

# 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 CATERING OUTLETS  
-----  
AT THE HONG KONG MUSEUM OF ART  
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(Tender Ref.: LRQ/MA/CO/2018)  
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## LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in triplicate and enclosed together with other documents of this 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 Catering Outlets at the Hong Kong Museum of Art”  
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  
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Before 12:00 noon (time) on 17 May 2018 (date). Late tenders will not be accepted.

Dated this 3 April 2018

Matthew LEUNG  
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Government Representative

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## Part I — Tender Documents

These documents under the tender reference LRQ/MA/CO/2018  
consist of three (3) complete sets of :

- (a) Tender Form;
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 7);
- (d) Terms of Tender (Sheets 8 to 32);
- (e) Conditions of Contract (Sheets 33 to 80);
- (f) Contract Schedules (Sheets 81 to 113);
- (g) Form of Security Deposit Election plus pro forma Bank Guarantee (Sheets 114 to 119);
- (h) Articles of Agreement (Sheets 120 to 121); and
- (i) Annexes (Sheets 122 to 135)

**Part II — Offer to be Bound**

- 1. Having read the Tender Documents, I/we agree to be bound by the terms and conditions as stipulated therein.
- 2. I/We do agree to carry out the Business mentioned in the Special Conditions of Contract and pay the Monthly Permit Fee quoted by me/us in the Contract Schedule 1, subject to and in accordance with the terms and conditions stipulated in the Tender Documents.
- 3. I/We have read *Clause 3 Tender Preparation, Clause 5 Two Envelopes System in Submission of Tender and Clause 6 Essential Requirements Concerning Experience* of the Terms of Tender and certify that the particulars given by me/us in completing the Tender Documents are true and correct.

(Note : (A) The Tenderer MUST complete the following parts of the Tender Documents :

- (i) Tender Form (Part II – Offer to be Bound);
- (ii) Monthly Licence Fee in Contract Schedule 1; and
- (iii) Contract Schedules.

(B) The Tenderer is required to submit necessary documents such as proposal(s) and plan(s) as described in Contract Schedule 4 together with photocopies of other relevant documents required under the terms and conditions of this tender.

4. I/We have read Clause 41 Anti-collusion of Terms of Tender. I/We agree to be bound by the terms and conditions as stipulated therein.

5. In case the Tenderer is a company/firm, the Tenderer is required to complete 5(a) to 5(c). In case the Tenderer is not a company/firm, the Tenderer is required to strike out 5(a) to 5(c).

(a) I am/We are duly authorized to bind the said company hereafter mentioned by my/our signature(s).

– or –

I am a partner/We are partners in the firm hereafter mentioned and duly authorized to bind the said firm and the partners therein for the time being.

(b) The name of the company/firm is .....  
A letter certifying the person who signs this tender is an authorized person to sign contracts/agreements on behalf of the said company/firm is required to be attached to this Tender Form. In case the said company is a body corporate, a certified true copy of the company’s Board Minutes to show that the signatory is duly authorized by the Board of Directors is required to be attached to this Tender Form.

(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/Authorized Representative \* \_\_\_\_\_  
(Name in block letters)

Signature of Tenderer/Authorized Representative \* \_\_\_\_\_  
(Signature) (with firm/company chop, if applicable)

Address(es) of person(s) signing : \_\_\_\_\_

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

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

\* Delete as appropriate

Tender Form

**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 Catering Outlets at the Hong Kong Museum of Art**

**Tender Reference: LRQ/MA/CO/2018**

**Tender Closing Date: 17 May 2018 (12 noon Hong Kong Time)**

Note: “The Price Submission” and “The Technical Submission” for operations of catering outlets must be enclosed in **sealed and separate envelopes** attached with labels provided (Label 1 and 2) outside the envelopes and inserted into one big envelope with this label outside. Please remember to complete and submit the following document 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 Catering Outlets at the Hong Kong Museum of Art**

**Tender Reference: LRQ/MA/CO/2018**

**Tender Closing Date: 17 May 2018 (12 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 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 Catering Outlets at the Hong Kong Museum of Art**

**Tender Reference: LRQ/MA/CO/2018**

**Tender Closing Date: 17 May 2018 (12 noon Hong Kong Time)**

Please remember to complete and submit the following documents in triplicate for “Technical Submission” :-

- Tender Form
- Contract Schedule 2
- Contract Schedule 3
- Contract Schedule 4
- Contract Schedule 6
- Form of Security Deposit Election

**(without any indication on Monthly Licence Fee)**

## INTERPRETATION

1. In these Tender Documents, the following have the meaning hereby assigned to them except when the context otherwise requires:

Business has the meaning given to it in **Clause 3** of the **Conditions of Contract**.

Café means the Licence Area shaded yellow in **Annex D** of the **Annexes**

Catering Outlets means the Restaurant and Café.

Catering Services means the services to be provided on demand under **Clause 3.2** of the **Conditions of Contract**.

conditional acceptance of tender has the meaning given to it in **Paragraph 14.2** of the **Terms of Tender**.

Contract means the Contract entered into between the signatory of the Articles of Agreement acting for and on behalf of 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” containing a merged set of general and special 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.

Contractor	means the Tenderer whose tender to operate the Business at the Licence Area is accepted by the Government Representative.
Contract Period	means the period specified in <b>Clause 2.1</b> of the <b>Conditions of Contract</b> as the same may be earlier terminated or extended in accordance with the applicable provision of the Contract.
Contract Year	has the meaning given to the term in <b>Clause 5.16(a)</b> of the <b>Conditions of Contract</b> .
Contractor Responsible Group	has the meaning given to the term in <b>Clause 33</b> of the <b>Conditions of Contract</b> .
Essential Requirements	means all requirements specified as such in the Tender Documents as well those requirements where it is stated that non-compliance with such requirements by the Tender Closing Date will lead to disqualification.
Estimated Contract Value	means the estimated value of the Contract to be arrived at by multiplying the Monthly Guaranteed Amount by the number of months in the Contract Period (less four months).
Food and Beverages	means in relation to each Catering Outlet (a) the list of proposed signature dishes / beverages for sale at such Catering Outlet as listed in <b>Contract Schedule 2</b> ; and (b) other items of food and beverages approved by the Government Representative in writing in advance for such Catering Outlet.
Free Decoration Period	means the maximum four-month fitting out period commencing from the first day of the Contract Period
Government	means the Government of the Hong Kong Special Administrative Region of the People's Republic of China and includes the Chief Executive of Hong Kong.

Government Provisions	all items belonging to the Government specified in <b>Contract Schedules 7 and 8</b> and such other Government property (moveable or immovable) which are from time to time made available to the Contractor for use in the Business or the Licence Area.
Government Representative	means the Director or Assistant Director of Leisure and Cultural Services or any public officer of LCSD authorized to act on his or her behalf.
Hong Kong	means the Hong Kong Special Administrative Region of the People's Republic of China.
Invitation to Tender	means the invitation issued by the Government Representative to invite tenders for the Contract on the terms set out in the Tender Documents.
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	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights 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.
Kitchen	means the Licensed Area identified in the floor plan in <b>Annex D</b> designated by use by the Contractor kitchen for the Catering Outlets.
LCSD	The Leisure and Cultural Services Department.
Licence Area	means the total areas as more particularly described in specified in Paragraphs 1 and 2 of <b>Contract Schedule 7</b> and as delineated and shaded in <b>Annex D</b> .
Monthly Licence Fee	means the Monthly Guaranteed Amount plus the Monthly Percentage Fee.
Monthly Licence Fee attributable to a Catering Outlet	means the portion of the Monthly Licence Fee payable in respect of a Catering Outlet comprising (a) such portion of the Monthly Guaranteed Amount



	based on the breakdown specified in <b>Contract Schedule 1</b> ; and (b) the Monthly Percentage Fee to be calculated based on the Gross Monthly Receipts in respect of that Catering Outlet only.
Monthly Gross Receipts	has the meaning given to the term in <b>Clause 5.16(b)</b> of the <b>Conditions of Contract</b> .
Monthly Guaranteed Amount (upper or lower case)	means the amount specified as such in <b>Contract Schedule 1</b> .
Monthly Percentage Fee	means the fee to be calculated under <b>Clause 5.2 of the Conditions of Contract</b> .
Original Tender Closing Date	means the date specified in the Tender Form as the date for submission of tender notwithstanding any extension.
Percentage of Monthly Gross Receipts	means the percentage as specified in <b>Contract Schedule 1</b> to be adopted for calculation of the Monthly Percentage Fee.
Restaurant	means the Licence Area shaded green in <b>Annex D</b> of the <b>Annexes</b>
Security Deposit	means the deposit which the Contractor deposits with the Government Representative in accordance with <b>Clause 7</b> of the <b>Conditions of Contract</b> for the due and proper performance of the Contract.
Tender (upper or lower case)	means a tender submitted in response to this Invitation to Tender.
Tender Closing Date	means the date specified in the Tender Form as the latest date by which tenders must be lodged as the same may be extended.
Tender Documents	means the documents as specified in <b>Paragraph 1</b> of the <b>Terms of Tender</b> .
Tender Validity Period	means the period of time as described in <b>Paragraph 10</b> of <b>Terms of Tender</b> during which the tender is to remain open.
Tenderer	means the person or firm or company submitting this tender.
Requisite Permits	has the meaning given to it in <b>Clause 9.1</b> of the

**Conditions of Contract.**

Museum	means the Hong Kong Museum of Art, located at 10 Salisbury Road, Tsim Sha Tsui, Kowloon, Hong Kong as indicated in <b>Annexes A, B and C</b> .
Restaurant and Café	means the restaurant and café to be operated within the Licence Area identified in the floor plan in <b>Annex D</b> .
working day	means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal no. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration during normal business hours in Hong Kong.

2. In the Contract, unless the content otherwise requires, the following rules of interpretation shall apply –

2.1 The following rules of interpretation shall apply:

- (a) 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;
- (b) 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;
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) 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;
- (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” and “Government Representative” shall include their respective assigns, successors-in-title, and persons deriving title under them, regardless of whether or not any of these persons are mentioned in the relevant provisions;

- (g) references to a “Paragraph” in the Terms of Tender are to a paragraph in the Terms of Tender; reference to a “Clause” in the Conditions of Contract are to a clause of the Conditions of Contract; references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- (h) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month mean a calendar month;
- (n) any negative obligation imposed on any party shall be construed as if it was also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it was also an obligation to procure that the act or thing in question be done;
- (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
- (p) words importing the whole shall be treated as including a reference to any part of the whole;
- (q) the expressions “include” and “including” shall be construed without limitation to the words following;
- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- (s) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
- (t) 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; and

- (u) 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.
- 2.2 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.
- 2.3 All rights and powers of the Government under the Contract may be exercised by the Government Representative for the Government. All claims of the Government may be enforced by the Government Representative for the Government.
- 2.4 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.
- 2.5 References to **Contract Schedule 4** – Information of Tenderer (Trade Experience (Essential Requirement), Business Plan, Marketing and Customer Service Plan, Operation and Management Plan) 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 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 IN 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**

1.1 The Tender Documents consist of a complete set of:

- (a) Tender Form (Parts I to II);
- (b) Tender Labels;
- (c) Interpretation (Sheets 1 to 7);
- (d) Terms of Tender (Sheets 8 to 32);
- (e) Conditions of Contract (Sheets 33 to 80);
- (f) Contract Schedules 1 to 8 (Sheets 81 to 113);
- (g) Form of Security Deposit Election plus pro forma Bank Guarantee (Sheets 114 to 119);
- (h) Articles of Agreement (Sheet 120 to 121); and
- (i) Annexes A to E (Sheets 122 to 135).

## 2. **Invitation to Tender**

Tenders are invited for the operation of a catering business to sell and supply food and beverages at the Licence Area within the Hong Kong Museum of Art for a Contract Period of six (6) years on such terms and conditions as set out in these Terms of Tender, Conditions of Contract, Contract Schedules and Annexes. General information of the Hong Kong Museum of Art and the Licence Area is at **Annexes A to D**. The Conditions of Contract contain a merged set of general and special conditions of contract.

## 3. **Tender Preparation**

- 3.1 All Tender Documents shall be completed and submitted in three (3) identical sets (one original and two photocopies) (as more particularly described in **Paragraph 5**) in the manner 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 complete the following parts of the Tender Documents and provide all information they are required to submit in the Contract Schedules at the time of submission of the tender –
- (a) **Tender Form** – Part II – ‘Offer to be Bound’  
(in technical submission envelope)
  - (b) **Contract Schedule 1** – Monthly Licence Fee  
(in price submission envelope)
  - (c) **Contract Schedule 2** – List of Signature Dishes / Beverages for Sale at Licence Area  
(in technical submission envelope)
  - (d) **Contract Schedule 3** – Working Background and Status of Tenderer  
(in technical submission envelope)
  - (e) **Contract Schedule 4** – Information of Tenderer (Trade Experience (Essential Requirement), Business Plan, Marketing and Customer Service Plan, Operation and Management Plan)  
(in technical submission envelope)
  - (f) **Contract Schedule 6** – Information Required for Financial Vetting of Tenderer  
(in technical submission envelope)

- (g) **Form of Security Deposit Election** – Security Deposit  
(in technical submission envelope **without** any indication on the Monthly Licence Fee)

3.4 When completing the Tender Documents, any alteration by the Tenderer to its own submission 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.

#### **4. Contents of the Tender**

4.1 Tenderers must submit the following documents on or before 12:00noon (Hong Kong time) on the Tender Closing Date:

- (a) the “**Offer to be Bound**” of the **Tender Form** duly signed by the Tenderer;
- (b) the quotation for the Monthly Guaranteed Amount and the Percentage of the Monthly Gross Receipts as required in **Contract Schedule 1 - Price Schedule**; and
- (c) information requested in **Contract Schedule 4 - Information of Tenderer (Trade Experience (Essential Requirement), Business Plan, Marketing and Customer Service Plan, Operation and Management Plan)**.

