with any instructions issued by the Government regarding measures to be adopted to prevent or control diseases of any kind.

22. Suspension of the Business

- 22.1 In the event that the Contractor is in breach of any term and condition of the Contract, the Government Representative shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area ("**Suspension for Default**") by notice in writing to the Contractor for a period as specified in such notice and the suspension may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice. Without prejudice to the generality of the foregoing, the Government Representative may suspend the Contractor's right to carry on the Business at the Licence Area upon the default of the Contractor as mentioned in **Clause 18.1** or **Clause 31.2** where applicable.
- 22.2 Upon a Suspension for Default, the Contractor shall have no right to operate the Business at the Licence Area during the period of such Suspension for Default. The Contractor shall remain liable to pay the Monthly Licence Fee in respect of the period of Suspension for Default and perform and observe all other obligations under the Contract.
- 22.3 In the event that any default leading to the Suspension for Default has been remedied to the satisfaction of the Government, the Government Representative may cancel the Suspension for Default by notice in writing to the Contractor ("**notice of resumption**"). Upon receipt of such notice, the Contractor shall resume the Business at the Licence Area by such date as specified in the notice of resumption. The Contract Period will not however be correspondingly extended due to any suspension under **Clause 22.1**.
- 22.4 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any Suspension for Default under **Clause 22.1**.

23. Closure of the Licence Area

- 23.1 Without prejudice to the rights and powers of the Government Representative (including under **Clause 22** to effect a Suspension for Default), the Government Representative may require a temporary closure of the Licence Area for any operational or other reason (including any of the reasons as specified in **Clause 23.2**) which is otherwise than due to any default of the Contractor by giving not less than seven (7) days' notice to the Contractor specifying the period of the temporary closure. Upon such temporary closure for more than seven (7) days (on a single occasion basis but not on an accumulative basis) (including a temporary closure due to any ground specified in **Clause 23.2**), the Monthly Licence Fee shall not be payable for so long as such closure continues. The Contract Period may be correspondingly extended after the temporary closure in accordance with **Clause 23**.

- 23.2 Without prejudice to the generality of **Clause 23.1**, the Government Representative reserves the right to require a temporary closure of the Licence Area in whole or in part, by reason of fire or storm or damage or spread of epidemic as mentioned in **Clause 21** (not being the result of willful default or misconduct or negligence of the Contractor, its employees or agents) or an act of God or repair or maintenance or building modification or for any other reasons at any time and for whatever period or periods during the Contract Period. The renovation of other part of the Museum shall not entitle the Contractor to claim or request temporary suspension of the Gift Shop.
- 23.3 Upon any temporary closure pursuant to this **Clause 23**, the Contractor shall cease carrying on the Business at the Licence Area for so long as the temporary closure continues.
- 23.4 The Contractor may request to suspend its Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained as far as it is practicable in the circumstances and the Government Representative's decision on the duration of such period of suspension shall prevail. The Contractor shall remain liable to pay the Monthly Licence Fee in full and all fees and charges in respect of the Licence Area and the Business during such approved period of suspension of Business.
- 23.5 Neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to any temporary closure or cessation of the Business under this **Clause 23**.
- 23.6 Notwithstanding anything herein to the contrary, the Government reserves the right to give less than seven (7) days' notice for urgent closure due to emergency events which are beyond its reasonable control.
- 23.7 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof for a period of less seven (7) days' will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

24. Stock and Sale of Commodities

- 24.1 The commodities to be provided by the Contractor for sale in the Licence Area shall be in line with the services, image and functions of the Museum, its exhibitions and activities. In stocking and procuring the merchandise for the Business, the Contractor shall comply with the list of proposed merchandise and merchandise plan submitted in **Contract Schedules 2 and 3** but which shall be in the final form as approved by the Government.

- 24.2 Unless otherwise specified in the Contract, the Contractor shall stock in sufficient quantities and sell only the merchandise as stipulated in **Contract Schedule 2** (in the final form as approved by the Government) and other items from time to time approved or prescribed by the Government Representative of a standard to the satisfaction of the Government Representative (“**Authorised Merchandise**”).
- 24.3 The Contractor shall not sell any merchandise not listed in **Contract Schedule 2** unless with prior written approval of the Government Representative.
- 24.4 The Contractor shall abide by any directions as to the quality of the goods sold or offered for sale at the Licence Area as may be given by the Hong Kong Consumer Council.
- 24.5 The Contractor shall not stock, display, sell or provide at the Licence Area any alcoholic products, cigarettes, cigars or tobacco products whatsoever.
- 24.6 The Contractor shall provide to customers upon request receipts for commodities sold specifying the commodities and the respective prices.
- 24.7 Notwithstanding the prior approval of any items appearing in **Contract Schedule 2** or other prior approval from time to time, the Contractor shall remove forthwith from display and not sell or continue to sell, stock or display at or from the Licence Area any goods or merchandise or any other things and materials whatsoever used or provided in or from the Licence Area:
- (a) to which the Government Representative has notified its objection to the Contractor as being inconsistent with the objectives of the Business or the objectives/images of the Museum or the Government; or
 - (b) of which there is allegation of infringement of Intellectual Property Rights of any person or persons; or
 - (c) which consists of or contains any materials that infringe or are alleged to infringe the Intellectual Property Rights of any person or persons;

and neither the Government nor the Government Representative shall be liable for any losses suffered or expenses incurred whatsoever by the Contractor as a result of such suspension from sale or removal of items concerned.

25. Display of Commodity Prices

- 25.1 The Contractor shall prominently display at all times the prices of the commodities in respect of the Business at the Licence Area. The displays shall be in both Chinese and English and shall be put up in such form, such manner and at such locations as shall be approved or prescribed by the Government Representative.

- 25.2 The Contractor shall display clearly the fixed prices for all items for sale in a style to be approved by the Government Representative and not on any occasion charge a price exceeding the fixed price so displayed. In the case of goods which have a wholesaler or manufacturer recommended Hong Kong retail price, a price not higher than that price shall be adopted and where such prices are stated in foreign currencies, the Contractor shall make available for inspection the Hong Kong Dollar exchange rates applied by the Contractor to the currencies concerned to any customer who so requests, and to notify the Government Representative of any changes to the said exchange rates. Where no recommended Hong Kong retail price is available, the goods will be sold at not more than the prices normally charged at any of the Contractor's other Hong Kong retail outlets, or in the case where such goods are not sold by the Contractor at its other retail outlets within the range of prices charged in similar types of retail outlets in Hong Kong.
- 25.3 The Government Representative reserves the right to question the price of any item for sale at the Licence Area at any time and the Contractor shall provide justification for the price being charged.
- 25.4 The Contractor shall offer a discount of ten percent (10%) off the displayed price of all Authorised Merchandise and Consignment Items offered for sale at the Licence Area, except for special sales items that are clearly specified, and such other discount and discount packages as may be agreed from time to time between the Government Representative and the Contractor, to all persons as specified by the Government Representative, including but not limited to annual and half-year and regional. Leisure and Cultural Services Department Museum Pass Holders and such persons who can produce for inspection at the time of purchase a current valid identification as prescribed by the Government Representative.

26. Erection of Structures

- 26.1 The Contractor shall not allow or permit any structure to be erected in or on the Licence Area and its immediate vicinity except signboard(s) bearing the trade name for the Business in both Chinese and English which have been approved in writing by the Government Representative.
- 26.2 The number, size, location and ways of erecting the signboard(s) stipulated in **Clause 26.1** shall be approved or prescribed by the Government Representative in writing.

27. Storage of Dangerous Goods and Prohibited Goods

The Contractor shall not keep, store or cause, permit or suffer to be kept or stored in the Licence Area any dangerous or prohibited goods or liquid petroleum gas or any other types of fuel within the meaning of the Dangerous Goods Ordinance (Cap. 295) or any arms, ammunition, explosives or combustible substance.

28. Fire Precautions

The Contractor shall provide and maintain fire-fighting equipment in proper and serviceable condition to the satisfaction of the Government Representative and comply with any directions issued by the Government Representative or the Director of Fire Services in connection with the Licence Area.

29. Watchman

The Contractor shall not allow any person including but not limited to any watchman to remain in the Licence Area overnight without prior permission in writing by the Government Representative. The Contractor shall immediately remove such person from the Licence Area if the Government Representative notifies the Contractor in writing of the withdrawal of its approval for such person to stay overnight in the Licence Area.

30. Access by the Government for Repair

Whilst the Government Representative has no obligation to do so, the Contractor shall permit the Government Representative or any of its servants or agents with or without workmen to enter upon the Licence Area or any part thereof at all reasonable times to carry out repairs and works thereto and to any fixtures, fittings, installations and equipment whatsoever therein owned by either the Government Representative or the Government and to view the condition and state of repair thereof.

31. Inconvenience or Annoyance Caused at the Museum

31.1 The Contractor shall ensure that its employees, suppliers and permitted sub-contractors shall perform their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

31.2 The Contractor shall not do anything in or upon the Licence Area or any part of the Museum or in the immediate vicinity thereof which may be or become a nuisance or annoyance (including but not limited to the making of excessive noise or sound) or cause damage or inconvenience or discomfort to the users of the Museum, the Government Representative, its staff or agents working in the Museum. The Government Representative shall be entitled to suspend the Contractor's right to carry on the Business at the Licence Area under **Clause 22.1** for non-compliance with this **Clause 31.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.