**Otherwise, the Tenderer’s Tender will not be considered further.**

4.2 In addition to **Paragraph 4.1** above, each Tenderer is required to provide all other information / supporting documents in the Tender Documents or relevant to its Tender, including but not limited to the following:

- (a) **Contract Schedule 2 (List of Signature Dishes / Beverages for Sale at the Licence Area)**;
- (b) **Contract Schedule 3 (Working Background and Status of Tenderer)**;
- (c) **Contract Schedule 6 (Information required for Financial Vetting of Tenderer)**;
- (d) **Form of Security Deposit Election.**

The Tenderer should provide all the above items specified in this **Paragraph 4.2** at the same time when it submits its Tender. The Government may, but is not obliged, exercise its discretion to request any of these items after the Tender Closing Date where they are found missing in accordance with **Paragraph 16**.



## 5. **Two Envelopes System in Submission of Tender**

- 5.1 Tenderers are required to submit a Price Submission and a Technical Submission. Tenderers should note that a marking scheme (as more particularly described in **Contract Schedule 5**) will be used for the assessment of their tenders. Completed Tender Documents, in three (3) identical sets (the original copy and two (2) copies), shall be submitted separately, the outside of which **should not** bear any indication which may relate the tender to the Tenderer, as follows:
- (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.: LRQ/MA/CO/2018 - Tender for the Grant of Licence to Operate the Catering Outlets at the Hong Kong Museum of Art – 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, 4, and 6**, 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 a sealed envelope clearly marked “Tender Ref.: LRQ/MA/CO/2018 - Tender for the Grant of Licence to Operate the Catering Outlets at the Hong Kong Museum of Art – Technical Submission” (Tender Label 2 provided).
- 5.2 Completed Tender Documents, i.e. the two sealed envelopes as described in **Sub-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 the Ground floor, North Point Government Offices, 333, Java Road, North Point, Hong Kong on or 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 case of a black rainstorm warning signal is issued or typhoon signal No. 8 or above is hoisted between 9:00am (Hong Kong time) and 12:00noon (Hong Kong time) on the Tender Closing Date, the closing time will be extended to 12:00 noon on the next working day when the black rainstorm warning signal or typhoon signal No. 8 or above is cancelled any time before 9:00a.m. on that day.
- 5.4 The Government Representative will not accept any tender submitted by methods other than as indicated in **Paragraphs 5.1 and 5.2**.

## 6. Essential Requirement Concerning Experience

- 6.1 The essential requirements concerning experience are set out in this Clause below. A tender will not be considered further if a Tenderer fails to fulfil any of the following requirement:

The Tenderer must have at least **THREE (3) CONTINUOUS** years of experience\*<sup>Note 1</sup> in managing and operating a catering business<sup>Note 2</sup> with seating accommodation and table services<sup>Note 3</sup> within the past ten (10) years immediately prior to the Original Tender Closing Date.

The following are further explanatory notes concerning the scope and interpretation of the essential requirements set out in **Paragraph 6.1** above:

- \*Notes:
- 1(a). The Tenderer's experience must be gained as an owner/operator of the business. Only the Tenderer's experience in the name of the Tenderer will be counted.
  - 1(b). If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership will be counted.
  - 1(c). The Original Tender Closing Date will be the cut-off date for calculation of years of experience. Experience obtained in different contracts/venues during the overlapping periods will be counted once only. Counting rule on experience: (a) Experience under different contracts will not be double-counted for those overlapping periods. The required years of experience is to be counted in days, i.e. "a continuous of at least 3 years" is equivalent to have accumulated no less than 1,095 (i.e. 365 days x 3) days of relevant experience within the past ten (10) years prior to the Original Tender Closing Date under a single contract or different contracts. (b) Experience under different contracts with overlapping periods is to be counted in accordance with the following example:

Contracts	Contract Period	Contract period without overlapping with another contract	No. of days counted for accumulated experience
A	16.4.2011-15.4.2014	16.4.2011-15.4.2014	1,095 days
B	1.4.2014-31.3.2015	16.4.2014-31.3.2015	350 days
C	1.1.2015-31.12.2016	1.4.2015-31.12.2016	640 days
		Total	2,085 days

- 1(d). Documentary proof such as a copy of lease agreement for the catering premises and 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.
2. "Catering business" shall mean a retail business of supplying on premises food and beverage, which shall be cooked and/or prepared

and/or reprocessed at a kitchen located in the same premises, to customers for immediate consumption on premises but excluding canteen in any school or work place or a factory or club or any agricultural premises or supply through an automatic vending machine.

3. “Seating accommodation and table services” is defined as a catering entity that offers customers with seating and waiter services for food and beverages.

## **7. Monthly Licence Fee**

- 7.1 In return for the right to operate the catering business at the Licence Area, apart from in respect of the first four (4) months of the Contract Period during which decoration work of the Licence Area is being carried out, 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 rates, Government rent and taxes payable in respect of the Licence Area. Apart from the Government Provisions, 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 quoted 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 quoted.
- 7.5 Should it be found on examination by the Government Representative after the Tender Closing Date that a Tenderer has made unintentional errors in the figures stated in its Tender, the Government Representative, 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 Representative considers should be the correct figures.

## **8. Information of the Tenderer**

Each Tenderer shall provide the following details relating to itself in **Contract Schedule 3**:

- (a) name of the Tenderer;

- (b) The business vehicle of the Tenderer: limited company / sole proprietor / partnership, and date of establishment or incorporation;
- (c) shareholders / partners / proprietor of the Tenderer and their percentages of shareholding / equity interest;
- (d) names and correspondence addresses of the following:
  - (i) director / partners / sole proprietor of the Tenderer; and
  - (ii) the contact person of the holding company or subsidiary company of the Tenderer (if any)
- (e) a copy of a valid Business Registration Certificate and copies of other documents evidencing its business status;
- (f) where the Tenderer is a limited company incorporated under the laws of Hong Kong, its Memorandum (if any) and Articles of Association, a Certificate of Incorporation, Certificate of Change of Name (if any), and latest annual return filed with the Companies Registry, and all filings with the Companies Registry subsequent to such annual return, or equivalent documents where the Tenderer is not a limited company incorporated under the laws of Hong Kong; and
- (g) where the Tenderer is a partnership, a copy of the excerpt of the partnership agreement evidencing the identities of the partners.

## **9. Submission of Documents for Financial Vetting**

9.1 Tenderers have to demonstrate their financial capability before they can be considered for the award of the Contract. For this purpose, they shall provide the following documents and any other financial information which should be submitted together with the Tender Documents for the purpose of financial vetting.

- (a) Tenderers shall provide audited accounts of their catering business (as defined in **Paragraph 6.1**) for the past three (3) years in **Contract Schedule 6**. The accounts shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in the Hong Kong Special Administrative Region and the disclosure requirements of the Companies Ordinance (Cap. 622). Where the Tenderers are unincorporated entities such as sole-proprietors, partnerships etc. and if audited accounts are not prepared, the Tenderers may alternatively submit management accounts for the past three (3) years supplemented with past tax assessment records which must be certified by the sole proprietor, partners, directors or a certified public accountant.
- (b) Tenderers shall provide projected profit and loss accounts and cash flow

statements for the Contract Period showing the revenue, operating expenses, capital expenditure and the sources of finance such as upfront investment and/or debt financing in **Contract Schedule 1**.

9.2 Tenders shall upon the request in writing by the Government Representative provide any other financial and corporate information as required by the Government Representative for the assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.

9.3 Tenderer failing to submit the required information will be considered as failing the financial vetting. The Tenderer is required, in such event, in addition to an amount equal to four (4) times the Monthly Guaranteed Amount, deposit an additional amount equivalent to –

(a) five percent (5%) of the estimated total Contract value (i.e. the total Monthly Guaranteed Amount to be paid by the Contractor during the Contract Period);  
or

(b) two (2) months' Monthly Guaranteed Amount,

**whichever is (a) or (b) is the lower**, as security for due and proper performance of the Contract.

## **10. Tenders to Remain Open**

10.1 It is an essential requirement of this Invitation to Tender that a Tender shall remain valid and open for acceptance for a period not less than one hundred and eighty (180) days from the Tender Closing Date ("**Tender Validity Period**").

10.2 A Tenderer who counter-proposes a shorter Tender Validity Period than the period specified in **Paragraph 10.1** will be disqualified and its Tender will not be considered further.

10.3 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.

## **11. Selection of Tender**

11.1 Only one Contract will be awarded to the successful Tenderer who will operate all Catering Outlets at the Licence Area. A partial tender to operate any one or more but not all of these Catering Outlets will not be considered further. The tender to operate all Catering Outlets will be evaluated on an overall basis.

- 11.2 Without prejudice to other rights and powers of the Government not to consider a Tender under other applicable provisions in the Tender Documents, the evaluation of Tenders will be conducted in accordance with the marking scheme set out in **Contract Schedule 5**. There are however further explanatory notes for the interpretation of the essential requirements as specified in **Paragraph 6** of these Terms of Tender.

## **12. Basis of Acceptance**

- 12.1 The Government Representative is not bound to accept the Tenderer with the highest combined score or any tender. Without prejudice to the generality of the foregoing, in case the Monthly Guaranteed Amount and/or the Percentage of the Monthly Gross Receipts offered by the Tenderer with the highest overall combined price and quality score is unreasonably low with reference to the advice of the Commissioner for 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 offer within the Licence Area will not be considered.**
- 12.3 Unless the Government decides that it is in the public interest not to award the Contract, subject to the other provisions of the Tender Documents, the Contract will normally be awarded to the Tenderer who passes the completeness check, essential requirements evaluation, quality criteria evaluation and price evaluation as referred to in **Contract Schedule 5**, or the Tenderer whom the Government considers to be fully capable of performing the Contract.

## **13. Negotiation**

The Government reserves the right to negotiate with all or any Tenderer(s) about any 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 have 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 such 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 thirty days (30) days from the date of the notification (or such later date as the Government Representative may allow):
- (a) the provision of the Security Deposit as required under **Paragraph 26**;

- (b) the payment of the Monthly Guaranteed Amount in respect of the fourth (4<sup>th</sup>) month of the Contract Period;
- (c) unless a Full Licence is already issued in the name of the successful Tenderer in respect of all Catering Outlets and remain valid for at least one (1) month from the conditional acceptance of tender, the receipt of a document known as “Letter of Requirements” issued by the Director of Food Environmental and Hygiene (“DFEH”) setting out the requirements to be fulfilled before a Provisional Licence may be issued for all Catering Outlets as referred to in **Clause 9.2 of the Conditions of Contract** or a Full Licence may be issued for all Catering Outlets as referred to in **Clause 9.3 of the Conditions of Contract**;
- (d) such changes to Contract Schedules 2 and 4 (Proposed Signature Dishes / Beverages, Décor Design and Ambience, etc.) as the Government Representative considers appropriate; and
- (e) 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 **Paragraph 14.2** above to the satisfaction of the Government, the Government 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 **Paragraph 14.2** above (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the Articles of Agreement upon notification by the Government (“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 Estimated Contract Value based on the amount of the Monthly Guaranteed Amount submitted by that defaulting Tenderer and the eventual Contractor who will be awarded 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 **Paragraph 18 or 19**, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a conditional notification of acceptance and fulfilled all the conditions specified in **Paragraph 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. Counter-proposals**

15.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; and (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and the award of the Contract.

15.2 If a Tenderer fails to comply with **Paragraph 15.1**, subject to any clarification which the Government may, but is not obliged to, make under **Paragraph 16**, its Tender will be disqualified and will not be considered further by the Government.

15.3 For counter-proposals to provisions other than those as specified in **Paragraph 15.1** or **Paragraph 15.4**, it shall equally be the case that no Tenderer may make any counter-proposals to any such requirement. Counter-proposals from a Tenderer in contravention of this restriction will entitle the Government to 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 still unwilling to withdraw such counter-proposal, or otherwise revise it on terms acceptable to the Government, the Government may still disqualify the Tenderer. Any accepted counter-proposal following from 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.

15.4 Without prejudice to **Paragraph 15.1**, 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.

**16. Request for Information**

In the event that the Government determines that:

- (a) clarification in relation to any tender is necessary;
- (b) a document or a piece of information, other than the document or information set out in **Paragraph 4.1**, 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.

**17. 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.

**18. Government Discretion**

18.1 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, provided or recommended 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 **Paragraphs 18.1(a) to 18.1(g)** are separate and independent, and shall not be limited by reference to or inference from the other of them.

18.2 For the purposes of **Paragraph 18.1**, each Tenderer shall provide in **Contract Schedule 3** 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 the award of the Contract) 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 **Paragraph 18.1(a)**;
- (b) details of conviction as mentioned in **Paragraph 18.1(e)** in Hong Kong or any overseas jurisdiction;
- (c) details of all infringement claims or allegations and / or settlement agreement as mentioned in **Paragraph 18.1(c)**;
- (d) details of all Contract Defaults as mentioned in **Paragraph 18.1(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 **Paragraph 18.1(f)**; and
- (f) details of any failure to pay taxes as mentioned in **Paragraph 18.1(g)**.

If none of the events as mentioned in **Paragraphs 18.2(a) to 18.2(f)** above has ever occurred within the applicable period as mentioned in the relevant sub-Paragraph in **Paragraph 18.1**, the Tenderer shall provide a statement to that effect by

completing the relevant part of **Contract Schedule 3** at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification.

18.3 In addition to the information mentioned in **Paragraph 18.2**, 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 **Paragraph 18.1**);
- (b) any of the directors or management staff of the Tenderer (viz information relevant to the event mentioned in any of **Paragraphs 18.1(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 **Paragraphs 18.1(a)** to **(g)** applicable to any such person);
- (d) the manufacturer of any proposed food and beverages to be offered (viz information relevant to the event mentioned in **Paragraph 18.1(c)** applicable to 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 **Paragraph 18.1**.

18.4 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 **Paragraph 18.1(c)**; details of any Contract Default referred to in **Paragraph 18.1(d)**; details of any conviction of serious offences referred to in **Paragraph 18.1(e)**; details of any professional misconduct, acts or omissions referred to in **Paragraph 18.1(f)** and of any failure to pay taxes to the Government referred to in **Paragraph 18.1(g)** above.

18.5 If the Tenderer fails to comply with the request made by the Government pursuant to **Paragraph 18.3** above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to **Paragraph 16**. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to **Paragraph 18.1(b)** above.

18.6 In providing the information required under **Paragraphs 18.2** and **18.3** 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.

- 18.7 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).

- 18.8 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.

- 18.9 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 **Paragraph 18.1(c), 18.1(d), 18.1(e), 18.1(f), or 18.1(g)**.

## **19. Cancellation of the Invitation to Tender**

- 19.1 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 **Paragraph 11** to identify the successful Tenderer.
- 19.2 After cancellation pursuant to **Paragraph 19.1** above, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Tender on such terms

and conditions as the Government considers appropriate.

**20. 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.

**21. Consent to Disclosure**

21.1 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, the name and address of the successful Tenderer, and the total Monthly Guaranteed Amount for the entire Contract Period, and the calculation of the Monthly Licence Fee payable.

21.2 Nothing in **Paragraph 21.1** above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in **Paragraph 21.1** 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 **Paragraph 21.1** above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

**22. Personal Data Provided**

22.1 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, the 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 Contract enforcement and management, and resolution of dispute 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.

- 22.2 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, his 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 **Paragraph 22.1** above.
- 22.3 An individual to whom personal data belongs or a person authorized 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.
- 22.4 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.

**23. 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.

**24. Licence, Permit and / or Certificate**

The award of the Contract to a Tenderer is conditional on the tenderer's obtaining the Letter of Requirements from DFEH in accordance with **Paragraph 14.2(c)**. 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 responsibility for applying the necessary licences, permits and certificates and fulfillment of the requirements stated therein (including provision of necessary ventilation equipment and other equipment in the kitchen area) 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 including DFEH as the licensing authority.

**25. 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 his rights or obligations under the Contract unless with the Government Representative's prior approval in writing.

**26. Security Deposit**

- 26.1 The successful Bidder shall, within fourteen (14 days) after the notification of conditional acceptance, 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 licensed under the provisions of the Banking Ordinance (Cap. 155) in the form attached at **Appendix to the Form of Security Deposit Election**, 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**.
- 26.2 The amount of the Security Deposit shall be four (4) times the Monthly Guaranteed Amount and if the Tenderer fails the financial assessment, plus the additional amount as specified in **Paragraph 9.3**.

**27. Free Decoration Period**

The successful Tenderer may, upon commencement of the Contract Period, have a maximum of four (4) months as Free Decoration Period for fitting out the Licence Area. No Monthly Licence Fee shall be payable where the successful Tenderer actually uses such Free Decoration Period for fitting out but the successful Tenderer shall pay and bear all outgoing and charges, including but not limited to electricity, water and gas charges, in respect of the Licence Area. Notwithstanding the aforementioned, the portion of the Monthly Licence Fee in respect of a Catering Outlet shall immediately be payable on a pro rata basis as soon as the successful Tenderer commences Business at that Catering Outlet during the Free Decoration Period.

**28. State of Premises**

**The Museum is currently closed for expansion and renovation. Tenderers are advised to attend the tender briefing session cum site visit before submitting the tenders.** 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).

**29. Tender Documents of the Unsuccessful Tenderer**

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

**30. Costs of Preparation of Tender**

Each Tenderer shall submit its tender at its own cost and expense. Neither the Government nor the Government Representative shall be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its tender including all costs and expenses relating to (a) communication or negotiations with the Government; or (b) attending briefings, document inspections, site visits or surveys made by the Tenderer, whether before or after the Tender Closing Date.

**31. Contractor's Performance Monitoring**

Where a Tenderer is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other tenders / quotation exercises are evaluated.

**32. 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.

**33. Tender Addenda**

Should the Government require any amendments to be made to the Tender Documents, the Government 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.

**34. Disclaimer**

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

34.2 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.

- 34.3 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.

**35. Offering Gratuities**

The Tenderer shall not and shall ensure that his officers and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any public officer or employee of the Government. Any breach of or non-compliance with this Paragraph 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, the Government Representative shall be entitled to terminate the Contract under **Clause 41** of the **Conditions of Contract**.

**36. 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.

**37. Communication 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 48** 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. Tenderer's Enquiries**

- 38.1 Any enquiries concerning these Tender Documents up to the date of lodging his tender with the Government Representative shall be in writing and submitted to The Manager (Hong Kong Museum of Art), Hong Kong Museum of Art, 10 Salisbury Road, Tsim Sha Tsui, Kowloon, Hong Kong or fax to facsimile number 2723 7666.
- 38.2 After lodging the tender with the Government, the Tenderer shall not attempt to initiate any contact, whether direct or indirect, with the Government Representative on his 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.

**39. Tender Briefing Session / Site Visit**

- 39.1 Tenderers are invited to attend a tender briefing session cum site visit to be held by the Government Representative on **13 April 2018 (Friday) at 10:30a.m.** at the **AC2, 4/F, Administration Building, Hong Kong Cultural Centre** before submitting their tenders in order to acquaint themselves with the requirements of the Government Representative.
- 39.2 Each Tenderer may send no more than three (3) representatives to attend the tender briefing session / site visit.

39.3 Tenderers are required to fill in the “**Enrolment Form for the Tender Briefing Session – Annex E** and send it by fax to the Assistant Manager (Hong Kong Museum of Art) House Management, Hong Kong Museum of Art at (852) 2723 7666 on or before **11 April 2018 (Wednesday)** for registration.

#### **40. Licence to Use the Tender Documents**

40.1 A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderers may be destroyed in accordance with **Paragraph 29**. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tender) and under the Contract and without prejudice to the warranties set out in **Clause 45.1** of the **Conditions of Contract**, each Tenderer grants to each of the Government and the Government Representative, their respective assigns, successors-in-title and authorized users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender (if any) for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith and also for the purposes of disclosure under **Paragraph 21**. Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong.

40.2 The Tenderer shall keep the Government Representative informed in writing of any materials that are subject matters of the licences granted or to be granted to which the Tenderer is not empowered to grant licences pursuant to **Paragraph 40.1** above and any restrictions whatsoever affecting the use thereof.

40.3 The Tenderer hereby undertakes to procure at its own costs and expense from the relevant third parties all proper licences, clearances and releases in writing to be granted in favour of the Government, the Government Representative, their respective authorized users, assigns and successors-in-title pursuant to the terms of licence under **Paragraph 40.1**.

40.4 The Tenderer hereby irrevocably waives and undertakes to procure at its own costs and expense all authors including his employees, sub-contractors and agents to irrevocably waive all moral rights (whether past, present or future) in all materials comprised in the Tender, such waiver shall operate in favour of the Government, the Government Representative, their respective authorized users, assigns and successors-in-title and shall take effect upon submission of such materials.

40.5 The Tenderer shall at his own costs and expense do and execute any further things, documents and materials (or procure that the same be done or executed) as may be required by the Government to give full effect to this **Paragraph 40** and shall provide all such things, 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.

- 40.6 By submitting a tender, the Tenderer represents and warrants that none of the materials comprised in the Tender submitted infringes the Intellectual Property Rights of any person.
- 40.7 The Tenderer shall indemnify the Government, the Government Representative, their respective assigns, successors-in-title and authorized users on the terms set out in **Clauses 34.2(a) and (b) of the Conditions of Contract** in the event that the exercise by any of them of the rights set out in **Paragraph 40** above infringes or is alleged to infringe the Intellectual Property Rights of any person.

#### **41. Anti-collusion**

- 41.1 By 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 Guaranteed Amount or the Percentage of the Monthly Gross Receipts which it has offered in **Contract Schedule 1** (collectively “tender price”);
  - (b) it has not fixed and will not fix the amount of any tender price 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 **Paragraph 41.1** above, the Government Representative shall be entitled to, without compensation to any person or liability on the part of the Government:
- (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 The Tenderer shall 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 arising out of or in relation to any breach of any of the representations and / or warranties in **Paragraph 41.1** above.
- 41.4 Any breach of any of the representations and / or warranties in **Paragraph 41.1** by

the Tenderer may prejudice the Tenderer's future standing as a Government contractor.

- 41.5 **Paragraph 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 **Paragraphs 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 Award of the Contract**

The tendering process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Tenderer who feels that his 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. Tenderers shall lodge the complaint before disposal of documents of unsuccessful Tenderers which shall be within three (3) months upon 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 award 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 contracting parties that this Contract creates no tenancy or lease or any form of legal rights on land whatsoever between the contracting parties except the right to use the Licence Area in accordance with the provisions of the Contract. This Contract is granted to entitle the Contractor to offer Food and Beverages at the Licence Area at the Hong Kong Museum of Art. All rights, powers and claims of the Government may be exercised and enforced by the Government Representative on behalf of the Government.

**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 of not exceeding four (4) 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 **19 February 2019** unless a different date is specified in the Articles of Agreement (which can be any date earlier or later than the aforesaid date as determined by the Government Representative at her sole and absolute discretion).

2.3 A major expansion and renovation project for the Museum is in progress and the tentative completion date is in early 2019. The galleries will gradually be opened from mid-2019 onwards.

2.4 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 23** 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 Obligation to Carry On the Business**

3.1 Subject to the terms and conditions of the Contract, the Government Representative grants the entitlement to the Contractor to operate the Catering Outlets at the designated portions of the Licence Area for the supply and sale of Food and Beverages at these Catering Outlets 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 three months after the date of commencement of the Contract Period.

- 3.2 The Government Representative shall be entitled to request at any time the Contractor to provide ad hoc catering or refreshment services at such other areas of the Museum as the Government Representative at its absolute discretion may at any time from time to time set aside and the Contractor shall upon such request provide the said services at the time and in the manner set forth in the request (“Catering Services”).
- 3.3 The Contractor shall carry on the Business at the Licence Area throughout the opening hours as set out in **Annex A** except when otherwise authorized by 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.
- 3.4 The Business shall be operated by the Contractor as the 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.

#### **4. Conduct of Business**

- 4.1 Subject to **Clauses 4.2 and 4.3**, this Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other area within or outside the Museum or otherwise (unless for the provision of Catering Services as demanded by the Government Representative). The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Museum other than the Licence Area.
- 4.2 The Contractor shall use the Licence Area only for the Business and shall not use, cause, suffer or permit to be used of the Licence Area or any part thereof for any other purpose.
- 4.3 The Contractor shall operate each Catering Outlet only within the portion of the Licence Area designated for such Catering Outlets. The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Licence Area for other purpose without the prior written consent of the Government Representative.
- 4.4 The name of the Catering Outlets 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 and Statement of Accounts

- 5.1 In consideration for the entitlement to operate all of the Catering Outlets at the Licence Area on and subject to the terms and conditions of the Contract, in respect of each month of the Contract Period (apart from the Free Decoration Period), the Contractor shall pay to the Government Representative 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, waste discharge, and electricity) without any deduction or set-off whatsoever.
- 5.2 The Monthly Licence Fee in respect of each month during the Contract Period (excluding the Free Decoration Period) shall comprise a Monthly Guaranteed Amount, plus a sum known as “Monthly Percentage Fee” to be calculated in the manner as described below under this Clause:

- (a) The Monthly Percentage Fee in respect of a month shall be calculated by the formula as follows:

Monthly Gross Receipts in respect of that month	<u>Multiplied by</u>	the Percentage of Monthly Gross Receipts specified in <b>Contract Schedule 1</b>	<u>Less</u>	Monthly Guaranteed Amount specified in <b>Contract Schedule 1</b>
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- (b) Further if the Monthly Percentage Fee so calculated for a particular month is a negative amount, there shall be no Monthly Percentage Fee for that month.

- 5.3 The Monthly Guaranteed Amount shall be payable on or before the first day of each and every month of the Contract Period (after the Free Decoration Period) without any deduction or set-off whatsoever except that the Monthly Guaranteed Amount in respect of the fifth (5<sup>th</sup>) month shall be payable before the signing of the Articles of Agreement. The Monthly Percentage Fee in respect of each month of the Contract Period (after the Free Decoration Period) shall be payable no later than 14 days after the end of that month (including the last month of the Contract Period or the remaining period after the last complete month of the Contract Period).
- 5.4 In respect of the Free Decoration Period :
- (a) Subject to (b) and (c) below, no Monthly Licence Fee shall be payable whilst fitting out work is being carried out by the Contractor on the Licence Area;
- (b) the Monthly Licence Fee in respect of a Catering Outlet shall be payable immediately on a pro-rata basis as soon as the Contractor commences the Business at that Catering Outlet during the Free Decoration Period (where applicable); and

- (c) without prejudice to the obligation of the Contractor to start the Business at all Catering Outlets no later than the beginning of the fifth (5<sup>th</sup>) month from the date of commencement of the Contract Period, the entire Monthly Licence Fee shall be payable as soon as the Free Decoration Period has ended even if the fitting out works continue beyond the Free Decoration Period.
- 5.5 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.
- 5.6 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.
- 5.7 In each of the following cases of (i) to (v), (each a “relevant period”), there shall be adjustment of the Monthly Guaranteed Amount (or the relevant portion(s) of the Monthly Guaranteed Amount in the case of (iv) and (v)) to be arrived at by multiplying the daily rate with the actual number of days of the relevant period (or in the case of any temporary closure, the actual number of days of that month which is unaffected by the temporary closure). The daily rate shall be arrived at by dividing the Monthly Guaranteed Amount (or the relevant portion(s) of the Monthly Guaranteed Amount in the case of (iv) and (v)) by the actual number of days in the month in which the relevant period falls:
- (i) In the event that the first day of the fifth (5<sup>th</sup>) month of the Contract Period does not start on the 1<sup>st</sup> day of a calendar month, there shall be adjustment of the Monthly Guaranteed Amount for the fifth (5<sup>th</sup>) month of the Contract Period.
  - (ii) 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 Guaranteed Amount for such remaining period.
  - (iii) In the event that there is any temporary closure of the whole of the Licence Area under **Clause 23** within a month of the Contract Period, there shall be pro rata adjustment of the Monthly Guaranteed Amount for that month.
  - (iv) In the event of a Catering Outlet commencing operation during the Free Decoration Period and the portion of the Monthly Guaranteed Amount attributable to such Catering Outlet shall be payable as soon as such

commencement; and

- (v) In the even that a temporary closure affects one or more Catering Outlet(s), the portion of the Monthly Guaranteed Amount attributable to such Catering Outlet shall only be payable in respect of actual number of days of that month unaffected by the temporary closure.