31.3 The Contractor shall not place or leave, or cause, suffer or permit to be placed or left any of its trade equipment, stores, provisions, furniture, fixtures, fittings, chattels or other things whatsoever at any places within the Licence Area or otherwise howsoever encumber or encroach such places and shall forthwith remove the same to a place designated by the Government Representative if the Government Representative in its opinion considers that they may cause encumbrance or encroachment. In the event of any breach of this **Clause 31.3** and without prejudice to any other rights and remedies which the Government has or may have under the Contract, the Government Representative shall be entitled to take all such steps as may be necessary to forthwith remove any such encumbrances or encroachments thereby constituted and without notice to the Contractor to seize and dispose of any such property in such manner as the Government Representative may see fit without any liabilities whether towards the Contractor or any person otherwise and the Contractor shall pay the Government on demand all the costs in relation with such removal and/or disposal which are incurred by the Government Representative.

32. Inspection and Rejection

32.1 The Business carried on by the Contractor at the Licence Area shall be subject to inspection by the Government Representative at any time.

32.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government Representative may reject any action undertaken by the Contractor (which action is purportedly for the compliance or observance of any term or condition of the Contract), or the result of such action which does not strictly conform to the terms and conditions of the Contract.

32.3 Within twenty-four (24) hours of being notified in writing of the rejection of any action undertaken by the Contractor or the result of such action, the Contractor shall take necessary action to rectify such rejected action or the result of such action to the satisfaction of the Government Representative.

32.4 If the Contractor fails to rectify such rejected action or the result of such action, the Government Representative may, without prejudice to any other rights and remedies available to the Government, carry out and complete such rectification by its own staff or agents. All costs and expenses whatsoever which may be incurred by the Government Representative thereof shall be recoverable in full from the Contractor forthwith on demand or otherwise in accordance with the express provisions applicable to the relevant failure. The normal working hours for the staff of the Government Representative are, with the exception of public holidays, from 0900 to 1800 hours from Mondays to Fridays. If such rectification is carried out by the staff of the Government Representative outside these normal working hours, the Contractor shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

33. Contractor's Act and Default

Any act, default, neglect or omission of any officer, employee, agent or sub-contractor (of whatever tier) of the Contractor, or those officers, employees or agents of such sub-contractors, or any visitor or patron of the Licence Area (all of the aforesaid persons collectively "**Contractor Responsible Group**"), shall be deemed to be the act, default, neglect or omission of the Contractor and the Contractor shall be responsible for them as if it is its own.

34. Liability and Indemnity

34.1 Neither the Government, the Government Representative nor any of the public officers, employees or agents of the Government shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees, sub-contractors, agents, visitors to, or patrons of, the Licence Area howsoever caused ; or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees, sub-contractors, agents, visitors to, or patrons of, the Licence Area, save and except any such injury or death caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).

34.2 Without prejudice to any other provisions of the Contract, the Contractor shall indemnify each of the Government, the Government Representative, their respective assigns, successors-in-title, authorized users and the public officers of the Government (each an "**Indemnified Person**") from and against:

- (a) all and any claims, actions, investigations, demands, proceedings or arbitration, threatened, brought or instituted by any person against an Indemnified Person (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part and whether alone or jointly with another) ("**Third Party Claims**"); and
- (b) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses; and

including without limitation those liabilities and indebtedness, losses, damage, injury or death arising from any Third Party Claim, and liabilities to pay damages or compensation, and all legal and expert fees and other awards, costs, payments, charges and expenses on a full indemnity basis whether incurred in any Third Party Claim or incurred in any claim or proceedings or arbitration brought by an Indemnified Party; which an Indemnified Person may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to –

- (i) the performance or breach of any provisions of the Contract by the Contractor (or by any member of the Contractor Responsible Group);
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, or any member of the Contractor Responsible Group ;
- (iii) any warranty or representation made by the Contractor in the Contract or in the tender submitted for the Contract or from time to time in the course of the Contract which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the Contractor in the course of performing the Contract, or any goods or materials supplied by the Contractor infringed the Intellectual Property Rights of any person;
- (v) the non-compliance by the Contractor, or any member of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority; or
- (vi) any death or injury or loss or damage of property as mentioned in **Clause 34.1** except any death or injury caused by the Negligence of the Government or the Government Representative or any of the employees of the Government (in the course of employment).

34.3 For the purposes of this Clause, “**Negligence**” (in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

34.4 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government Representative in enforcing any of the terms and conditions of the Contract, or in supervising or controlling the Contractor’s operation or method of working, or in detecting or preventing or remedying any defective work carried out by the Contractor, its employees and agents.

34.5 The Contractor shall notify the Government Representative in writing of any injury to or death of any of the Contractor’s employees or agents arising from any work done in pursuance of the Contract or of any visitor of the Licence Area; and any loss of or damage to the Government’s provisions or other property of the Government or to the property of any of the Contractor or of its employees or agents or of any visitor of the Licence Area within forty-eight (48) hours of the occurrence of such injury, death, loss or damage or after such injury, death, loss or damage has come to the Contractor’s knowledge. The requirement of notifying the Government Representative under this Clause shall not exempt or excuse the Contractor from compliance with any law.

35. Government to Recover Cost

If the Contractor fails to carry out any of its obligations or duties under this Contract and the Government Representative executes such obligations or duties on behalf of the Contractor, without prejudice to the other rights and claims of the Government, the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government all costs and expenses that it has incurred in executing such obligations or duties or procuring the service of a third party to execute such obligations or duties including all administrative and legal costs for supervising and monitoring the performance of such obligations and duties and enforcing its rights under this Clause.

36. Public Liability Insurance

- 36.1 The Contractor shall effect at its own expense a public liability insurance policy (“**the Policy**”) throughout the Contract Period in the joint names of the Contractor and the Government Representative in the sum of not less than **Hong Kong Dollars Ten Million (HK\$10,000,000)** for any one incident and unlimited number of claims in any one (1) year with an insurance company authorized by the Insurance Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative in writing in advance.
- 36.2 The Policy shall cover liability to pay damages or compensation as a result of the damage to properties, death of or injury to or illness suffered by any person arising out of vandalism, any act or default of the Contractor, the Government Representative and their employees and agents.
- 36.3 On top of the indemnity amount as stated in **Clause 36.1**, the Policy shall also indemnify each of the insured from and against payment of legal costs awarded in favour of any claimant of any claim covered by the Policy and legal costs incurred by the insured in defending any claim.
- 36.4 The Contractor shall keep the Policy in force during the continuance of the Contract and shall, if required, deposit with the Government Representative for safe keeping such policy of insurance together with the receipt for payment of the current premiums.
- 36.5 If the terms of the Policy taken out by the Contractor require the insured parties to bear any excess amount in the event of claims, the Contractor shall be personally and solely responsible for the payment of such excess amount and shall reimburse the Government Representative for such payment if it is paid by the Government Representative.
- 36.6 The Policy shall include a cross liability clause so it shall be treated that a separate policy has been issued to each of the Contractor and Government Representative.

36.7 The Contractor is responsible to lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage, provided that the Government shall have the right to liaise with the insurance company on any matter of such claims.

36.8 If the Contractor fails to effect or to keep in force the Policy or any other insurance which it may be required to effect under the terms and conditions of the Contract, the Government Representative may effect and keep in force any such insurance and pay such premium or premiums thereof as may be necessary for that purpose and may from time to time deduct the amount so paid from the Security Deposit in accordance with **Clause 7** or may recover the same as a debt due from the Contractor.

37. Recovery of Sums Due

If the Contractor fails to pay any amount due or payable or otherwise upon demand by the Government Representative pursuant to any applicable provision of the Contract, the Government Representative shall be entitled to deduct the same from the Security Deposit in accordance with **Clause 7** and/or may recover the same as a debt due from the Contractor in such order as it deems appropriate regardless of whether it is specifically stated in the relevant provisions that such amount may be recovered as a debt.

38. Set-off

Whenever under the Contract any sum of money is recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Government contracts.

39. Termination

39.1 Without prejudice to any right or action or remedy which shall have accrued or shall accrue thereafter to the Government, the Government Representative may at any time by notice forthwith terminate the Contract without entitling the Contractor to compensation in any of the following events –

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract, or in the case of a breach capable of being remedied, fails within fourteen (14) days (or such longer period as the Government Representative may allow) to remedy the breach following from the issue of a notice in writing from the Government Representative requiring it to do so (such notice shall contain a warning of the Government Representative's intention to terminate the Contract);
or

- (b) if the Contractor is at any time adjudged bankrupt, or has a receiving order or orders for administration of its estate made against it, or takes any proceedings for liquidation or composition under the Bankruptcy Ordinance (Cap. 6), or makes any conveyance or assignment of its effects or composition or arrangements for the benefit of its creditors or purports to do so, or suffers any execution to be levied on its goods and assets in the Licence Area, or a petition is filed for the bankruptcy or winding up of its Business otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government Representative in writing; or
- (c) if the Contractor, being a company, passes a resolution, or the court makes an order for the liquidation of its assets, or a receiver or manager is appointed on behalf of the debenture holders, or circumstances have risen which entitle the court or debenture holders to appoint a receiver or manager, provided that such determination shall not prejudice or affect any right or action or remedy which have accrued or accrue thereafter to the Government; or
- (d) if the Contractor assigns or transfers, or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government Representative; or
- (e) if the Contractor unilaterally ceases its Business at the Licence Area and/or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period otherwise than in accordance with **Clause 39.4**; or
- (f) if there is any claim or allegation or the Government Representative has reasonable grounds to believe that the Contractor in the course of performing the Contract, or any goods or materials supplied or to be supplied by the Contractor, has infringed or may infringe the Intellectual Property Rights of any person or persons; or
- (g) any event or circumstance occurs which enables the Government Representative to terminate the Contract under any provision of the Contract including any of the following provisions:
 - (i) **Clause 5.6** (Payment of Monthly Licence Fee);
 - (ii) any of **Clauses 20.13 to 20.19** (Contractor's Employees and/or Agents); or
 - (iii) **Clause 41** (Corrupt Gifts).