5.8 Before the expiry of the fourth (4<sup>th</sup>) year of the Contract, the Government Representative will conduct an assessment to determine whether or not the prevailing Monthly Guaranteed Amount 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 Guaranteed Amount for the period from the fifth (5<sup>th</sup>) year to the six (6<sup>th</sup>) year may either remain unchanged as offered by the Contractor in **Contract Schedule 1** or be increased. If the prevailing Monthly Guaranteed Amount is to be increased, the open market rental assessed by the Government Representative shall be adopted as the new Monthly Guaranteed Amount for the period from the fifth (5<sup>th</sup>) year to the six (6<sup>th</sup>) years of the Contract. The Government Representative shall issue a written notice to the Contractor and request the Contractor to confirm its acceptance of the increased Monthly Guaranteed 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 increased Monthly Guaranteed 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.

5.9 The Contractor shall, within fourteen (14) days after the expiry of each month during the continuance of the Contract Period (including the Free Decoration Period) and within fourteen (14) days after the termination or expiry of the Contract Period:

- (a) submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the Monthly Gross Receipts generated from the Business in the Licence Area and the amount of the Monthly Percentage Fee that shall be payable to the Government Representative for that month or part of that month as appropriate if the Business does not cover an entire month. The statement of accounts shall be certified as being accurate and complete by the Managing Director of the Contractor or such other person as the Government Representative may from time to time approve or prescribe in writing; and
- (b) if the statement of accounts is not submitted within fourteen (14) days as stated above, pay to the Government Representative by way of a provisional Monthly Percentage Fee for that month the sum equivalent to the highest of the Monthly Percentage Fee paid during the twelve (12)

months' period immediately preceding the month in question (or the sum equivalent to the highest of the Monthly Percentage Fee already paid up to the month in question if the actual number of months elapsed is less than twelve (12) months). PROVIDED always that when the statement of accounts for the month in question is later submitted by the Contractor, the Contractor shall pay to the Government Representative forthwith an amount equivalent to the Monthly Percentage Fee as shown in the statement of accounts less the amount of the provisional Monthly Percentage Fee held by the Government Representative for the month in question within fourteen (14) days of the demand in writing. Where the amount of the provisional Monthly Percentage Fee held by the Government Representative for the month in question is greater than the Monthly Percentage Fee shown, the Government Representative shall pay to the Contractor the difference within thirty (30) days of the demand in writing.

- 5.10 Upon the request from time to time of the Government Representative, the Contractor shall within thirty (30) days from the date of such request submit a statement of accounts in the form as the Government Representative may approve. The statement of accounts shall show the Monthly Gross Receipts generated from the Business in the Licence Area and the amount of the Monthly Percentage Fee that shall be payable to the Government Representative for such month(s) as stipulated in the request. Such statement of accounts shall be audited and certified as being accurate and complete by a professional accountant holding practicing certificate or a corporate practice within the meaning of the Professional Accountants Ordinance (Cap. 50) ("Auditor").
- 5.11 Within three (3) months after the end of each Contract Year, the Contractor shall submit to the Government Representative audited statement of accounts showing the Monthly Gross Receipts and Monthly Percentage Fee for each month of such Contract Year. The audited statements shall be audited and certified to be accurate and complete by an Auditor and in the form as the Government Representative may approve.
- 5.12 In the event that the amount of the Monthly Percentage Fee as shown in the audited statement of accounts submitted by the Contractor under **Clause 5.10** or **5.11** for any period covered by such accounts shall exceed or shall be less than the Monthly Percentage Fee actually paid by the Contractor to the Government Representative in respect of that period, the amount of the shortfall, if any, shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand from the Government Representative; or the amount of overpayment, if any, shall be repaid by the Government Representative to the Contractor within thirty (30) days of invoice from the Contractor. In the case of shortfall, the Contractor shall also pay interest on the shortfall amount at the rate specified in **Clause 5.5** to accrue from the date which it should have been paid up to the date of actual payment

- 5.13 If the audited statement of accounts is not submitted by the deadline as specified in **Clause 5.11**, the Contractor shall pay to the Government Representative by way of a provisional top up amount to the Monthly Percentage Fee for the Contract Year equivalent to the highest Monthly Percentage Fee paid during that Contract Year multiplied by the number of months covered by that Contract Year and then subtract the same with the total amount of Monthly Percentage Fees already paid by the Contractor in respect of that Contract Year (“top-up amount”). In the event that the amount of the Monthly Percentage Fee as shown in the audited statement of accounts eventually submitted by the Contractor for a Contract Year shall exceed or shall be less than the Monthly Percentage Fee actually paid by the Contractor to the Government Representative in respect of that period (taking into account any top-up amount paid in respect of that period), the amount of the shortfall, if any, shall be paid by the Contractor to the Government Representative within fourteen (14) days of demand from the Government Representative; or the amount of overpayment, if any, shall be repaid by the Government Representative to the Contractor within thirty (30) days of invoice from the Contractor. In the case of shortfall, the Contractor shall also pay interest on the shortfall amount at the rate specified in **Clause 5.5** to accrue from the date which it should have been paid up to the date of actual payment.
- 5.14 The Contractor shall throughout the Contract Period maintain and keep proper accounts and all the receipts and appropriate vouchers in relation to all Monthly Gross Receipts and retain the same for at least seven (7) years. Such accounts including the supporting receipts and vouchers shall be made available for inspection at all times by the Government Representative or its authorized person.
- 5.15 For the avoidance of doubt, it is hereby expressly agreed and declared that the acceptance by the Government Representative of any accounts or audited accounts submitted or any money paid by the Contractor in accordance with this Clause shall not in any way whatsoever bar or otherwise preclude the Government Representative from subsequently disputing the accuracy of any such accounts or the correctness of any such sum and that in the event that any further sum whatsoever be found due from the Contractor to the Government Representative, the same shall be paid by the Contractor to the Government Representative on demand plus interest to accrue from the due date to the date of actual payment in full at the rate specified in **Clause 5.5**.
- 5.16 Throughout the Contract:
- (a) “Contract Year” shall mean each successive financial year of twelve (12) months of the Contractor falling within the Contract Period except that the first Contract Year shall commence from the first day of the Contract Period and ending on the first financial year of the Contractor which falls within the Contract Period; and the last Contract Year shall end on the last day of the Contract Period.

(b) “Monthly Gross Receipts” in respect of a month shall mean:

the gross proceeds or revenue received or receivable by the Contractor in respect of the Business in respect of that month without any deduction whatsoever (except as expressly allowed under (i) below) and which include :

- (i) the gross proceeds derived from the sale of food and beverages (including Food and Beverages) at all of the Catering Outlets within that month (“Menu Proceeds”); and all service charges and tips (regardless of the mode of payment) but less 10% of the Menu Proceeds;
- (ii) the gross proceeds derived from the Catering Services provided within the Museum ; and
- (iii) any other income (except profits arising from the sale of capital assets belonging to the Contractor) deriving from or in respect of the Business ;

## **6. Non-exclusive Right 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 in accordance with all requirements and restrictions set out in the Contract 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 supply any food or drink or other catering or hosting services at the Museum. The Contractor is not entitled to claim any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorizations.
- 6.5 Notwithstanding anything to the contrary herein, and without prejudice to the overriding principles specified in **Clauses 6.3 and 6.4**, the Government Representative will normally authorize and permit other caterer or organization other than the Contractor to provide services similar to the Catering Services to

persons in the Museum.

## 7. **Security Deposit**

7.1 The Contractor shall, within fourteen (14) days from the notification of the conditional acceptance of tender, deposit with the Government Representative in cash or in the form of bank guarantee in the form set out at the **Appendix to Form of Tender** issued by a bank holding a valid banking licence issued under the Banking Ordinance (Cap. 155), a sum equivalent to four (4) times the quoted Monthly Guaranteed Amount as specified in **Contract Schedule 1** as security for the due and proper performance of the Contract. In addition, where the successful Tenderer fails the financial vetting as mentioned in **Paragraph 9.3 of the Terms of Tender**, the aforesaid amount shall be further topped up by the lower of the following amount:

- (a) an amount equivalent to 5% of the Estimated Contract value (i.e. total amount of the Monthly Guaranteed Amount to be paid by the Contractor during the Contract Period); or
- (b) an amount equal to twice the Monthly Guaranteed Amount.

The aforesaid amount (whether with or without top-up, as applicable) shall serve as security for the due punctual and proper performance of the Contract (“Security Deposit”)

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 the commencement of the Contract Period until the date specified in (a) or (b) below, whichever is applicable:

- (a) the date falling three 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 claim or right of the Government Representative or the Government, 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 provide a further bank guarantee in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue of and form part of the Security Deposit and, where applicable, the additional security amount required under **Clause 9.1**.
- 7.6 In the event that this Contract is early terminated 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 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 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 does agree 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 tire), 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 in order to operate the Business in the Licence Area (“Requisite Permits”). Nothing in this Contract shall be construed to fetter any statutory power of any public officer under any Ordinance.
- 9.2 The Contractor shall apply for and successfully obtain a provisional licence to operate each of the Catering Outlet at the Licence Area designated for such Catering Outlet under section 33C of the Food Business Regulations (Cap 132X) (“Cap 132X”) (“Provisional Licence”) before commencement of Catering Outlet at that designated Licence Area for that Catering Outlet.
- 9.3 After having obtained such Provisional Licence for a Catering Outlet, it is required that the Contractor will eventually be issued with a full licence under section 31 of Cap 132X to operate that Catering Outlet at the designated Licence Area for that Catering Outlet before the first Provisional Licence expires (“Full Licence”) or renew the Provisional Licence once more under section 33C(4) of Cap 132X and then eventually issued with a Full Licence before the renewed Provisional Licence expires. In the event that the Contractor fails to do so, the Government Representative shall be at liberty to terminate the Contract under **Clause 39.1** or suspend the Contract under **Clause 22.1** or partially terminate the Contract under **Clause 39.5**.
- 9.4 Notwithstanding **Clauses 9.2 and 9.3**, if the Contractor so chooses, it may apply directly for a Full Licence instead of a Provisional Licence provided that it can successfully obtain such Full Licence within three months from the date of commencement of the Contract Period in order that it can commence the Business no later than three months after the date of commencement of the Contract Period. In the event that the Contractor opts to apply for a Full Licence instead of a Provisional Licence but fails to obtain such Full Licence within the aforesaid period, the Government Representative shall be at liberty to terminate the Contract under **Clause 39.1** or suspend the Contract under **Clause 22.1** or partially terminate the Contract under **Clause 39.5**.
- 9.5 Apart from the Provisional Licence and Full Licence as specified in **Clauses 9.2 and 9.3** or where applicable **Clause 9.4**, the Contractor shall apply for and obtain all other Requisite Permits for the operation of the Business at the Licence Area including without limitation the necessary licences or permits as required under the Dutiable Commodities Ordinance (Cap. 109) for the sale of alcoholic liquor.
- 9.6 The entitlement to operate the Business at the Licence Area is conditional on the Contractor having obtained all Requisite Permits, and that they remain valid and

in force throughout the Contract Period and that the Contractor complies with all conditions and requirements stated therein. A Provisional Licence and/or Full Licence to be obtained under the aforementioned provisions must be for the kind of food business which legally entitles the Contractor to operate the Catering Outlet at the designated Licence Area. Obtaining a Licence for the incorrect kind of food business would be treated as breach of these provisions.

- 9.7 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 Requisite Permits.
- 9.8 Without prejudice to other rights and claims of the Government Representative for any failure by the Contractor to commence the Business no later than the beginning of the fifth (5<sup>th</sup>) month 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 Requisite Permits. The non-issuance of any of the Requisite Permits by the relevant authorities does not constitute any ground for the abatement of the Monthly Licence Fee.
- 9.9 The Contractor shall produce copies of all Requisite Permits, 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 that: –
- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract, to perform all its obligations hereunder 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 and in the performance of its obligations under this Contract;
- 10.2
- (a) The Contractor shall throughout the Contract Period keep and maintain proper books and records and all the receipts and appropriate vouchers in respect of the Business including *inter alia* records of the Monthly Gross Receipts and cause all such books and records to be made up on a monthly basis and retain the same for at least seven (7) 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 books and records of the Contractor, and if required, to make copies of the same.
  - (b) 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 Monthly Gross Receipts 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 accept the Licence Area and the Government Provisions in the state and condition when possession is given. However, the Government Representative shall make good any defects (whether structural and/or non-structural) of the Licence Area and ensure the Government Provisions specified in Contract **Schedules 7 and 8** are in good working order when possession is given to the Contractor.
- 11.2 The Contractor warrants and undertakes to perform all of the following: –
- (a) During the Free Decoration Period, to fit out the Licence Area at the Contractor's own cost and expense in accordance with such plans, drawings, specifications and other details as shall have been first submitted to and approved in writing by the Government Representative (including the Business Plan set out in **Contract Schedule 4**) 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 in accordance with the **Technical Schedule** specified in

**Contract Schedule 8.** In particular, the Contractor shall be responsible for any fitting out / alteration / maintenance works to the building structure / building elements / building services installations within the Licence Area for the purpose of obtaining relevant Requisite Permits (including the Provisional Licence and the Full Licence) at its own cost and expense.

- (b) Prior to the commencement of any work, 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 11.2(a)**. Unless otherwise approved by the Government Representative, these plans, drawings, specifications shall not deviate from the Business Plan submitted in **Contract Schedule 4**, but such plan shall equally be subject to the approval of the Government Representative even if the tender containing such plan has been accepted.
  - (c) During the Free Decoration Period, to decorate the Licence Area in a décor approved in advance 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.
  - (d) Prior to the commencement of the operation of the Catering Outlets, to provide sound isolation for the Catering Outlets to minimize the disturbance of the noise level to the activities held at the Museum.
- 11.3 The Contractor shall furnish and provide all such equipment, furniture utensil and all other materials of whatsoever nature necessary for the efficient operation of the Business including those facilities as specified in the Business Plan, Marketing and Customer Service Plan, and Operation and Management Plan submitted in **Contract Schedule 4**. All such equipment and furniture and utensil shall be of a design and standard to the satisfaction of the Government Representative.
- 11.4 The Contractor shall perform all work as specified in the **Technical Schedule of Contract Schedule 8** whether during the Free Decoration Period or otherwise throughout the Contract Period.

## **12. Maintenance and Repair**

- 12.1 The Contractor shall keep and maintain at all times all Government Provisions stated in **Contract Schedules 7 and 8**, and all other Government property located at the Licence Area (moveable or immovable) or otherwise from time to time provided to the Contractor for use (if any) (viz, "Government Provisions") in good repair, clean and serviceable condition to the Government Representative's satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Provisions 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

- 12.2 The Contractor shall keep and maintain at all times at the expense of the Contractor 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 material to walls, floors and ceilings and all fixtures and fittings therein including all interior doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatus in good clean and proper repair condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 12.3 The Contractor shall pay or reimburse to the Government Representative the cost incurred by the Government Representative in replacing all broken and damaged interior windows in the Licence Area irrespective of by whom or under whatever circumstances the same be broken or damaged.
- 12.4 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 equipment/system belonging to the Contractor, if any, in any other part of the Licence Area if so required by the Government Representative and the relevant authority.
- 12.5 The Contractor shall repair, keep and maintain at all times to the satisfaction of the Government Representative at the expense of the Contractor the dumb-waiter for the service of the Licence Area in good and working condition.
- 12.6 The Contractor shall be required to fit out all lavatories and water apparatus in accordance with all relevant statutory regulations.
- 12.7 The Contractor shall keep and maintain at all times all the equipment and furniture used in the course of carrying the Business in good repair and condition to the Government Representative's satisfaction and to replace the same or any of the same with new ones whenever necessary or when the Government Representative reasonably demands.
- 12.8 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 Provisions without the 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.
- 12.9 The Contractor shall not make or permit any alteration or addition to the Licence Area or to the electrical wiring installation or to the Government Representative's fixtures and fittings or to install any plant apparatus or machinery therein without having first obtained the written consent of the Government Representative. Any application by the Contractor for the Government Representative's consent

- under this Clause shall be accompanied by a plan showing the proposed changes. The Government Representative shall be entitled to prescribe the maximum weight and location of any safe and other heavy equipment and to require that the same stand on supports of such dimensions and material to distribute the weight as the Government Representative may deem necessary.
- 12.10 The Contractor shall be liable to the Government Representative for any damage or loss to the Licence Area or any of the Government Provisions. If the Licence Area or any Government Provisions 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.
- 12.11 All Government Provisions 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.
- 12.12 For the avoidance of doubt, the Contractor shall be regarded as the occupier of the Licence Area under the Occupiers 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 **Clauses 34.2(a) and 34.2(b)** including claims arising from any incident occurring within the Licence Area which constitutes as 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. Services**

- 13.1 The Contractor shall ensure that during the continuance of this Contract and during the opening hours of the Licence Area, an efficient and adequate supply of Food and Beverages of a style, type and quality to the satisfaction of the Government Representative is provided and maintained at the Licence Area. Without prejudice to the generality of the foregoing, the Contractor shall at all times ensure that the Business operated 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 carry out the Business which is commensurate with the

services, image, functions and activities of the Museum and to satisfy the needs of the Museum's core clients including patrons of various ages and styles, overseas and local artists, sponsors and VIP guests, tourists, casual visitors as well as office staff.

- 13.3 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 other than service charges and / or tips, if any, levied up to ten percent (10%) of the menu price (or such increased rate as the Government Representative may from time to time approve in writing).
- 13.4 The Contractor shall accept payment for all items sold at the Licence Area by all internationally recognized credit cards.
- 13.5 The Contractor shall ensure that a high standard of customer service is maintained and all staff conduct themselves in a courteous manner to the satisfaction of the Government Representative.
- 13.6 In conducting the Business, the Contractor shall observe and comply with the Business Plan, Marketing and Customer Service Plan, and Operation and Management Plan as set out in **Contract Schedules 4** and in the final form as approved by the Government Representative upon signing of the Articles of Agreement.

#### **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 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;
- (b) not to use any gramophone, radio, television, loudspeaker, musical instrument or karaoke instrument or similar apparatus or equipment in such a way that the same shall be audible outside the Licence Area;
- (c) not to cause, suffer or permit any smoking whatsoever to take place in or at the Licence Area.
- (d) if the Government Representative so requires, the Contractor shall display in a prominent position in the Licence Area a sufficient number of signs to indicate that smoking is prohibited in the area and such signs shall be of a design and size as approved or prescribed by the Government Representative and shall be maintained at all times by the Contractor in good and legible condition.



- (e) not to cause, suffer or permit the preparation, heating or re-heating of food in areas of the Licence Area which are not approved by the Government Representative;
- (f) not to use the Licence Area or any part thereof, or cause, permit or suffer the same to be used, for any illegal or immoral purpose, gambling or any other purpose not permitted under the Contract;
- (g) not to cause, suffer or permit any games to be played in the Licence Area; and
- (h) not to 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.

## **15. Air-conditioning and Ventilation System**

As more particularly stipulated in **Paragraph 2** of the **Technical Schedule of Contract Schedule 8**, the Contractor shall, at its own cost, install separate / additional air-conditioning and ventilation system at the Catering Outlets. All electricity supplied to such air-conditioning and ventilation system (excluding electricity for chilled water) shall be separately metered by meters separately arranged by the Contractor with the power company as user. The consumption of chilled water from the main chiller plant of the building would be measured by meters installed by the Government and would be charged with the electricity consumed with this supply. The Contractor shall comply with the directions and instructions of the Government Representative regarding installation and shall at its own expense be responsible for their periodic inspection, maintenance and repair and for the replacement of defective wiring and the Contractor shall be strictly liable for any damage caused by the installation, operation or removal of such units. Provided that in the event of undue noise, vibration, heat or dripping of water being caused or generated by any air-conditioning units installed hereunder, the Government Representative may require the Contractor to remove or replace such installations forthwith and to make good any loss or damage caused to the Licence Area or the Museum.

## **16. Premises Hygiene, Food 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 in respect of 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 Representative on demand all sums paid by the Government Representative by way of increased premium or premiums thereon and all expenses incurred by the Government Representative in and about any renewal of such policy or policies rendered necessary by a breach of this 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 install and provide suitable equipment and systems and so on to protect the Licence Area and Government Provisions from any such damage, 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 previously in writing 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 as well as to remove the same should the Government Representative so direct.
- 16.4 The Contractor shall assume full responsibility for the safety 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 each of the Government and the Government Representative from and against everything specified in **Clause 34.2(a) and (b)** arising from the use of such vehicles.
- 16.6 The Contractor shall provide and maintain at all times proper insulated and refrigerated containers solely for the storage of frozen confections and shall store in such insulated and refrigerated containers all frozen confections available for sale in the Licence Area.
- 16.7 The Contractor shall keep all articles of food and beverages stored or offered for sale at the Licence Area effectively protected against flies, cockroaches, vermin, dust and dirt.
- 16.8 The Contractor shall not sell or offer for sale any liquid refreshment other than in sterile drink cups or in the original containers supplied by the manufacturers of such refreshment.
- 16.9 The Contractor shall cleanse and immerse crockery, cutlery and utensils used in the preparation or serving of food and beverages in boiling water for no less than one minute and dry the same by evaporation before each use, and store the same in vermin-proof and dust-proof cupboards when not in use.
- 17. Outgoings**
- 17.1 The Contractor shall pay all the installation costs and costs and deposits of electricity, gas, fuel, sewage services, telephones and water consumed on or in the Licence Area (including but not limited to electricity charges for electricity

consumed by air-conditioning fan-coil units and any other air-conditioning equipment, machinery and installation whatsoever installed in the Licence Area under **Clause 15** or otherwise, air-condition ventilation made available to the Licence Area under **Clause 15**, charge for water, sewage services all charges for telephones 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, gas, fuel and water (including sewage services) 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.
- 17.4 Due to technical reasons, the Contractor may not apply for separate meters from the power company for the metering of electricity consumed for chilled water by the Contractor. Separate meters shall be installed by the Government Representative for this purpose ("Government Meters"). The Government will pay the entire amount of the monthly electricity bill for all electricity consumed within the Museum (including fuel clause adjustment) ("Gross Electricity Charge"). The Contractor shall throughout the Contract Period be obliged to reimburse the Government its share of the Gross Electricity Charge ("Contractor Electricity Share") each month for the period to which the monthly electricity bill relates. The Contractor Electricity Share based on each monthly electricity bill shall be paid by the Contractor to the Government within fourteen (14) days upon presentation of a demand note from the Government together with a copy of that electricity bill. Where there is any period covered by a monthly electricity bill issued by the power company which is outside the Contract Period, the Contractor Electricity Share shall be adjusted on a pro rata basis.
- 17.5 In the event that the Contractor shall fail to pay a Contractor Electricity Share under **Clause 17.4**, without prejudice to other rights and claims of the Government, the Government Representative shall be entitled to make deduction from the Security Deposit in satisfaction of such Contractor Electricity Share in such order as the Government Representative in her absolute discretion deems fit. The Security Deposit may be deducted, 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.

**18. Cleansing, Collection and Disposal of Refuse and Litter**

- 18.1 The Contractor shall maintain to the reasonable satisfaction of the Government Representative the Licence Area and its immediate vicinity in a clean, tidy and serviceable condition. 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 works 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 suspend the right of the Contractor to carry out the Business at the Licence Area under **Clause 22.1** in order 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 latest Municipal Solid Waste Charging Scheme. 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, or which is otherwise deposited by customers 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 The Contractor shall arrange cleaning of the refuse collection point and all passage ways leading from the Licence Area to the refuse collection point on daily regular basis or at a frequency as prescribed by the Government Representative.
- 18.5 The Contractor shall carry out cleansing and clearing of all grease traps in relation to the Licence Area as identified and shaded area in the Floor Plan in Annex D for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes in relation to the Licence Area as identified and shaded red in the Floor Plan for which the Contractor is liable at frequent intervals to the Government Representative's reasonable satisfaction to prevent choking and blockage of the installations. Where the Government Representative reasonably considers that hot or warm effluent may congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government Representative undertake at its own expense either

an emulsifying or a neutralizing effect by using such equipment or by employing such cleaning agent as may be approved or prescribed by the Government Representative.

- 18.6 The Contractor shall thoroughly clean the Kitchen and other permitted food preparation areas, at least, on a daily basis, and at least twice a year employ a specialist cleaning contractor as may be approved or prescribed by the Government Representative to deep clean the kitchen exhaust and ventilation systems in the Licence Area to the satisfaction of the Government Representative.
- 18.7 The Contractor shall take all reasonable steps to prevent the accumulation of any stains, dirt, grease or other matter discharged from the Licence Area through the kitchen exhaust or ventilation system on any part of the exterior of the Museum and in the event of such stains, dirt, grease or other matter accumulating on any part including but not limited to the external wall, the Contractor shall at such regular intervals as may be approved or prescribed by the Government Representative undertake the cleaning of such parts to the satisfaction of the Government Representative using a contractor approved or prescribed by the Government Representative. The Contractor shall ensure that waste water that comes out from the Licence Area is free of grease and shall not cause, suffer or permit to be caused the waste water discharging onto areas surrounding the Licence Area and the Museum.
- 18.8 In the event of failure to comply with this **Clause 18**, the Contractor shall pay the Government Representative on demand the costs and expenses incurred by the Government Representative if the removal and disposal of such refuse and litter is being carried out by the Government Representative or in cleansing and clearing any of the drains, sewers, grease traps, kitchen exhaust and ventilation systems choked or blocked due to the act, default or negligence of the Contractor.
- 18.9 At the sole cost of the Contractor, the Contractor shall employ or use only such cleaner or cleaning 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. Water Supply and Electricity Supply**

- 19.1 The Contractor shall at its own expense install and provide all necessary water supply required for its Business and pay all fees and charges in connection herewith.
- 19.2 All installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government Representative previously in writing and the works shall be carried out by qualified personnel approved in writing by and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government

Representative free of any costs and charges. The Contractor shall be responsible for maintaining and repairing such installation at its own expense as well as removing the same should the Government Representative so direct.

The Contractor shall ensure all water pipe installation of the cooking equipment will interface with the approved water supply plan by Water Supply Department (WSD). Separate application to WSD might be required for any cooking apparatus which involved connection to the main water supply system of the Museum, to ensure no contamination to the system will be affected.

- 19.3 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 as more particularly specified in **Paragraph 1 of the Technical Schedule in Contract Schedule 8**. All consumption of electricity from such supply points must be separately metered by the Contractor applying for the meters from the power company. The Contractor shall pay all deposits, fees and charges in connection therewith. 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 to comply in all respects with the Electricity Ordinance (Cap. 406) and its subsidiary legislations and / or the Government Representative with respect to the utilities.
- 19.4 Any installation, alteration and addition of wiring and lighting fittings to the existing Government provisions, and all other electrical works, be it permanent or temporary, shall be approved by the Government Representative previously in writing 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 be responsible for maintaining and repairing such fittings at its own expense as well as removing the same should the Government Representative so direct. A copy of the Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to Government Representative for retention.

## **20. On-site Personnel**

- 20.1 In deploying staff for operating the Business, the Contractor shall comply with the staffing structure plan and the staff training plan submitted in **Contract Schedule 4** which shall be in the final form as approved by the Government Representative upon signing of the Articles of Agreement.
- 20.2 The Contractor shall require all persons employed or appointed to work at the Licence Area (whether by the Contractor or by any of its sub-contractors of whatever tier) (collectively, "On-site Personnel") to submit to such medical examinations at such places and times as may be prescribed by a registered medical practitioner and shall not employ or shall cease to employ at the Licence Area any person found by the medical practitioner to be likely to spread a communicable disease.