39.2 If the Government Representative is at any time prevented from performing the Contract by force majeure, the Government Representative shall serve a notice on the Contractor to this effect whereupon the Contract shall be terminated immediately.

- 39.3 For the purpose of **Clause 39.2**, “force majeure” means acts of God, strikes, lockouts, acts of war, civil disorders, or other similar or different events or contingencies beyond the reasonable control of the parties to this Contract. For these purposes an event shall not be deemed to be within the control of the Government Representative on the ground that the Government Representative could have prevented that event by acceding to any unreasonable demands of an authority, corporation, trade union, association or person.
- 39.4 Notwithstanding anything herein to the contrary, either party to the Contract may without cause terminate the Contract early by giving not less than six (6) months’ notice to the other party any time after eighteen (18) months of the Contract Period.
- 39.5 The grounds for termination specified in this **Clause 39** are separate and independent, and shall not be limited by reference to or inference from the other of them.

40. Effect of Termination

- 40.1 In the event of termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in **Clause 39** or otherwise (“**Termination**”):
- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government Representative’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitles the Government Representative to terminate the Contract);
 - (ii) the rights and claims which have accrued to a party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (howsoever occasioned) (including without limitation **Clauses 5, 8, 10, 12, 14, 15, 17, 33 to 57** (apart from **Clause 47.1**));
 - (b) neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;

- (c) without prejudice to the other rights and claims of the Government Representative including the right to seek indemnity under **Clause 34.2**, in the event that this Contract is terminated under **Clause 39.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government and the Government Representative arising from the Termination including without limitation (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement contract is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination; (ii) all administrative and legal costs incurred by the Government and the Government Representative for terminating the Contract; and (iii) all administrative and legal costs incurred by the Government Representative for issuing an invitation to bid for a new replacement contract similar to the Contract;
- (d) the Contractor shall forthwith pay up all unpaid Monthly Licence Fee without any deduction or set-off whatsoever plus interest on any overdue amount at the rate as specified in **Clause 5.3**;
- (e) in the event of the Termination under **Clause 39.1**, there shall be a forfeiture of the Security Deposit in its entirety without prejudice to the Government Representative's claims and demands under the Contract which cannot be satisfied by the Security Deposit;
- (f) the Contractor shall immediately deliver up vacant possession of the Licence Area and all Government Property in good repair (fair wear and tear excepted) and in clean and hygienic condition, provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government Representative's consent, the Government Representative may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government Representative may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government Representative's fixtures and installations thereof by such deadline date as specified by the Government Representative (whether to fall before or after the Termination) before delivering up the Licence Area to the Government Representative. Alternatively, the Government Representative may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government Representative so chooses without any compensation to the Contractor whatsoever;
- (g) the Contractor shall remove from the Licence Area all removable objects from the Licence Area which do not belong to the Government including any materials, machinery, equipment, plant and all other properties. The Contractor shall at its own expense make good any damage to the Licence Area arising from such removal;

- (h) all employees and agents of the Contractor shall vacate the Licence Area and deliver up all keys and access cards to the Licence Area;
- (i) if the Contractor fails to comply with any of **Clauses 40.1(f) to (h)**, the Government Representative may forthwith enter the Licence Area to remove any persons therein, or to remove any fixtures and fittings or reinstate any alterations so installed or erected, or any property, materials, machinery and equipment found therein and to effect the necessary repair and cleansing work so as to keep the Licence Area in good repair and a clean and serviceable condition. The Government Representative reserves the right to take over or to dispose of in whatsoever manner it deems appropriate and without any liability and compensation whether towards the Contractor or any other party any fixtures and fittings so installed or erected and any chattels not collected or removed by the Contractor upon the termination of the Contract. All costs, losses, damages or expenses incurred by the Government Representative as a direct or indirect result of the breach of the Contract under this Clause shall be recoverable as a debt due from the Contractor;
- (j) return all unsold Consignment Items to the Government; and
- (k) submit all outstanding statements and information as specified in **Clause 10.2** and unpaid sale proceeds of the Consignment Items payable under **Clause 45.5** plus any interest at the rate specified in **Clause 5.3** for any late payment.

41. Corrupt Gifts

If the Contractor or any employee or agent of the Contractor is found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may terminate the Contract under **Clause 39.1(g)**.

42. Monies or Valuables Found

All monies or other items of value found by the Contractor's employees and/or agents in carrying out the Business in the Licence Area shall be handed to the Government Representative's management in the Museum as soon as possible and a written receipt obtained therefrom.

43. Publicity and Advertisement

- 43.1 The Contractor shall not exhibit, display, publish or use any advertising or other publicity materials or perform any act with an advertising nature either inside or outside the Licence Area or any part thereof except with the prior written consent of the Government Representative.

43.2 Save and except where the Government Representative at its discretion may permit or require, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Licence Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature.

43.3 Without prejudice to the generality of **Clause 43.2**, the Contractor shall not exhibit or display, or cause, permit or suffer to be exhibited or displayed either inside or outside the Licence Area any advertisement or any other materials whatsoever (such as writings, signs, signboards or any other devices whether illuminated or not which may be visible from inside or outside the Licence Area or any part thereof) of any advertising nature relating to any tobacco or tobacco-related products.

44. Notice to be Displayed or Circulated

If the Contractor proposes to display or circulate any notices requiring its employees, agents or the public to comply with the rules and regulations of the Government Representative, the Government or other competent authority or for the purpose of the operation of its Business under the Contract, it shall first seek the prior written consent of the Government Representative and such consent can be withdrawn at any time at the discretion of the Government Representative. All notices displayed or circulated by the Contractor in the Licence Area shall be written in both Chinese and English.

45. Consignment Items

45.1 The Government Representative may at any time and from time to time provide and the Contractor shall then stock and display for sale in the Licence Area to the reasonable satisfaction of the Government Representative –

- (a) such government publications in reasonable quantity as the Government Representative may from time to time prescribe; and
- (b) such publications, novelty and souvenir items in reasonable quantity as the Government Representative may from time to time prescribe.

(those quantities of goods falling within (a) and/or (b) above as from time to time provided by the Government to the Contractor are collectively referred to as “**Consignment Items**”).

- 45.2 The Contractor shall reserve a display area at a conspicuous location within the Licence Area of no less than ten percent (10%) of the total area of the Licence Area for promoting and selling the Consignment Items. The Contractor shall obtain the prior approval of the Government Representative in respect of the location, design, style of decoration of this reserved display area, and in respect of the manner of display of the Consignment Items therein. The Contractor shall also maintain the standard of décor of this reserved display area at all times to the satisfaction of the Government Representative.
- 45.3 The price at which the Consignment Items shall be advertised for sale and sold shall be prescribed by the Government Representative. The Contractor has no authority to offer any discount for such Consignment Items unless with the prior approval of the Government or unless under the express provision of this Contract.
- 45.4 The Government Representative reserves the right to arrange promotional sales of the goods which are the same as or similar to the Consignment Items through other channels other than through the Contractor at the Gift Shop and the prices and discounts to be offered for such sale will be at the sole decision by the Government Representative.
- 45.5 The gross proceeds from the sale of any and all Consignment Items without any deduction whatsoever shall be paid by the Contractor to the Government on a monthly basis based on the information and statements submitted in **Clause 10.2**. For each Consignment Item sold, the Government shall pay to the Contractor a commission at the rate prescribed for that Consignment Item by the Government Representative when such Consignment Item is supplied to the Contractor. The commission will be separately payable by the Government on a monthly basis upon issue of an invoice from the Contractor showing the Consignment Items sold in the month to which the invoice relates and the total commissions payable at the rate prescribed by the Government in the aforesaid manner. Provided that the invoice has been duly issued and further that the gross proceeds of the Consignment Items as specified in the invoice have been paid to the Government, the Government shall pay the commission to the Contractor within 30 days after the invoice or 30 days after payment of the gross proceeds to the Government, whichever is later.
- 45.6 All and any Consignment Items shall remain the property of the Government unless and until they are sold by the Contractor. Upon early termination or expiry of the Contract Period, the Contractor shall return all unsold Consignment Items to the Government.
- 45.7 Together with the monthly statements required in **Clause 10.2(a)**, the Contractor shall submit to the Government Representative on a monthly basis, a statement in a form approved by the Government Representative showing *inter alia* details of all Consignment Items sold during the period since the submission of last such statement and the sale price at which each Consignment Item was sold as well as the remaining inventory level.

- 45.8 The Government Representative reserves the right to withdraw any Consignment Items from the Licence Area at any time prior to their being sold without incurring any liability whatsoever to the Contractor.
- 45.9 The Government Representative further reserves the right at all reasonable times and upon having given prior notice to the Contractor to enter the Licence Area and carry out stocktaking on the Consignment Items and at the request of the Government Representative the Contractor shall give the Government Representative access to all books and records relating to the stocking and sales of the Consignment Items.
- 45.10 The Contractor shall pay a compensation equal to the sale price of the Consignment Item in the event of any loss or damage of such Consignment Item whilst it is in the possession or under the control of the Contractor.
- 45.11 Nothing in this clause shall serve to relieve the Contractor of its obligation under this Contract to stock and sell sufficient quantities Authorised Merchandise for its own account to the reasonable satisfaction of the Government Representative.