- 20.3 The Contractor shall ensure that its managerial or supervisory staff shall be in attendance at the Licence Area at all times to supervise On-site Personnel.
- 20.4 The Contractor shall be responsible for the good conduct of all On-site Personnel while they are in the Licence Area or any other parts of the Museum, and shall ensure that they will behave accordingly.
- 20.5 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 member of On-site Personnel.
- 20.6 The Government Representative shall be entitled to refuse to admit to the Licence Area or any part thereof any member of On-site Personnel, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- 20.7 Any removal demanded or refusal made under **Clauses 20.5** and **20.6** 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.
- 20.8 The Government Representative shall in no circumstances be liable either to the Contractor or any of its sub-contractors or any member of On-site Personnel in respect of any liabilities, losses or damages occasioned by such removal demanded or refusal made as stipulated in **Clauses 20.5** and **20.6** and the Contractor shall fully indemnify the Government Representative against everything stated in **Clause 34.2(a)** and **(b)** arising from any such removal or refusal.
- 20.9 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 all On-site Personnel.
- 20.10 The Contractor shall ensure that at all times when On-site Personnel are at work or on duty in the Licence Area they shall wear such clothes and uniforms in a clean and tidy manner.
- 20.11 The Contractor shall ensure that all On-site Personnel shall keep to such parts of the Licence Area as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 20.12 The Contractor shall maintain a proper current and accurate record of all On-site Personnel for the carrying out of the Business. Such record shall include the name, the Hong Kong Identity Card number and a photograph of such On-site Personnel 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 the Hong Kong Special Administrative Region or not entitled for whatever

reasons to undertake any employment in the Hong Kong Special Administrative Region. 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 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 in the Hong Kong Special Administrative Region, or is convicted of an offence for aiding and abetting another person to breach his condition of stay, 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)**.
- 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 Ordinance.



20.20 Any conviction mentioned in **Clauses 20.15 to 20.20** or any other provision of this Contract does not have to relate to this Contract. The conviction of a related person (as defined in Paragraphs **18.7 and 18.8** 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 Representative 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", and the Catering Outlets affected by the Suspension for Default is "Suspended Business") by notice in writing to the Contractor for a period as specified in such notice and the Suspension for Default 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** or the failure of the Contractor to obtain the Requisite Permits as mentioned in **Clause 9.3 or Clause 9.4** where applicable.

22.2 Upon a Suspension for Default, the Contractor shall have no right to operate the Suspended 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 all Catering Outlets 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 Representative, 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 Suspended 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 or any part thereof for any operational or other reason (including any of the reasons as specified in **Clause 22.2**) 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. The Contract Period may or may not be correspondingly extended after the temporary closure in accordance with **Clause 2.4** depending on whether the temporary closure affects the entire Licence Area or just parts thereof. In the event of former, the Contract Period may be extended in accordance with **Clause 2.4** but not in the case of latter.
- 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 wilful 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 parts of the Museum shall not entitle the Contractor to claim or request temporary closure of the Licence Area or deduction of the Monthly Licence Fee.
- 23.3 Where the demand of such closure or suspension of Business by the Government Representative is due to any repair or maintenance or building modification, notwithstanding **Clause 23.1**, the Government Representative will give the Contractor at least one (1) month's prior notice before the commencement date of such closure and suspension, if it is practicable in the circumstances.
- 23.4 During the period of temporary closure of the entire Licence Area (including all such parts of the Licence Area designated for the operation of the Catering Outlet(s)) for seven (7) days or more (but not otherwise), no Monthly Guaranteed Amount shall be payable in respect of such period, and there shall be a pro rata deduction of the Monthly Guarantee Amount based on the number of days of temporary closure based on the calculation as stated in **Clause 5.7**. In the event that there is only temporary closure of part(s) of the Licence Area designated for the operation of one or more Catering Outlet(s) for seven (7) days or more, such portions of the Monthly Guaranteed Amount attributable to such Catering Outlet(s) as stated in **Contract Schedule 1** shall not be payable during such temporary closure with further pro rata deduction based on the number of days of temporary closure as aforesaid.

- 23.5 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.
- 23.6 Subject to **Clause 23.4**, 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 temporary closure or cessation of the Business under this **Clause 23**.
- 23.7 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.
- 23.8 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 Food Commodities**

- 24.1 The Contractor only has the right to sell Food and Beverages at the Licence Area. Without prejudice to the generality of the foregoing, unless otherwise specified in the Contract, the Contractor shall stock in sufficient quantities and sell the Food and Beverages as approved and of a standard to the satisfaction of the Government Representative.
- 24.2 Any food or beverage or any other goods or service to be sold at the Catering Outlets not belonging the style of such Catering Outlets may only be sold after obtaining the prior written approval of the Government Representative. Any deduction of items from the proposed Signature Dishes / Beverages may only be made after obtaining the prior written approval of the Government Representative.
- 24.3 The Contractor shall only sell the food and beverages consistent with the style of Catering Outlets as stipulated in **Contract Schedule 4**. Subject to the foregoing, and observation and compliance with all other requirements in the Contract, the Contractor will nonetheless be allowed, according to market demand, to introduce new items of food or beverages which are consistent with the style of the Catering Outlets without the need for obtaining the prior written approval of the Government Representative.
- 24.4 The Contractor shall provide to customers upon request receipts for any food and beverage sold at the Licence Area.
- 24.5 Notwithstanding the prior approval of any items appearing in **Contract Schedules 2 and 4** 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 food, beverage or services or any other items whatsoever used or provided in or from the Licence Area or in connection with the performance of this Contract:

- (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 or images of the Museum or the Government or the Government Representative; or
- (b) of which there is any claim or allegation of infringement of Intellectual Property Rights of any person; or
- (c) which consists of or contains any materials that infringe or are alleged to infringe the Intellectual Property Rights of any person;

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 item concerned.

- 24.6 The Contractor shall not stock, sell or provide at the Licence Area any cigarettes, cigars or tobacco products whatsoever. The Contractor shall obtain such necessary licence or permit as is required under the Dutiable Commodities Ordinance (Cap. 109) for sale of alcoholic liquor, if such permission for sale is given by the Government Representative.
- 24.7 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.
- 24.8 The Contractor shall submit to the Government Representatives for information the menu containing a list of all items sold at the Licence Area together with their prices to be supplied and sold at the Licence Area not less than seven (7) days prior to their coming into force.
- 24.9 The Contractor shall abide by any directions as to the quality of the Food and Beverages sold or offered for sale at the Licence Area as may be given by the Hong Kong Consumer Council.

**25. Display of Commodity Prices**

- 25.1 The Contractor shall prominently display at all times at each Catering Outlet the prices of all items sold at that Catering Outlet. The displays shall be in both Chinese and English and shall be put up in such form, manner and at such locations as shall be approved or prescribed by the Government Representative.
- 25.2 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 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 outlet, or in the case where such goods are not sold by the Contractor at its other retail outlet, within the range of prices charged in similar types of retail outlet in Hong Kong.

**26. Erection of Structure**

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 those stipulated in **Clause 25.1** and apart from one signboard(s) bearing the trade name(s) for the Business in both English and Chinese which has been approved in writing by the Government Representative.

26.2 The number, size and location of, and the ways of erecting, the signboards stipulated in **Clause 26.1** shall be approved by the Government Representative in writing.

**27. Store of Dangerous Goods and Prohibited Goods**

Except a reasonable quantity to be stored at the Licence Area required for the operation of the Business, 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 substances.

**28. Fire Precautions**

28.1 The Contractor shall provide and maintain in proper and serviceable condition fire-fighting equipment 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.

28.2 The Contractor shall only use electricity as fuel in the Café and town gas as fuel in the Restaurant. No naked flame is permitted in the Licence Area.

**29. Watchman**

29.1 The Contractor shall not allow any person including but not limited to any watchman to remain in the Licence Area overnight without the 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.

29.2 The Contractor shall ensure that each of the watchmen possesses a valid security

personnel permit issued under the Security and Guarding Services Ordinance (Cap. 460) and submit the name and Hong Kong Identity Card number of such watchmen to the Government Representative for prior written approval.

**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 at all reasonable times to enter upon the Licence Area or any part thereof 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 On-site Personnel 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 employees 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 and without prejudice to any other rights and remedies which the Government Representative 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 Representative 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 performance of any obligation by the Contractor of this Contract including the supply of food and beverages provided 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 or the result of such action which does not strictly conform to the terms and conditions of the Contract, including any action that may constitute as non-compliance with any condition stated in Requisite Permits or will lead to revocation of any of such Requisite Permits.
- 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 shall fail to rectify such rejected action or result of action, the Government Representative may, but it is not obliged, without prejudice to any other rights and remedies available to the Government Representative carry out and complete such rectification by its own staff or by its 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. The normal working hours for the staff of the Government Representative are, with the exception of public holidays, from 9 am to 5:30 pm from Mondays to Fridays. In addition to the administrative costs recoverable from the Contractor for performing any such work within the normal working hours, if any work is carried out by the staff of the Government Representative outside these normal working hours, the Contractor shall also 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 patron or visitor of the Licence Area (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 it as if it were 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 their 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 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”);
- (b) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses (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 person of the Contractor Responsible Group;
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor or by any person 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) the non-compliance by the Contractor, or any person of the Contractor Responsible Group with any applicable law or regulation, or order or requirement of any government agency or authority; or
- (v) 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).

- (vi) any claim or allegation for infringement of any Intellectual Property Rights of any person at or from the Licence Area or in connection with the performance of this Contract.
- 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, or any member of the Contractor Responsible Group.
- 34.5 The Contractor shall notify the Government Representative in writing of any injury to or death of any of any member of the Contractor Responsible Group; and any loss of or damage to the Government Provisions or other property of the Government or to the property of any of the Contractor or of any member of the Contractor Responsible Group 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. Public Liability Insurance**

- 35.1 The Contractor shall throughout the Contract Period effect at its own expense (a) a public liability insurance policy (“Public Liability Insurance Policy”) 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; and (b) product liability insurance (“Product Liability Insurance Policy”), in each case with an insurance company authorized by the Insurance Companies Ordinance (Cap. 41) on such terms and conditions to be approved by the Government Representative in writing in advance.
- 35.2 The Public Liability Insurance Policy shall:
- (a) indemnify the insured in respect of all sums which each of the insured shall become legally liable to pay as compensation for any death of or injury to or illness suffered by any person (other than an employee where such death or personal injury arises out of and in the course of employment) or any loss or damage of property belonging to any person; and
  - (b) 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 of insurance and legal costs incurred by the insured in defending any claim.

- 35.3 The Product Liability Insurance Policy shall indemnify the Contractor in respect of all sums which the insured shall become legally liable to pay as compensation for any death of or injury to or illness of any person due to poisoning by food and / or drink supplied by the Contractor at the Licence Area as well as the legal costs awarded in favour of any claimant of any claim covered by the policy of insurance and legal costs incurred by the insured in defending any claim.
- 35.4 The Contractor shall keep each of the Public Liability Insurance Policy and Product Liability Insurance Policy in force throughout the continuance of the Contract Period and shall, if required, deposit with the Government Representative for record copies of such Policies together with the receipt for payment of the current premiums.
- 35.5 Where the terms of the Public Liability Insurance Policy or Product Liability Insurance 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 paid by the Government Representative). Under no circumstances whatsoever shall the Government Representative or the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 35.6 The Public Liability Insurance Policy shall include a cross liability clause so that it shall be treated that a separate policy has been issued to each of the Contractor and Government Representative.
- 35.7 The Contractor shall take out and maintain the employees' compensation insurance as required under the Employees' Compensation Ordinance, Cap 282 of the Laws of Hong Kong.
- 35.8 The Contractor is responsible for lodging 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 Representative shall have the right to liaise with the insurance company on any matter of such claims.
- 35.9 If the Contractor fails to effect or to keep in force the Public Liability Insurance 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.
- 35.10 The Contractor shall conform to the terms and conditions of the Public Liability Insurance Policy and Product Liability Insurance Policy, and all reasonable

requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby these policies shall be rendered void or voidable, or which would otherwise amount to a breach of these. The Contractor shall bear the economic consequences of, and indemnify the Government Representative in full from and against everything stated in **Clauses 34.2(a) and (b)** which may arise from any failure of the Contractor to observe and comply with this Clause.

**36. 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 Representative, the Government Representative shall be entitled to recover from the Contractor as a debt due to the Government Representative 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.

**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 Representative, the Government Representative may at any time by notice forthwith terminate the Contract 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 and in the case of a breach capable of being remedied, the Contractor 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 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) for the time being in force, 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 which have arisen entitle the court or debenture holders to appoint a receiver or manager; 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 the operation of any of the Catering Outlet at the designated Licence Area and / or unilaterally terminates the Contract at any time prior to the expiry of the Contract Period; 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
  - (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 5.8** (Payment of Monthly Licence Fee and Statement of Accounts);
    - (ii) **Clause 9.3 or Clause 9.4** (Licence, Permit and / or Certificate);
    - (iii) any of **Clauses 20.13 to 20.19** (On-site Personnel); or
    - (iv) **Clause 41** (Corrupt Gifts).

- 39.2 If the Government Representative is at any time prevented from performing the Contract by force majeure, then the Government Representative shall serve a notice on the Contractor to this effect whereupon the Contract shall terminate 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 early terminate this Contract by giving not less than six (6) months’ notice to the other party but such date of termination shall not be earlier than forty-eight (48) months after the date of commencement of the Agreement.
- 39.5 Instead of terminating the entire Contract pursuant to **Clause 39.1** or **39.2** or **39.4** of this Part, the Government Representative may elect, but is not obliged, to terminate the Contract in relation to one or more but not all of the Catering Outlets (collectively, “Terminated Catering Outlet”).
- 39.6 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 and the Government’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 entitle the Government Representative to terminate the Contract);
    - (ii) the rights and claims which have accrued to a party or the Government 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 (however occasioned) (including without limitation **Clauses 5, 8, 10, 12, 14, 17, 33 to 56**);

- (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 to:
  - (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 earlier terminating the Contract;
  - (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 5.5**;
- (e) in the event that the Termination is 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 other working area and storage area provided by the Government Representative or used by the Contractor in a clean and tidy condition, and all Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government Representative or the Government 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. For the avoidance of doubt, the Contractor shall be entitled to remove its own trade fixtures and trade equipment;

- (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) the Contractor and all persons of the Contractor Responsible Group 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 **Clause 40.1(f)** or **(g)** or **(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 a good repair and 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; and
- (j) submit all outstanding statements and information as specified in **Clause 5**.

40.2 Upon a Partial Termination pursuant to **Clause 39.5**:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Catering Outlet 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;

- (ii) the rights and claims which have accrued to a party prior to the Partial Termination; and
  - (iii) the continued existence and validity of all remaining provisions of the Contract.
- (b) unless and to the extent otherwise approved by the Government Representative, the same consequences specified in **Clause 40.1** shall apply save that references to “Termination” shall mean “Partial Termination”; references to “Catering Outlet” shall mean the Terminated Catering Outlet; references to “Licence Area” shall mean such portion of the Licence Area in relation to the Terminated Catering Outlet; and reference to “Government Provisions” shall mean such Government Provisions specifically for such Terminated Catering Outlet.

#### **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 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 in the Licence Area**

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 authorities 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 English and Chinese.

**45. Intellectual Property Rights**

45.1 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 by reason of the Contractor's possession, stocking, display or sale of any item 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 or the performance of the Contract by the Contractor;
- (b) all items to be stocked, displayed or for sale in or from the Licence Area and/or all things or materials to be supplied or delivered by the Contractor under the Contract do not consist of or contain any materials which may infringe or are alleged to infringe the Intellectual Property Rights of any person;
- (c) in respect of any items to be stocked, displayed or for sale in the Licence Area, and in respect of which any Intellectual Property Rights are vested in a third party, the Contractor has or will have a valid and continuing licence or right under which it is entitled to stock, display or sell such items;
- (d) the Government, the Government Representative, their respective authorized users, assigns and successors-in-title will not incur any liability for infringement of any Intellectual Property Rights of any person by the Contractor's possession, stocking, display or sale of any item 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 or the performance of the Contract by the Contractor; and
- (e) the Government and the Government Representative and their authorized

users, assigns and successors-in-title will not infringe any Intellectual Property Right of any person by the exercise of any of its rights under this Contract ;

- (f) if and to the extent any material (to be supplied or provided by the Contractor to the Government Representative under the Contract including those statements under **Clause 5** and the plans, drawings, specifications and other details submitted and form part of the Contract Schedules) is required for performing the Contract or providing the Catering Services contain any works or materials of which the Intellectual Property Rights belong to a third party, prior to use and incorporation of such works and materials for performing the Contract or providing the Catering Services, the Contractor shall have obtained from such third party the grant of all necessary licences for itself and the Government, the Government Representative, their respective authorized users, assigns and successors-in-title to use such works and materials in the manner and for any of the purposes contemplated by this Contract. The costs of the above licences shall be borne by the Contractor.

**46. Applicability of the Public Health and Municipal Services Ordinance**

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. Mediation**

- 47.1 Any dispute or difference arising out of or in connection with this Contract shall first be referred to mediation at the 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.

- 47.2 The Contractor shall be obliged to carry on the Business in accordance with the Contract irrespective of a notice of mediation having been served by either party or whether mediation is in progress.

**48. Service of Notice**

- 48.1 Any notice or communication to be given herein shall be in writing and shall be sent to the address or fax number of the Government Representative set out below (in the case the Government Representative or the Government is the recipient) or the address or fax 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.

48.2 The Government Representative's details are as follows:

Address : 10 Salisbury Road, Tsim Sha Tsui, Kowloon, Hong Kong  
Fax Number : 2723 7666  
Email Address : ma2@lcsd.gov.hk  
Attention : Manager (Hong Kong Museum of Art)2

48.3 Any notice or communication 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 despatched by email as evidenced by a return receipt whether generated manually or automatically; or
- (d) when successfully despatched by facsimile as evidenced by a successful transmission report generated by the facsimile machine.

#### **49. Waiver of Remedies**

49.1 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.

49.2 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 this Contract on the Contractor's part to be observed and performed.

49.3 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.

#### **50. Severability**

50.1 In the event that any provisions of the Contract or any part thereof is at any time adjudged by a court of the Hong Kong Special Administrative Region to be invalid, unlawful, 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.

50.2 If at any time any one or more provisions hereof is adjudged by a court of the Hong Kong Special Administrative Region 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.

50.3 Where, however, the provisions of any such applicable law of the Hong Kong Special Administrative Region 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.

**51. 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.

**52. 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.

**53. Further Assurance**

The Contractor shall at its own costs and expenses do and execute any further things, documents and materials (or procure the same be done or executed) to give full effect to the Contract and shall provide all such things, 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.

**54. Relationship of the Parties**

54.1 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.

54.2 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.

**55. Governing Law and Jurisdiction**

The Contract shall be governed by and construed according to the laws of the Hong Kong and subject to **Clause 47.1**, the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region in relation to any dispute arising from or in connection with or in relation to the Contract.

**56. Contracts (Rights of Third Parties) Ordinance**

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

**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) Terms of Tender;
- (c) Contract Schedules;
- (d) Annexes.

**PART 3**  
**CONTRACT SCHEDULES**

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**CONTRACT SCHEDULE 1**

**Monthly Licence Fee**

**(Note: This Contract Schedule should be sealed in the “Price Submission” envelope)**

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 Catering Outlets at the Licence Area on and subject to the terms and conditions of the Contract:

- (i) A Percentage of the Monthly Gross Receipts of **all Catering Outlets OR**
- (ii) A Monthly Guaranteed Amount **WHICHEVER IS THE GREATER**

<b>Period</b>	<b>Percentage of the Monthly Gross Receipts of all Catering Outlets</b>	<b>Monthly Guaranteed Amount in respect of all Catering Outlets (HK\$)</b>
For the Contract Period of six (6) years starting from the 1 <sup>st</sup> month to the 72 <sup>th</sup> month, including a Free Decoration Period as stipulated in <b>Clause 2.1</b> of the <b>Conditions of Contract</b> but subject to any sooner termination or extension under any applicable provision of the Contract	<p align="center">_____</p> Percent (%) of Monthly Gross Receipt	HK\$_____per month in respect of all Catering Outlets  which amount is to be further broken down with reference to each Catering Outlet as follows:  Restaurant: HK\$ _____  Café: HK\$ _____

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**

**(Note: This Contract Schedule should be sealed in the “Price Submission” envelope)**

**In accordance with Paragraph 9.1 of the Terms of Tender, Tenderers are required to provide projected profit and loss accounts and cash flow statements for the Contract Period, showing the revenue, operating expenses, capital expenditure and the sources of finance such as upfront investment and/or debt financing:**

*(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 2**

**List of Signature Dishes / Beverages for Sale at the Licence Area  
(put in “Technical Submission” envelope)**

Tenderer is reminded to complete this Contract Schedule in conjunction with **Item 4 of Contract Schedule 4** – Operation and Management Plan. The Tenderer must provide signature dishes / beverages in the Licence Area as proposed by the Tenderer below.

**1. Proposed Signature Dishes / Beverages for Restaurant**

Item	Description

**2. Proposed Signature Dishes / Beverages for Café**

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 2**

**List of Signature Dishes / Beverages for Sale at the Licence Area  
(put in “Technical Submission” envelope)**

**3. Menu and Service Package for Catering Services**

Proposed menu and service package including sets of menu of all food and beverage designed for Catering Services as stipulated in Clause 3.2 of the Conditions of Contract to offer catering service for different functions/occasions such as ceremonies of the Museum.

*(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**

**Working Background and Status of Tenderer  
(put in “Technical Submission” envelope)**

In accordance with **Paragraph 8** of the **Terms of Tender**, Tenderers are required to provide the following information. (Please make photocopy of this sheet if necessary)

1. (a) Name of Tenderer : \_\_\_\_\_ (in English)  
\_\_\_\_\_ (in Chinese)  
Registered address : \_\_\_\_\_  
\_\_\_\_\_

Telephone number : \_\_\_\_\_

(b) Length of catering business experience :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Shareholders / partners / proprietor of the Tenderer and their percentages of shareholding / equity interest :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) Names and residential addresses of the following, where appropriate  
- directors / partner / sole proprietor of the Tenderer : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**

**Working Background and Status of Tenderer  
(put in “Technical Submission” envelope)**

(e) where the Tenderer is a limited company incorporated under the laws of Hong Kong, its Memorandum (if any) and Articles of Association, a Certificate of Incorporation, Certificate of Change of Name (if any), and latest annual return filed with the Companies Registry, and all filings with the Companies Registry subsequent to such annual return, or equivalent documents where the Tenderer is not a limited company incorporated under the laws of Hong Kong:  
(Please specify document copy attached)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(f) where the Tenderer is a partnership, a copy of the partnership agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) 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:  
(Please specify document copy attached)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Present business : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(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****Working Background and Status of Tenderer  
(put in “Technical Submission” envelope)**

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

(a) Year of establishment : \_\_\_\_\_  
 (i) Ownership : \_\_\_\_\_  
 (ii) If a subsidiary, name of holding company : \_\_\_\_\_

(b) No. of staff : \_\_\_\_\_

(c) Liability : \_\_\_\_\_ (as at \_\_\_\_\_)

(d) Capital -

(i) Authorized Capital : \_\_\_\_\_ (as at \_\_\_\_\_)  
 (ii) Issued Capital : \_\_\_\_\_ (as at \_\_\_\_\_)  
 (iii) Paid-up Capital : \_\_\_\_\_ (as at \_\_\_\_\_)

(e) Net worth (i.e. Total Assets – Liabilities) : \_\_\_\_\_  
 HK\$ \_\_\_\_\_ (as at \_\_\_\_\_)

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

Name: \_\_\_\_\_

Post: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_

Telephone: \_\_\_\_\_

*(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 4**

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

In accordance with **Paragraph 6.1** of the **Terms of Tender**, Tenderers are required to submit the following information for evaluation according to the marking scheme in **Contract Schedule 5**. Information provided by Tenderers hereunder will be binding on the Tenderers upon the award of the Contract. Tenderers’ attention is invited to the marking scheme in **Contract Schedule 5**. **Failure to provide the following information will result in the Tenderer’s Tender not be considered further.**

**1. Trade Experience (Essential Requirement)**

A tender will not be considered further if a Tenderer fails to fulfil any of the following requirement:

The Tenderer must have at least **THREE (3) CONTINUOUS** years of experience\*<sup>Note 1</sup> in managing and operating a catering business<sup>Note 2</sup> with seating accommodation and table services<sup>Note 3</sup> within the past ten (10) years immediately prior to the Original Tender Closing Date.

Name of catering outlet(s)	Location	Total area (sq.m) & seating capacity per catering outlet	Date of holding and duration	Food/ service categories
	<i>Total no. of outlets</i>			<i>Total no. of years</i>

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

- \*Notes:**
- 1(a). The Tenderer’s experience must be gained as an owner/operator of the business. Only the Tenderer’s experience in the name of the Tenderer will be counted.
- 1(b). If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership will be counted.
- 1(c). The Original Tender Closing Date will be the cut-off date for calculation of years of experience. Experience obtained in different contracts/venues during the overlapping periods will be counted once only. Counting rule on experience: (a) Experience under different contracts will not be double-counted for those overlapping periods. The required years of experience is to be counted in days, i.e. "a continuous of at least 3 years" is equivalent to have accumulated no less than 1,095 (i.e. 365 days x 3) days of relevant experience within the past ten (10) years prior to the Original Tender Closing Date under a single contract or different contracts. (b) Experience under different contracts with overlapping periods is to be counted in accordance with the following example:

<b>Contracts</b>	<b>Contract Period</b>	<b>Contract period without overlapping with another contract</b>	<b>No. of days counted for accumulated experience</b>
A	16.4.2011-15.4.2014	16.4.2011-15.4.2014	1,095 days
B	1.4.2014-31.3.2015	16.4.2014-31.3.2015	350 days
C	1.1.2015-31.12.2016	1.4.2015-31.12.2016	640 days
		Total	2,085 days

- 1(d). Documentary proof such as a copy of lease agreement for the catering premises and 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.
2. “Catering business” shall mean a retail business of supplying on premises food and beverage, which shall be cooked and/or prepared and/or reprocessed at a kitchen located in the same premises, to customers for immediate consumption on premises but excluding canteen in any school or work place or a factory or club or any agricultural premises or supply through an automatic vending machine.
3. “Seating accommodation and table services” is defined as a catering entity that offers customers with seating and waiter services for food and beverages.

**CONTRACT SCHEDULE 4**

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

- (a) Proposed trade name(s) for the Licence Area. Please provide evidence of your full power, authority and legal right to carry out the business under the proposed trade name(s):

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- (b) Provide other pertinent information relating to the Tenderer’s relevant experience which may assist the Government Representative in assessing the tender:

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*(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 4****Information of Tenderer  
(put in “Technical Submission” envelope)****2. Business Plan**

The Tenderer is required to incorporate the information outlined below into the Business Plan in compatibility with the Museum's vision, mission, values, image and functions as stated in the tender document (to be illustrated and supported by statements, plans and drawings where appropriate) :

- (a) Proposed plan with details on the business vision (not limited to the core value of the business including quality food, excellent customer service, creativity, integrity, social responsibility, etc.).
- (b) Proposed plan with branding concept (not limited to an overview of marketing and communication methods to create a unique brand identity) and clientele philosophy (not limited to the identification of target customer segment and formulation of various strategies to reach the target group).
- (c) Proposed plan with details on décor design (not limited to the layout plans for dining areas, kitchen / food serving areas, shop front, reception, restrooms, etc.).
- (d) Proposed plan with details on proposed facilities (not limited to dining table layout and tableware for the catering outlets).

*(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 4****Information of Tenderer  
(put in “Technical Submission” envelope)****3. Marketing and Customer Service Plan**

The Tenderer is required to incorporate the information outlined below into the Marketing and Customer Service Plan :

- (a) Proposed plan with details on branding strategies (not limited to image building brand name of the catering outlets, application of logo and slogan) for complementing the promotion of the image and functions of the Museum.
- (b) Proposed plan with details on marketing strategies (not limited to advertising, customer outreaching programmes on traditional and internet social platforms).
- (c) Proposed plan with details on customer services initiatives (not limited to membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Museum and encouraging repeated visits of the customers.
- (d) Proposed plan with details in support of the promotion of the Museum’s exhibitions/activities (not limited to displaying posters and pamphlets at the prominent locations of the catering outlets, free Internet access available for use by patrons).