46. Applicability of the Public Health and Municipal Services Ordinance (Cap. 132)

The Contract is subject to the provisions of the Public Health and Municipal Services Ordinance (Cap. 132) and of all regulations made thereunder, which may be applicable to the Licence Area and the Business.

47. Intellectual Property Rights

- 47.1 Insofar as any Intellectual Property Rights of the name of the Hong Kong Heritage Museum or its related images, designs or exhibits are vested in the Government (collectively, “**Museum IP**”), the Government Representative may at its sole discretion grant a revocable, non-exclusive, non-transferable, non-assignable, non-sub-licensable, and royalty-free licence to the Contractor to use the Museum IP for the production and sale of goods and souvenirs bearing such Museum IP (“**Museum Licensed Items**”). The licence shall be terminated at the same time as the Contract Period is expired or is earlier terminated.
- 47.2 The Contractor warrants to the Government that —
- (a) the Contractor will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person or persons in the operation of the Business at the Licence Area and in the performance of the Contract;
 - (b) all goods and merchandise to be stocked, displayed or for sale in or from the Licence Area do not and will not infringe the Intellectual Property Rights of any person or persons;

- (c) if any goods or merchandise to be stocked, displayed or for sale and other things or materials used or otherwise provided in or from the Licence Area contain any works or materials of which the Intellectual Property Rights belong to a third party and if the Intellectual Property Rights in respect of any activities conducted in the Licence Area belong to a third party, prior to stocking, displaying, selling, using or providing such goods, merchandise, things or materials (as the case be) and prior to conducting such activities, the Contractor shall have obtained at its own costs and expenses from such third party the grant of all necessary licences for itself, the Government, the Government representative and their authorized users, assigns and successors-in-title to stock, display, sell, use or provide such goods, merchandise, things or materials in or from the Licence Area and to conduct such activities in the Licence Area;
- (d) the Government, the Government Representative, and their authorized users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person or persons by the Contractor's possession, stocking, display or sale of any goods or merchandise or any other things and materials of whatsoever nature used or provided in or from the Licence Area or any activity conducted in the Licence Area or in connection with the operation of the Business in the Licence Area.
- (e) the Contractor shall not use the Museum IP other than for the usage as specified in **Clause 47.1**.
- (f) the Government, the Government Representative and their authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights of any person by the exercise of any of its rights under this Contract (including the licence under **Clause 47.3**; and
- (g) the Contractor has the full capacity, power and authority to enter into this Contract and to perform all its obligations hereunder including without limitation the grant of the licences in respect of the Intellectual Property Rights to the Government according to **Clause 47.3**.

47.3 The Contractor hereby grants for the benefit of the Government, the Government Representative, and their authorized users, assigns and successors-in-title an irrevocable, non-exclusive, transferable, worldwide, perpetual, sub-licensable and royalty-free licence to use any works and materials to be submitted or provided by the Contractor under the Contract including but not limited to the right to reproduce in any format and as many copies of those works and materials (including without limitation the books and records under **Clause 10.2**). In relation to any works or materials to which the Contractor is not empowered to grant sub-licence(s), the Contractor hereby undertakes to procure at its sole costs and expenses the grant of such rights for the benefits of the Government, the Government Representative and their authorized users, assigns and successors-in-title by the relevant third parties in respect of such works and materials to be granted on or before such works and materials are submitted or provided to the Government in accordance with the

terms hereto.

- 47.4 The Contractor shall keep the Government Representative informed in writing of any works and materials covered by **Clause 47.3** the Intellectual Property Rights in which do not belong to the Contractor.
- 47.5 The Contractor undertakes to procure at its own costs and expenses from the relevant third parties all proper licences, clearances and releases in writing to be granted in favour of the Government, the Government Representative and their authorized users, assigns and successors-in-title pursuant to the terms of the licence under **Clause 47.3**.
- 47.6 For the purpose of **Clause 47.3**, the licences granted or to be granted shall cover all Intellectual Property Rights of whatever nature.
- 47.7 The Contractor irrevocably waives and undertakes to procure at its own costs and expenses all authors including its employees, sub-contractors and agents to irrevocably waive all moral rights (whether past, present or future) in all works and materials submitted or to be submitted by the Contractor to the Government and all works and materials used by the Contractor in the performance of the Contract, such waiver shall operate in favour of the Government, the Government Representative, and their authorized users, assigns and successors-in-title and shall take effect upon the submission of such works and materials to the Government or the creation of such works and materials (as the case may be).
- 47.8 The Contractor shall at its own costs and expenses do and execute any further things and documents (or procure the same be done or executed) as may be required by the Government to give full effect to this **Clause 47** and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

48. Mediation

- 48.1 Any dispute or difference arising out of or in connection with the Contract shall first be referred to mediation at Hong Kong International Arbitration Centre (HKIAC) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then each of the parties hereto submit to the exclusive jurisdiction of the courts of Hong Kong for resolving such dispute or difference.
- 48.2 The Contractor shall be obliged to carry on the Business in accordance with the Contract irrespective of a notice of mediation or arbitration having been served by either party or whether mediation or arbitration is in progress.

49. Service of Notice

49.1 Any notice or communication to be given herein shall be in writing and shall be sent to the address or facsimile number of the Government Representative set out below (in the case the Government Representative or the Government is the recipient) or the address or facsimile number of the Contractor set out in the Articles of Agreement (in the case the Contractor is the recipient) or to such other address as either party shall notify the other in writing by no less than five (5) days' prior written notice. Notice may be delivered personally or by post, by courier, by facsimile or by email.

49.2 The Government Representative's details are as follows:

Address: Hong Kong Heritage Museum, 1 Man Lam Road, Sha Tin,
Hong Kong

Facsimile Number: 2180 8111

Email Address: mhm@lcsd.gov.hk

Attention: Manager (Heritage Museum)

49.3 Any such notice shall be deemed given –

- (a) when left at the address of the recipient if delivered by hand during normal business hours;
- (b) one (1) working day after despatch by post;
- (c) when successfully dispatched by email as evidenced by a return receipt whether generated manually or automatically; or
- (d) when successfully dispatched by facsimile as evidenced by a successful transmission report generated by the facsimile machine.

50. Waiver of Remedies

50.1 Time shall be of the essence of the Contract. No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party. Nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power, or remedy shall be cumulative.

50.2 Acceptance of any payment by the Government Representative shall not be deemed to operate as a waiver by the Government Representative of any right to proceed against the Contractor in respect of any breach, non-observance or non-performance by the Contractor of any of the terms and conditions of the Contract on the Contractor's part to be observed and performed.

50.3 No condoning, excusing or overlooking by the Government Representative of any default, breach, non-observance or non-performance by the Contractor of any of the obligations of the Contractor under the Contract shall operate as a waiver of the Government Representative's right under the Contract in respect of any continuing or subsequent default, breach, non-observance or non-performance.

51. Severability

51.1 In the event that any provisions of the Contract or any part thereof is at any time adjudged by a court of Hong Kong to be invalid, illegal or otherwise howsoever unenforceable, such provisions or such part thereof, as the case may be, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions hereof.

51.2 If at any time any one or more provisions hereof is adjudged by a court of Hong Kong to be invalid, illegal or otherwise howsoever unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be thereby impaired or affected.

51.3 Where, however, the provisions of any such applicable law of Hong Kong may be waived, they are hereby waived by the parties hereto to the full extent permitted by such law to the end that the Contract shall be valid, binding and enforceable in accordance with its terms and conditions.

52. Entire Agreement

The Contract embodies the entire understanding of the parties and supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

53. Amendment

Unless where expressly specified which confers on the Government Representative the unilateral power to make amendments, no amendment to any provision of the Contract shall be binding upon the parties unless it is made by a written instrument signed by each of the Government Representative and the Contractor.

54. Further Assurance

The Contractor shall at its own costs and expenses do and execute any further things and documents (or procure the same be done or executed) to give full effect to the Contract and shall provide all such documents and materials to the Government Representative within fourteen (14) days of the date of written request by the Government Representative or such longer period as may be agreed by the Government Representative in writing.

55. Relationship of the Parties

55.1 The Contractor enters into the Contract with the Government Representative as an independent Contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, a relationship of landlord and tenant, or a joint venture between the Government Representative and the Contractor or between the Government and the Contractor.

55.2 Unless otherwise expressly provided for in the Contract, neither party is authorized to act in the name of, or on behalf of, or otherwise bind the other party.

56. Governing Law and Jurisdiction

The Contract shall be governed by and construed according to the laws of the Hong Kong and subject to **Clause 48.1**, the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising from or in connection with or in relation to the Contract.

57. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a) these Conditions of Contract;
- (b) Contract Schedules 1 to 5;
- (c) Annexes A to E; and
- (d) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

PART 3**CONTRACT SCHEDULES**

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CONTRACT SCHEDULE 1

Monthly Licence Fee
(put in the “Price Submission” envelope)

(The list can be written in English or Chinese or both)

In the event that I am/we are awarded the Contract, I/we will pay the following Monthly Licence Fee to the Government Representative in consideration of the grant of the right to operate the Business at the Licence Area on and subject to the terms and conditions of the Contract.

I/we have read all terms and conditions of the Contract including without limitation the following:

- (a) I/We shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at my/our own costs and expenses; and
- (b) except in the case of sale of Consignment Items, the Business shall be operated by the Contractor as principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative; and
- (c) the installation costs, costs and deposits of electricity, telephones and data lines and water consumed, rates, Government rent, taxes, fees, charges and outgoings payable in respect of the Licence Area and its Business throughout the Contract Period including the Free Decoration Period or the period or periods of suspension of Business due to whatsoever reasons will not be covered by the Licence Fee.

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

* Delete as appropriate

CONTRACT SCHEDULE 1**Monthly Licence Fee****(put in the "Price Submission" envelope)**

(The list can be written in English or Chinese or both)

Period	Monthly Licence Fee (HK\$)	
	In Figures (HK\$)	In Words (Note)
For the Contract Period of six (6) years commencing from 17 June 2019 unless a different date is specified in the Articles of Agreement, including a Free Decoration Period as stipulated in Clause 2.1 of the Conditions of Contract but subject to any early termination or extension under any applicable provision of the Contract	HK\$ _____	Hong Kong Dollars
	per month	_____ _____ only per month

Note: The Monthly Licence Fee expressed in words shall prevail where there is any inconsistency between the figures and words.

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

* Delete as appropriate

CONTRACT SCHEDULE 2

List of Proposed Merchandise for Sale at the Licence Area (put in the “Technical Submission” envelope)

(The list can be written in English or Chinese or both)

The Tenderer is required to complete this Contract Schedule in conjunction with **Item 3** of **Contract Schedule 3 – Merchandise Plan**. The Tenderer shall provide the merchandise plan with the list of merchandise to be supplied for sale in the Licence Area and specify the proposed items, such as souvenirs, publications and goods items.

The Tenderer shall also propose strategies in providing merchandise (range and class of merchandise to be sold and sources of merchandise/suppliers) for sale at the Licence Area to meet the demand of the Museum users and to tie in with the services, image and functions of the Museum, its exhibitions and activities.

Merchandise items shall include but shall not be limited to publications, gifts or souvenirs including art-related items, visual arts, publications on art and other items that relate to the image and functions of the Museum and promotion of cultural heritage and its preservation. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

Item	Description

(Note: If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

The Tenderer shall submit the following information for evaluation according to the marking scheme in **Contract Schedule 5**. **Information provided by the Tenderer hereunder will be binding on the successful Tenderer upon the award of the Contract.** The Tenderer should note the marking scheme in **Contract Schedule 5** and that zero (0) mark will be given for a plan if the Tenderer fails to provide information on any one of the requisite items required under the relevant plan. An offer will not be considered further if a Tenderer fails to obtain the passing mark stipulated therein.

The plans and proposals submitted below and those in **Contract Schedule 2** shall be subject to approval and comment by the Government upon or after the award of the Contract. The Contractor must seek written approval from Government Representative if plan(s) and proposal(s) as approved by the Government Representative are proposed to be altered or not followed.

1. Trade Experience

The Tenderer shall meet the essential requirement in Clause 6 of the Terms of Tender: “A Tenderer must have at least TWO (2) CONTINUOUS years of experience* in selling as owner of the business on a retail basis gifts or souvenirs or publications or art products or audio visual products or novelty products within the ten (10) years immediately prior to the Original Tender Closing Date in the same brick and mortar shop.”

***See the Notes under the Essential Requirement in Clause 6 of the Terms of Tender.**

(Note: If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

2. Facilities and Decoration Plan (Maximum 30 marks)

The Tenderer shall provide the facilities and decoration plan with information such as the description of the proposed overall design theme for the decoration, shop front design, furniture and facilities of the Licence Area to blend with the image and functions of the Museum. The Tenderer is advised to provide a sketch of their design layout. The Tenderer may also include other materials as appropriate to facilitate consideration of its offer by the Government.

(Note: If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

3. Merchandise Plan (Maximum 25 marks)

The Tenderer shall provide the merchandise plan with the proposed list of merchandise to be supplied for sale in the Licence Area and specify the proposed items in **Contract Schedule 2** above such as souvenirs, publications and goods items. The Tenderer shall also propose strategies in providing merchandise (range and class of merchandise to be sold and sources of goods/suppliers) for sale at the Licence Area to meet the demand of the Museum users and to tie in with the services, image and functions of the Museum, its exhibitions and activities.

Merchandise items shall include but shall not be limited to publications, gifts or souvenirs including art-related items, visual arts, publications on art and other items that relate to the image and functions of the Museum and promotion of cultural heritage and its preservation. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

(Note : If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

4. Marketing Plan for Promoting the Image and Functions of the Museum (Maximum 10 marks)

The Tenderer shall provide a marketing plan with details of measures it shall take to attract more customers and promote the image and functions of the Museum and the Licence Area to blend with the image and functions of the Museum. The plan shall include but not be limited to strategies for different categories of patrons/occasions/seasons relevant to the Museum’s exhibitions and activities, etc. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

(Note : If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

**5. Marketing Plan for Promoting the Sale of the Consignment Items of Museum
(Maximum 10 marks)**

The Tenderer shall provide a marketing plan for marketing and promoting the sale of the Consignment Items such as publications and souvenirs to be sold at the Licence Area to blend with the image and functions of the Museum. The Tenderer is advised to provide information on the proposed design layout with a sketch of the designated display area for the Consignment Items in addition to strategies on promoting the Consignment Items. The display area must occupy an area which is not less than 10% of the total area of the Licence Area. The plan shall include but not be limited to strategies for different categories of patrons/occasions/seasons relevant to the Museum’s exhibitions and activities. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

(Note : If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

Experience and Business Plans
(put in the “Technical Submission” envelope)

(The list can be written in English or Chinese or both)

6. Operation and Staff Plan (Maximum 5 marks)

The Tenderer shall provide an operation and staff plan for running of the Business. The operation and staff plan shall include but not be limited to aspects of procurement of merchandise, proposed staff deployment plan in running the business and information of the proposed work force including the number of staff for the Licence Area, the requirement of the staff’s working experience and qualification. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

(Note : If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 3

**Experience and Business Plans
(put in the “Technical Submission” envelope)**

(The list can be written in English or Chinese or both)

7. Customer Services Plan (Maximum 5 marks)

The Tenderer shall provide a customer services plan for providing courteous and efficient services to customers such as a plan on the provision of customer services training to the staff engaged for the business and the strategy for enhancing customer services to encourage repeat visits such as policies on refund/exchange of substandard goods, handling of customers’ complaints. The Tenderer may also include other materials as appropriate to facilitate consideration of their offer by the Government.

(Note: If there is not enough space, please use additional sheets.)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____
(with firm / company chop)

CONTRACT SCHEDULE 4

Information of the Tenderer
(put in the “Technical Submission” envelope)

Tenderers are required to provide the following information -

1. (a) Name of Tenderer: _____ (in English)

Registered address: _____ (in Chinese)

Telephone Number: _____

Facsimile Number: _____ E-mail: _____

(b) Length of business experience: _____

(c) Proprietor, shareholders/partners of the company/business organisation and their percentage of ownership:

(d) Names and residential addresses of the following, where appropriate

- major directors or partners: _____

- sole proprietor: _____

(e) A photocopy of the Memorandum (if any) and Articles of Association, a Certificate of Incorporation, the Certificate of Change of Name (if any), partnership agreement, and latest annual return filed with the Companies Registry or other documents evidencing business status, if appropriate.

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

CONTRACT SCHEDULE 4

Information of the Tenderer

(put in the "Technical Submission" envelope)

- (f) A photocopy of the current Business Registration Certificate. The Certificate should bear a machine printed line to show that full registration fee has been effected, if appropriate.

2. Present Business: _____

(* Please use additional sheets if required)

3. Particulars of Company (Please attach copies of the latest audited or certified financial statements of the company):

(a) Year of Establishment : _____

(i) Ownership : _____

(ii) If a subsidiary, name of parent company : _____

(b) Number of Staff : _____

(c) Liability : _____ (as at _____)

(d) Capital - _____

(i) Issued Capital : _____ (as at _____)

(ii) Paid up Capital : _____ (as at _____)

(e) Net Worth (i.e. Total Assets – Liabilities) :

HK\$ _____ (as at _____)

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

CONTRACT SCHEDULE 4

**Information of the Tenderer
(put in the “Technical Submission” envelope)**

4. Please provide contact person(s) in the event of any queries relating to the tender offer:

Name: _____

Telephone Number: _____

Facsimile Number: _____ E-mail: _____

5. *I/we confirm that none of the events as mentioned in **Clause 19.2(a) to 19.2(f)** of the **Terms of Tender** has ever occurred within the applicable period as mentioned in the relevant sub-clause of **Clause 19.1 OR**

I/we hereby provide the details as required in **Clauses 19.2(a) to 19.2(f)** of the **Terms of Tender** where applicable.

*Delete where inapplicable

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation****Overview of the Marking Scheme for Tender Evaluation**

The Government will assess the tenders received in accordance with the following procedures.

Tenders will first be checked for completeness and then go through an assessment on the “essential requirement” and must meet the essential requirement set out in Stage 1 below before they will be considered further in accordance with a marking scheme which carries a quality to price weighting of 50 : 50.

The technical proposal of those tenders which meet the essential requirement will be marked in Stage 2 technical assessment. The total maximum mark is 85. There is passing mark in each assessment criteria. Tenderers failing to attain the passing mark will not be considered further. The Tenderer who passes all the assessment criteria in Stage 2 and attains the highest technical mark will be awarded with a weighted quality score of 50 while the weighted quality scores for other Tenderers who pass the Stage 2 technical assessment will be calculated in accordance with the following formula:

$$50 \quad \times \quad \frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark amongst the tenders which pass Stage 2 technical assessment}}$$

Upon completion of the technical assessment in Stage 2, the price of those tenders will be evaluated in Stage 3 price assessment. The tender with the highest combined score will normally be recommended for acceptance.

Stage 0 Completeness Check

Completeness check of the tender will be conducted by checking whether the tender is submitted in accordance with the requirements of the Tender Documents. If a Tenderer fails to complete or submit any item in accordance with **Clause 4.2** of the **Terms of Tender** by the Tender Closing Date, its tender will not be considered further.

Stage 1 Essential Requirement

1. Tenderers must have at least TWO (2) CONTINUOUS years of experience^{*Notes} in selling as owner of the business on a retail basis gifts or souvenirs or publications or art products or audio visual products or novelty products within the ten (10) years immediately prior to the Original Tender Closing Date in the same brick and mortar shop under **Clause 6** of the **Terms of Tender**.

***Notes:**

- i) The Tenderer’s experience must be gained as an owner of the business.
- ii) Experience gained within or outside Hong Kong will be counted.
- iii) If the Tenderer is a partnership, only the years of partnership experience gained by that partnership, but not the individual experience of the participants to the partnership will be counted.
- iv) The Original Tender Closing Date will be the cut-off date for calculation of years of experience. Experience obtained in different contracts/venues during overlapping periods will be counted once only.
- v) Documentary proof such as a copy of lease agreement for the shop premises showing the contract description, the contract commencement and expiry date shall be provided by the Tenderer to substantiate the past experience claimed in the tender. Otherwise, the relevant claimed past experience will not be taken into account.

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation****Stage 2 - Technical Assessment**

The technical information of conforming tenders will be assessed in accordance with the criteria set out below.

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>1. <u>Facilities and Decoration plan (passing mark = 15)</u> Proposed plan in décor design and facilities and its compatibility with the Museum's image and functions</p> <p>a. Proposed plan is practicable, ties in with the image of the Museum and is expected to enhance the ambiance of the Museum¹ and contains detailed supporting information on each item as listed in Item 2 of Contract Schedule 3</p> <p>b. Proposed plan is practicable, ties in with the image of the Museum and is expected to enhance the ambiance of the Museum with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 2 of Contract Schedule 3</p> <p>c. Proposed plan is impracticable; or does not benefit the image/ambiance of the Museum and unlikely to enhance the ambiance of the Museum; or fails to provide information on any of the items listed in Item 2 of Contract Schedule 3</p>	<p>(Max.:30)</p> <p>30</p> <p>15</p> <p>0</p>	

¹ Tenderers can make inferences on museum's image and functions having regard to the information stated in the Tender Documents.

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>2. <u>Merchandise Plan (passing mark = 5 under 2.1)</u></p> <p>2.1 Proposed plan in providing list of commodities for sale at the Licence Area to meet visitors' demand and to blend with the image and functions of the Museum</p> <p>a. Proposed plan is practicable, blends well with the image and functions of the Museum, with attractive² merchandise that can meet visitors' demand³ and with detailed plan explanation on each item listed in Item 3 of Contract Schedule 3</p> <p>b. Proposed plan is practicable, blends well with the image and functions of the Museum, with merchandise that can meet visitors' demand and with detailed plan explanation on each item listed in Item 3 of Contract Schedule 3</p> <p>c. Proposed plan is practicable, blends well with the image and functions of the Museum, with merchandise that can meet visitors' demand and with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 3 of Contract Schedule 3</p> <p>d. Proposed plan is impracticable; or fails to provide information on any of the items listed in Item 3 of Contract Schedule 3; and/or unlikely to meet visitors' demand; and/or does not benefit the image and functions of the Museum</p>	<p>(Max.:15)</p> <p>15</p> <p>10</p> <p>5</p> <p>0</p>	

² "Attractive merchandise" includes but are not limited to: a wide range of merchandise available to meet the visitor profile; merchandise that are consistent with the theme and image of the Museum; valuable or collectable merchandise; merchandise with appealing or innovative design; and balanced mix of publications and souvenirs.

³ Tenderers can make inferences on visitors' demand having regard to the information on visitor profile stated in the Tender Documents.

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>2.2 Special features in support of the Museum and/or value-added service</p> <p>a. Operator to provide space and facilities in the Gift Shop to display at least two (2) museum posters (the size is at least 20" x 30") and at least two (2) types of museum pamphlets (at least twenty (20) copies for each type of pamphlet at one time) at prominent locations</p> <p>b. Provide additional payment options (e.g. EPS, Octopus etc, 1 mark for each item, maximum 2 marks) on top of payment options already specified in the contract</p> <p>c. Provide online platform for sale of publications and souvenirs (including Consignment Items and Museum Licensed Items)</p> <p>d. Any other practicable and good suggestion by operator (1 mark for each suggestion, maximum 3 marks for this item)</p>	<p>(Max.:10)</p> <p>3</p> <p>1 - 2</p> <p>2</p> <p>1 - 3</p>	

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>3. <u>Marketing Plan for Promoting the Image and Functions of the Museum (passing mark = 3)</u> Provision of marketing plan in promoting the image and functions of the Museum and the Licence Area to blend with the functions and image of the Museum</p> <p>a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 4 of Contract Schedule 3 and at least two (2) good suggestions⁴ which will enhance the publicity and/or the image of the Museum and/or the Gift Shop</p> <p>b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 4 of Contract Schedule 3</p> <p>c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 4 of Contract Schedule 3</p> <p>d. Proposed plan is impracticable; or fails to provide information on any of the items as listed in Item 4 of Contract Schedule 3</p>	<p>(Max.:10)</p> <p>10</p> <p>6</p> <p>3</p> <p>0</p>	

⁴ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed marketing measure is practical and effective, the extent of its publicity or outreach impact.
 Contract Schedule 5

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>4. <u>Marketing Plan for Promoting the Sale of the Consignment Items of Museum (passing mark = 3)</u> Provision of marketing plan in promoting the Consignment Items at or outside the Licence Area to blend with the functions and image of the Museum</p> <p>a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 5 of Contract Schedule 3 and at least two (2) good suggestions⁵ which will enhance publicity and/or the image of the Museum</p> <p>b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 5 of Contract Schedule 3</p> <p>c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 5 of Contract Schedule 3</p> <p>d. Proposed plan is impracticable; or fails to provide information on any of the items as listed in Item 5 of Contract Schedule 3</p>	<p>(Max.:10)</p> <p>10</p> <p>6</p> <p>3</p> <p>0</p>	

⁵ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed marketing measure is practical and effective, the extent of its publicity or outreach impact.
 Contract Schedule 5

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>5. <u>Operation and Staff Plan (passing mark = 1)</u> Provision of operation and staff plan in running the Business</p> <p>a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 6 of Contract Schedule 3 and at least two (2) good suggestions⁶ which will enhance the services of the Gift Shop</p> <p>b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 6 of Contract Schedule 3</p> <p>c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 6 of Contract Schedule 3</p> <p>d. Proposed plan is impracticable; or fails to provide information on any of the items as listed in Item 6 of Contract Schedule 3</p>	<p>(Max.:5)</p> <p>5</p> <p>3</p> <p>1</p> <p>0</p>	

⁶ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed measure is practical and effective, whether it will have significant impact in enhancing the quality and efficiency of services of the Gift Shop.

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation**

Assessment Criteria	Mark	Marks obtained by Tenderer
<p>6. Customer Services Plan (passing mark = 1) Proposed strategy in enhancing customer services and providing staff training to encourage repeat visits</p> <p>a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 7 of Contract Schedule 3 and at least two (2) good suggestions⁷ which will enhance the services of the Gift Shop</p> <p>b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 7 of Contract Schedule 3</p> <p>c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 7 of Contract Schedule 3</p> <p>d. Proposed plan is impracticable; or fails to provide information on any of the items as listed in Item 7 of Contract Schedule 3</p>	<p>(Max.: 5)</p> <p>5</p> <p>3</p> <p>1</p> <p>0</p>	

Tenderers failing to obtain the passing mark of 15 for Criterion 1 or the passing mark of 5 for Criterion 2.1 or the passing mark of 3 for any of the Criteria 3 and 4, or the passing mark of 1 for any of the Criteria 5 and 6 will not be considered further.

A maximum weighted quality score of 50 will be allocated to the Tenderer with the Highest Quality Score, while the score for other Tenderers will be calculated by the following formula:

$$\text{Weighted Quality Score} = 50 \times \frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark amongst the tenders which pass Stage 2 technical assessment}}$$

⁷ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed measure is practical and effective, whether it will have significant impact in enhancing the quality and efficiency of services of the Gift Shop.

CONTRACT SCHEDULE 5**Marking Scheme for Tender Evaluation****Stage 3 - Price Assessment**

The calculation of the weighted price score for Tenderers who pass the technical assessment, is calculated in accordance with the following formula:

$$\text{Weighted Price Score} = 50 \times \frac{\text{Monthly Licence Fee Offered by the Tenderer}}{\text{Highest Offer of the Monthly Licence Fee Amongst the Offers Which Have Passed Stage 2 technical assessment}}$$

Stage 4 - Calculation of the Combined Score

$$\text{Combined Score} = \text{Weighted Quality Score} + \text{Weighted Price Score}$$

Form of Security Deposit Election

(put in the “Technical Submission” envelope)

Tenderers are advised to read carefully the Tender Documents before completing this Form of Security Deposit Election.

To: The Chairman
Tender Opening Committee, Government Logistics Department

If my/our tender is accepted, I/we shall elect, pursuant to **Clause 7** of the **Conditions of Contract**, to deposit with the Government Representative within twenty-one (21) days after the notification of the Conditional Acceptance of Tender, or any other later date as required by the Government Representative, a sum equivalent to four (4) months’ tendered Monthly Licence Fee, as security for the due and faithful performance of the Contract.

- * (a) In cash, or
- * (b) In a bank guarantee issued by a bank that holds a valid banking licence under the Banking Ordinance (Cap. 155) in the form set out in Annex E .

** Delete as appropriate. In the event that the Tenderer fails to select which method of providing the Security Deposit it prefers, it will be assumed that the Tenderer will deposit cash with the Government.*

Name of Tenderer : _____ Date : _____

Name of Authorized Representative* : _____

Signature of Tenderer or Authorized Representative for and on behalf of the Tenderer* : _____

(with firm / company chop)

** Delete as appropriate*

Articles of Agreement

THIS AGREEMENT is made the _____ day of _____, 20____ BETWEEN The Assistant Director of Leisure and Cultural Services whose office is situated at the Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, Hong Kong acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (hereinafter referred to as "**Government** ") of the one part,

AND _____

_____ (hereinafter referred to as "Contractor") of the other part.

WHEREAS:

- (A) By an Invitation to Tender (Tender Ref.: LCSD/HMM(R)/1/2018), the Government has invited tenders to operate the Business at the Licence Area within the Museum.
- (B) The Contractor's tender for the Contract was accepted in principle by the Government by the Conditional Acceptance of Tender to the Contractor pursuant to **Clause 14.2 of Terms of Tender**.
- (C) The Contractor has apparently fulfilled all conditions specified in the Conditional Acceptance of Tender.
- (D) Pursuant to **Clause 14.3 of the Terms of Tender**, the parties hereto enter into these Articles of Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
- 2. The Contract between the Government and the Contractor is hereby constituted and shall comprise the following documents:
 - (i) These Articles of Agreement;
 - (ii) Tender Form (Parts I and II);
 - (iii) Interpretation;
 - (iv) Conditions of Contract;
 - (v) Contract Schedules 1 to 5 (in their original form as found in the Tender Documents);
 - (vi) Contract Schedules 1 to 4 (in the form as submitted by the Contractor as part of its tender for the Contract);
 - (vii) Form of Security Deposit Election; and
 - (viii) Annexes A to E.

Articles of Agreement

3. The commencement date of the Contract Period shall be: _____.

4. For the purposes of **Clause 49** of the **Conditions of Contract**, the address and facsimile number of the Contractor are as follows:

Name of the Contractor: _____

Address: _____

Facsimile number: _____

Email address: _____

Attention (Post Title): _____

Articles of Agreement

IN WITNESS whereof the parties hereto have entered into these Articles of Agreement on the day and year first above written.

SIGNED BY CONTRACTOR / THE)
AUTHORISED REPRESENTATIVE for and)
on behalf of THE CONTRACTOR)

Name of the Authorised Representative: _____
Title of the Authorised Representative: _____
in the presence of: _____

Name of witness:
Title of witness:
Signature of witness:

SIGNED BY THE ASSISTANT DIRECTOR)
OF LEISURE AND CULTURAL SERVICES)
DEPARTMENT for and on behalf of the)
GOVERNMENT OF THE HONG KONG)
SPECIAL ADMINISTRATIVE REGION)

in the presence of:

Name of witness:
Title of witness:
Signature of witness:

ANNEXES

<u>Content</u>	<u>Sheet No.</u>
Annex A – General Information of the Hong Kong Heritage Museum.....	99
Annex B – Location Map of the Hong Kong Heritage Museum.....	103
Annex C –The Licence Area.....	104
Annex D – Enrolment Form for the Tender Briefing Session..	105
Annex E – Form of Bank Guarantee.....	106

Annex A**General Information of the Hong Kong Heritage Museum****1. Introduction**

- 1.1 The Hong Kong Heritage Museum (the Museum) is situated at 1 Man Lam Road, Shatin, located at the waterfront of Shing Mun River. It houses 12 Exhibition Galleries (including 6 permanent galleries and 6 thematic galleries) for the display of museum exhibitions, occupying a net exhibition area of 7,500 square metres, which is so far the largest museum of its kind in Hong Kong.
- 1.2 The various programmes provided by the Museum include special subject exhibitions based on the Museum collections, temporary exhibitions from local and overseas sources, lectures, school or group visits, guided tours, educational and extension activities organized by the Museum and the co-organisers. The Museum has a theatre with a seating capacity of 400 for holding programmes such as Cantonese opera, children show, video show, traditional art show, music performance, lecture, seminar, ceremony. Besides, the Museum also has a Courtyard, a Function Place, a Seminar Room, an Education Studio, a Gift Shop, a Catering Outlet and other supporting facilities such as fee paying public carpark. A location map of the Museum is at **Annex B**.

2. The Gift Shop

- 2.1 The Gift Shop is situated on the ground floor of the Museum. The Gift Shop is intended to provide a wide range of high quality gift or souvenir merchandises including art, history, public and community art related items, tourist items, Consignment Items from the Museum and the Government, and other items that relate to the image and functions of the Museum and promotion of Chinese culture and heritage. The style and quality of service of the Gift Shop should be commensurate with the unique image, ambiance and operation of the Museum. It has an area of about 161 square metres, including serving area, stock room and retail office. It has 2 entrances, both inside the Museum of which one facing the Children's Discovery Galley and the other near to the VIP Room and the Nursery/ First Aid Room. The floor plan of the Gift Shop and the Licence Area is at **Annex C**.

(Note: The attached plans at **Annex B** and **C** are approximate and for the purpose of identification only. The figures referring to the respective areas of the Licence Area referred to in this Schedule are approximates and subject to final measurement.)

3. Opening Hours of the Gift Shop

- 3.1 Subject to the provisions of the Contract, the opening hours of the Gift Shop, shall be the same as those of the Museum's opening hours which may be changed by the Government Representative from time to time. The opening hours of the Hong Kong Heritage Museum are as follows:

Monday, Wednesday to Friday : 10:00 am to 6:00 pm
Saturday, Sunday and public holiday : 10:00 am to 7:00 pm
Christmas Eve and Chinese Lunar New Year's Eve : 10:00 am to 5:00 pm

Closed on Tuesdays (except public holidays) and the first two days of Chinese New Year.

- 3.2 The Gift Shop must be open daily except on the aforesaid closed days of the Museum. Special functions and activities including exhibition previews, opening ceremonies and receptions will be presented in the Museum after its normal closing hours. The Contractor shall open the Gift Shop and conduct Business to serve the users, presenters and participants of such functions and activities upon request.
- 3.3 The Museum will be closed when typhoon signal no. 8 or above is hoisted until the signal is lowered to no.3 or below. The Museum will remain closed if typhoon signal no. 8 is lowered or cancelled less than 2 hours before the normal closing hour.
- 3.4 The Museum will open as usual when Amber Rainstorm Warning or Red Rainstorm Warning is issued. If Black Rainstorm Warning is issued during the Museum's opening hours, the Museum will remain open to provide shelter to the visitors and staff. If the Black Rainstorm Warning is issued before the Museum's opening hours, the Museum will be closed until the warning is cancelled. The Museum will remain closed if the Black Rainstorm Warning is cancelled less than two (2) hours before the normal closing hours.

4. Theme and Positioning of the Hong Kong Heritage Museum

- 4.1 The Hong Kong Heritage Museum is a multi-disciplined museum devoted to exploring Hong Kong's diversified cultures, with emphasis on its living heritage and creative culture such as design, photography, popular culture and Cantonese opera. The Museum also bridges the many cultures of the world with the people of Hong Kong. Apart from organizing exhibitions, the Museum also organizes a variety of educational and community involvement activities to tie in with its mission and focus. The Museum aims to provide a comfortable, cultural atmosphere and nice setting for visitors to enjoy exhibitions and other activities. Ancillary services inside the Museum including the catering outlet and the Gift Shop shall tie in with the ambiance and image of the Museum to provide a good visiting experience. Site visit will be arranged to parties interested in bidding for the tender. For the Gift Shop, a good mix of different types of book racks including racks displaying the cover of books is desirable. Relevant factors include spatial organization, customer flow, colour scheme, choice of décor display, design of book racks and other furnishing, if any etc.

5. Attendance of the Museum in 2014-2017

Calendar Year	Total Attendance	Blockbuster Exhibition
2014	866,258	<ul style="list-style-type: none"> ● Studio Ghibli Layout Designs: Understanding the Secrets of Takahata and Miyazaki Animation (14 May 2014 – 31 August 2014)
		<ul style="list-style-type: none"> ● Dunhuang – Untold Tales, Untold Riches (28 November 2014 – 16 March 2015)
2015	484,226	
2016	723,437	<ul style="list-style-type: none"> ● Claude Monet: The Spirit of Place (4 May 2016 – 11 July 2016)
2017	1,106,419	<ul style="list-style-type: none"> ● Ceremony and Celebration – The Grand Wedding of the Qing Emperors (30 November 2016 – 27 February 2017)
		<ul style="list-style-type: none"> ● Inventing le Louvre: From Palace to Museum over 800 Years (26 April 2017 – 24 July 2017)
		<ul style="list-style-type: none"> ● Hall of Mental Cultivation of the Palace Museum – Imperial Residence of Eight Emperors (29 June 2017 – 15 October 2017)
		<ul style="list-style-type: none"> ● Pixar 30 Years of Animation: Hong Kong Celebration of Friendship and Family (18 November 2017 – 5 March 2018) <i>figure as at 31 December 2017</i>

(Note: Tenderer should note that the above information is for reference only and the Government gives no warranty as to the accuracy, completeness or future change of such information. Tenderer should conduct its own independent assessment for preparation of its Tender.)

6. Visitor Profile from the Opinion Surveys on Museum Services of LCSD (2016/2017) of the Hong Kong Heritage Museum

6.1 Gender

Male: 43.6%
Female: 56.4%

6.2 Age Groups

Age	8-11	12-19	20-39	40-59	60 or above	Total
%	1.7%	13.3%	42.6%	24.6%	17.8%	100%

6.3 Origin of Visitors

- 6.3.1. Local Visitors: 92.9%
- 6.3.2. Visitors from the Mainland: 4.6%
- 6.3.3. Visitors from Asia: 1%
- 6.3.4. Visitors from the Americas: 0.9%
- 6.3.5. Visitors from Europe, Africa & the Middle East: 0.3%
- 6.3.6. Visitors from Australasia: 0.3%

6.4 Education Level

Education level	Primary or below	Secondary/ matriculation	Tertiary or above
%	5.9%	35.5%	58.6%

Annex B

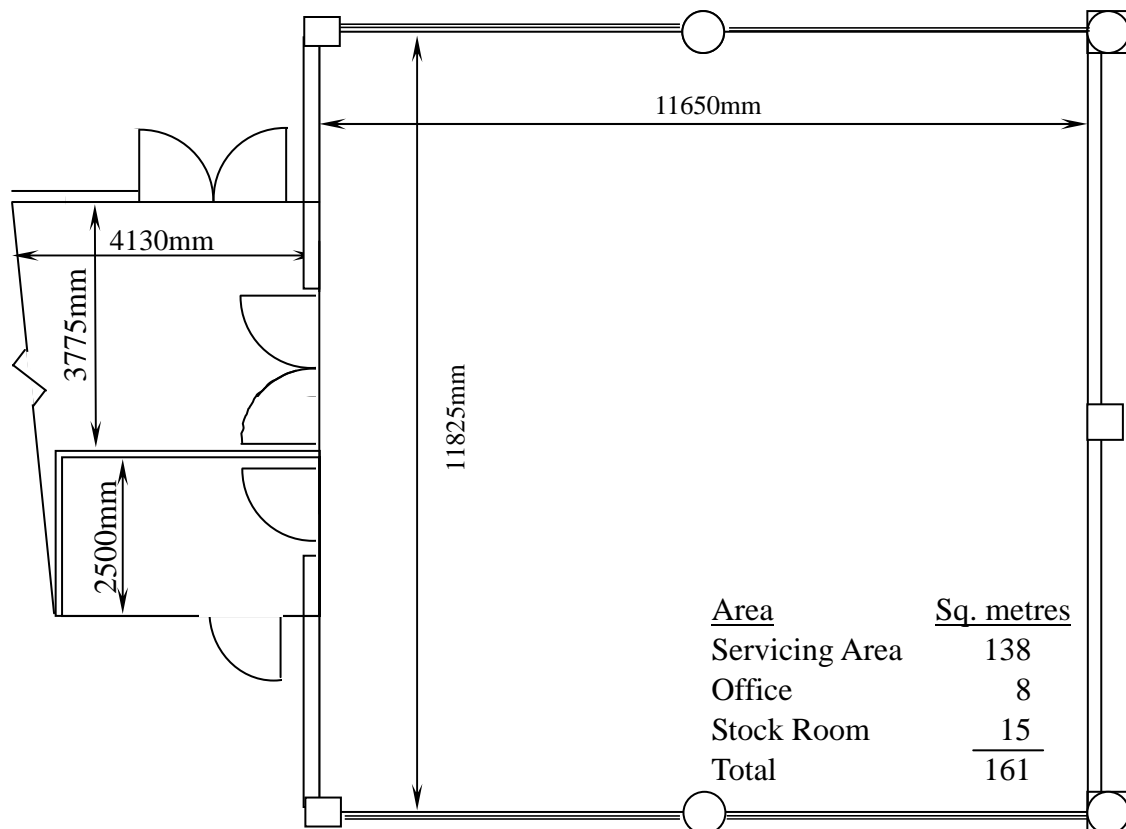
Location Map of the Hong Kong Heritage Museum



(Not to scale)

The Licence Area

**Floor Plan of the Licence Area
Ground Floor, Hong Kong Heritage Museum**



**The approximate total usable floor area of the Gift Shop is 161 square metres.
(Including servicing area, office and stock room)**

(Not to scale)

**ENROLMENT FORM FOR THE TENDER BRIEFING SESSION
on 15 November 2018 (Thursday) at 10:30am**

To: Assistant Manager (Heritage Museum) Patron Services and Public Relations

Email: amhmpr@lcsd.gov.hk

Facsimile:2180 8111

Tender Ref: LCSD/HMM(R)/1/2018

**Tender for the Grant of Licence to Operate the Gift Shop
at the Hong Kong Heritage Museum**

[please return this form by facsimile or email on or before 14 November 2018 (Wednesday)]

Name of Company: _____ (Chinese)

_____ (English)

Name & title of Representatives attending the Briefing Session (maximum of 3)

1. _____

2. _____

3. _____

Details of the Organization/Company:

Contact Person : _____

Post : _____

Address : _____

Telephone : _____

Facsimile : _____

E-mail : _____

The Tenderer is advised to bring along the “Tender Documents” to the Tender Briefing Session.

* Delete whichever is inappropriate

FORM OF BANK GUARANTEE

THIS GUARANTEE is made on the day of 2018
BY.....
... of, a bank with a valid banking licence within the
meaning of the Banking Ordinance, Cap. 155 (“Guarantor”)

IN FAVOUR OF

ASSISTANT DIRECTOR OF LEISURE AND CULTURAL SERVICES
DEPARTMENT whose office is situated at the Leisure and Cultural Services
Headquarters, 1-3 Pai Tau Street, Sha Tin acting for and on behalf of THE
GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE’S REPUBLIC OF CHINA (“Government”)

WHEREAS

- (A) By a contract (“Contract”) to be made between of (“Contractor”) of the one part and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China of the other part (designated as Leisure and Cultural Services Department Contract No. of), the Contractor agrees and undertakes to operate the Gift Shop at Hong Kong Heritage Museum upon the terms and conditions of the Contract.
- (B) It is a condition precedent to the Government agreeing to grant the Contract that, inter alia, the Contractor shall pay to the Government the Contract Deposit. The Guarantor executes this Guarantee in favour of the Government.

THIS GUARANTEE EXECUTED AS A DEED WITNESSES as follows:

- (1) Where applicable, words and expressions used in this Guarantee (including the recitals) shall have the meaning assigned to them in the Contract. All rights and powers of the Government under this Guarantee may be exercised by the Government Representative.
- (2) In consideration of the Government agreeing to enter into the Contract with the Contractor:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and not as a surety, and as a continuing security, the due and punctual performance and observance by the Contractor of all of its obligations under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government or the Government Representative under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government or the Government Representative by reason or in consequence of any default on the part of the Contractor in performing or observing any of its obligations under the Contract, regardless of any dispute between the Government or the Government Representative and the Contractor.
- (b) The Guarantor, as a principal obligor and not as a surety, and as a separate, independent and continuing obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified each of the Government and the Government Representative from and against and shall pay to the Government Representative 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 or the Government Representative arising from or in connection with the failure of the Contractor to perform or observe fully or punctually any of its obligations under the Contract.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as “the Contractor” or where the Contractor is a partnership, any change in the partners.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Contractor and the Government or the Government Representative or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government or the Government Representative to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to clause (4) above, the obligations 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:
- (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government or the Government Representative, in whole or in part, in respect of the Contractor’s obligations under the Contract;
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract for any reason;

- (d) any forbearance or waiver of any right of action or remedy that the Government or the Government Representative may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government or the Government Representative in enforcing any right, power, privilege to or remedy available to the Government or the Government Representative in relation to the obligations of the Contractor set out in the Contract;
 - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
 - (g) 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 obligations by the Government or the Government Representative.
- (6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
- (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 Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling six (6) months after the expiry or early termination of the Contract Period; or
 - (b) upon early termination or expiry of the Contract Period, there remain any outstanding obligations and liabilities of the Contractor under the Contract which have not been duly and fully carried out, completed and discharged in accordance with the Contract or there is any outstanding right or claim of the Government or the Government Representative, the date on which all such obligations and liabilities, rights and claims have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing such confirmation the date shall not in any event be later than thirty-six (36) months after the expiry or early termination of the Contract Period.

whichever is the 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 or the Government Representative may at any time hold (collectively “Other Security”) and this Guarantee may be enforced by the Government or the Government Representative without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government or the Government Representative 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) 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.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, to the Leisure and Cultural Services Department marked for the attention of Manager (Heritage Museum), Hong Kong Heritage Museum, 1 Man Lam Road, Sha Tin, Hong Kong, facsimile number (852) 2180 8111;
 - (b) upon the Guarantor, at _____, marked for the attention of _____, facsimile number _____.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or facsimile 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 despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed _____.

IN WITNESS whereof the Guarantor has caused its [Common Seal/ 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)
.....)

[Name and Title]
duly authorised by its board of directors:
In the presence of:)
Signature of witness:

Name of witness: _____
Title of witness: _____

@ Signed Sealed and Delivered for and on)
behalf of and as lawful attorney of the)
Guarantor under power of attorney)
dated and deed of)
delegation dated)
by)
)

[Name and Title]

In the presence of:
Signature of witness:

Name of witness: _____
Title of witness: _____

* *Delete as appropriate.*

@ See Powers of Attorney Ordinance, Cap. 31

Note: When banker’s guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.