*(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 4**

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

**4. Operation and Management Plan**

The Tenderer is required to incorporate the information outlined below into the Operation and Management Plan for enhancing the business viability of the catering outlets in compatibility with the Museum's image and functions:

- (a) Proposed plan with details on the operation of the catering outlets including the day-to-day operation (not limited to opening hours, food served).
- (b) Proposed plan with details on the management of the catering outlets (not limited to occupational and health safety, food hygiene, environmental and cleansing standards).
- (c) Proposed plan with details on inter-operability<sup>1</sup> of the catering outlets and system of regular checking and surprise check.
- (d) Proposed plan of staff management (not limited to staff recruitment, staffing structure, training/re-training and retention strategies) and qualifications for the key personnel (includes the person-in-charge at the catering outlets, like but not limited to the chief chef and in-house manager) for each of the catering outlets.

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

<sup>1</sup>“Inter-operability” refers to the inter-exchange of information, facilities, resources among the catering outlets to enhance the overall visitors’ experience.

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 5

### **Marking Scheme for Tender Evaluation**

1. The Government will use a marking scheme in assessing the Tenders which meet all requirements stipulated in Stage 1 and Stage 2. Offers which fail to meet the essential requirements will not be considered. Those meeting the essential requirements will be evaluated in accordance with the assessment on technical submission in Stage 3. The technical score carries a weight of 50% as against a 50% weighting for the price score. A Tender which fails to pass any one of the criteria in the technical assessment will not be further considered. The Tenderer with the highest technical mark and which Tender attains all the passing scores will be awarded with a weighted technical score of 50, while the weighted technical score for other Tenderers which Tenders attain all the passing scores will be calculated in accordance with the formula in Clause 4.2. Upon completion of the technical assessment, the price information will be evaluated in Stage 4. The Tender with the highest combined technical and price score in Stage 5 will normally be recommended for acceptance.
  
2. **Stage 1 – Completeness Check**
  - 2.1 Tenderers must submit the following documents on or before 12:00noon (Hong Kong time) on the Tender Closing Date :
    - (i) the "**Offer to be Bound**" of the **Tender Form** duly signed by the Tenderer;
    - (ii) the quotation for the Monthly Guaranteed Amount and the Percentage of the Monthly Gross Receipts as required in **Contract Schedule 1 - Price Schedule**; and
    - (iii) information requested in **Contract Schedule 4 - Information of Tenderer** (Trade Experience (Essential Requirement), Business Plan, Marketing and Customer Service Plan, Operation and Management Plan).

**Otherwise, the Tenderer's Tender will not be considered further.**

## CONTRACT SCHEDULE 5

### Marking Scheme for Tender Evaluation

#### 3. Stage 2 – Assessment on Compliance with Essential Requirements

3.1 A tender will not be considered further if a Tenderer fails to fulfil any of the following requirement:

The Tenderer must have at least **THREE (3) CONTINUOUS** years of experience\*<sup>Note 1</sup> in managing and operating a catering business<sup>Note 2</sup> with seating accommodation and table services<sup>Note 3</sup> within the past ten (10) years immediately prior to the Original Tender Closing Date.

**\*Notes:**

1(a). The Tenderer's experience must be gained as an owner/operator of the business. Only the Tenderer's experience in the name of the Tenderer will be counted.

1(b). If the Tenderer is a partnership, only the years of experience gained by the partnership, but not the individual experience of the participants to the partnership will be counted.

1(c). The Original Tender Closing Date will be the cut-off date for calculation of years of experience. Experience obtained in different contracts/venues during the overlapping periods will be counted once only. Counting rule on experience: (a) Experience under different contracts will not be double-counted for those overlapping periods. The required years of experience is to be counted in days, i.e. "a continuous of at least 3 years" is equivalent to have accumulated no less than 1,095 (i.e. 365 days x 3) days of relevant experience within the past ten (10) years prior to the Original Tender Closing Date under a single contract or different contracts. (b) Experience under different contracts with overlapping periods is to be counted in accordance with the following example:

Contracts	Contract Period	Contract period without overlapping with another contract	No. of days counted for accumulated experience
A	16.4.2011-15.4.2014	16.4.2011-15.4.2014	1,095 days
B	1.4.2014-31.3.2015	16.4.2014-31.3.2015	350 days
C	1.1.2015-31.12.2016	1.4.2015-31.12.2016	640 days
		Total	2,085 days

1(d). Documentary proof such as a copy of lease agreement for the catering premises and 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.

2. "Catering business" shall mean a retail business of supplying on premises food and beverage, which shall be cooked and/or prepared and/or reprocessed at a kitchen located in the same premises, to customers for immediate consumption on premises but excluding canteen in any school or work place or a factory or club or any agricultural premises or supply through an automatic vending machine.

3. "Seating accommodation and table services" is defined as a catering entity that offers customers with seating and waiter services for food and beverages.

## CONTRACT SCHEDULE 5

### Marking Scheme for Tender Evaluation

#### 4. Stage 3 – Technical Assessment

**4.1 Tender shall be assessed under the following criteria of technical submission and marks will be given to Tenders in each assessed criterion in accordance with the standard stipulated below.**

Assessment Criteria	Mark
<p><b>1. <u>Business Plan (passing mark = 10)</u></b></p> <p>The Tenderer is required to incorporate the information outlined below into the Business Plan in compatibility with the Museum's vision, mission, values, image and functions as stated in the tender document (to be illustrated and supported by statements, plans and drawings where appropriate) :</p> <p>(a) Proposed plan with details on the business vision (not limited to the core value of the business including quality food, excellent customer service, creativity, integrity, social responsibility, etc.) .</p> <p>(b) Proposed plan with branding concept (not limited to an overview of marketing and communication methods to create a unique brand identity) and clientele philosophy (not limited to the identification of target customer segment and formulation of various strategies to reach the target group).</p> <p>(c) Proposed plan with details on décor design (not limited to the layout plans for dining areas, kitchen/ food serving areas, shop front, reception, restrooms, etc.).</p> <p>(d) Proposed plan with details on proposed facilities (not limited to dining table layout and tableware for the catering outlets).</p>	<b>(Max.: 40)</b>
(i) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with more than two (2) good ideas or suggestions.	40
(ii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with one (1) or two (2) good ideas or suggestions.	30
(iii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects; or detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect with one (1) or more good ideas or suggestions.	20
(iv) Proposed plan is practicable and provides detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect; or detailed information on two (2) of the listed aspects and brief information on the remaining listed aspects and with one (1) good idea or suggestion.	10
(v) Proposed plan provides detailed information on two (2) or less than two (2) of the four (4) listed aspects; or Proposed plan is incomplete or impractical.	0

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

Assessment Criteria	Mark
<p><b>2. <u>Marketing and Customer Service Plan (passing mark = 10)</u></b></p> <p>The Tenderer is required to incorporate the information outlined below into the Marketing and Customer Service Plan :</p> <p>(a) Proposed plan with details on branding strategies (not limited to image building, brand names of the catering outlets, application of logo and slogan) for complementing the promotion of the image and functions of the Museum.</p> <p>(b) Proposed plan with details on marketing strategies (not limited to advertising, customer outreaching programmes on traditional and internet social platforms).</p> <p>(c) Proposed plan with details on customer services initiatives (not limited to membership discount programme, seasonal promotion, value-added service (use of electronic payments, etc.)) for complementing the promotion of the image and functions of the Museum and encouraging repeated visits of the customers.</p> <p>(d) Proposed plan with details in support of the promotion of the Museum's exhibitions/activities (not limited to displaying posters and pamphlets at the prominent locations of the catering outlets, free Internet access available for use by patrons).</p>	<b>(Max.: 40)</b>
(i) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with more than two (2) good ideas or suggestions.	40
(ii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with one (1) or two (2) good ideas or suggestions.	30
(iii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects; or detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect with one (1) or more good ideas or suggestions.	20
(iv) Proposed plan is practicable and provides detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect; or detailed information on two (2) of the listed aspects and brief information on the remaining listed aspects and with one (1) good idea or suggestion.	10
(v) Proposed plan provides detailed information on two (2) or less than two (2) of the four (4) listed aspects; or Proposed plan is incomplete or impractical.	0

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

Assessment Criteria	Mark
<p><b>3. <u>Operation and Management Plan (passing mark = 5)</u></b></p> <p>The Tenderer is required to incorporate the information outlined below into the Operation and Management Plan for enhancing the business viability of the catering outlets in compatibility with the Museum's image and functions:</p> <p>(a) Proposed plan with details on the operation of the catering outlets including the day-to-day operation (not limited to opening hours, food served).</p> <p>(b) Proposed plan with details on the management of the catering outlets (not limited to occupational and health safety, food hygiene, environmental and cleansing standards).</p> <p>(c) Proposed plan with details on inter-operability<sup>1</sup> of the catering outlets and system of regular checking and surprise check.</p> <p>(d) Proposed plan of staff management (not limited to staff recruitment, staffing structure, training/re-training and retention strategies) and qualifications for the key personnel (includes the person-in-charge at the catering outlets, like but not limited to the chief chef and in-house manager) for each of the catering outlets.</p>	<b>(Max: 20)</b>
<p>(i) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with more than two (2) good ideas or suggestions.</p>	20
<p>(ii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects and with one (1) or two (2) good ideas or suggestions.</p>	15
<p>(iii) Proposed plan is practicable and provides detailed information on all the four (4) listed aspects; or detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect with one (1) or more good ideas or suggestions.</p>	10
<p>(iv) Proposed plan is practicable and provides detailed information on three (3) of the listed aspects and only brief information on the remaining listed aspect; or detailed information on two (2) of the listed aspects and brief information on the remaining listed aspects and with one (1) good idea or suggestion.</p>	5
<p>(v) Proposed plan provides detailed information on two (2) or less than two (2) of the four (4) listed aspects; or Proposed plan is incomplete or impractical.</p>	0

<sup>1</sup> Inter-operability refers to the inter-exchange of information, facilities, resources among the catering outlets to enhance the overall visitors' experience.



## CONTRACT SCHEDULE 5

### Marking Scheme for Tender Evaluation

#### 4.2 Calculation of weighted technical score

The technical proposal of those tenders which meet all the essential requirements will be marked in Stage 3 technical assessment. There is a 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 3 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 3 technical assessment will be calculated in accordance with the following formula:

$$50 \quad \times \quad \frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark amongst the tenders which pass Stage 3 technical assessment}}$$

[Note: The weighted technical score of each conforming Tender will be rounded to the nearest two (2) decimal places. Figures with the values at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

Examples of calculating the weighted technical score and the rounding arrangements are given as follows -

Assuming there are three (3) Tenderers who have attained all passing standard scores in the technical assessment; Tenderer A gains the highest total mark of 80; Tenderer B gains a total mark of 75; and Tenderer C gains a total mark of 60. The weighted technical scores of the three (3) Tenderers are:

Tenderer A: 50  
 Tenderer B:  $50 \times 75/80 = 46.875$ ; and  
 Tenderer C:  $50 \times 60/80 = 37.50$

After they have been rounded to the nearest two (2) decimal places, the weighted technical score of Tenderers A, B and C will become 50, 46.88 and 37.50 respectively.]

Upon completion of the technical assessment in Stage 3, the price of those tenders will be evaluated in Stage 4 price assessment.

## CONTRACT SCHEDULE 5

### Marking Scheme for Tender Evaluation

#### 5. Stage 4 - Price Assessment

##### 5.1 Calculation of weighted price score

The price evaluation will proceed after completion of the technical assessment.

(i) The following two price marks will be used for calculating the weighted price score for Tenderers who have passed the technical assessment:

$$\text{Mark of Monthly Guaranteed Amount} = \frac{1}{2} \times \frac{\text{Monthly Guaranteed Amount of the tender being considered}}{\text{Highest Monthly Guaranteed Amount among all tenders which have passed the technical assessment in Stage 3}}$$

$$\text{Mark of Percentage of Monthly Gross Receipts} = \frac{1}{2} \times \frac{\text{Percentage of the tender being considered}}{\text{Highest Percentage offer among all tenders which have passed the technical assessment in Stage 3}}$$

$$\text{Total price mark} = \text{Mark of Monthly Guaranteed Amount} + \text{Mark of Percentage of Monthly Gross Receipts}$$

(ii) A weighted price score of 50 will be allocated to the tender with the highest price mark, while the weighted price score for the other tenders will be arrived at based on by the following formula:

$$\text{Weighted price score} = 50 \times \frac{\text{Total price mark of the tender being considered}}{\text{Highest total price mark among all tenders which have passed Stages 1 and 2 evaluation and the technical assessment in Stage 3}}$$

(iii) All calculations of the mark of monthly guaranteed amount, mark of percentage of monthly gross receipts, weighted price score in Stage 4 respectively will be rounded to the nearest two (2) decimal places. (i.e. the same method of rounding as shown in the Note under Clause 4.2)

## **CONTRACT SCHEDULE 5**

### **Marking Scheme for Tender Evaluation**

#### **6. Stage 5 - Calculation of Combined Score**

Combined Score = Weighted Quality Score + Weighted Price Score

The tender with the highest combined score will normally be recommended for acceptance subject to the requirement that the Government is satisfied that the recommended Tenderer is fully capable of undertaking the contract and is the most advantageous to the Government in accordance with the Tender provision.

**CONTRACT SCHEDULE 6**

**Information Required for Financial Vetting of Tenderer  
(put in “Technical Submission” envelope)**

In accordance with **Clause 9.1 of Terms of Tender**, Tenderers are required to provide the following information –

Audited accounts of the catering business for the past three (3) years. The accounts shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in the Hong Kong Special Administrative Region and the disclosure requirements of the Companies Ordinance (Cap. 622). Where the Tenderers are unincorporated entities such as sole-proprietors, partnerships, etc. and if audited accounts are not prepared, they can submit management accounts supplemented with past tax assessment records for the past three (3) years instead and the management accounts or unaudited accounts must be certified by the sole proprietor, partners, directors or certified public accountants:

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*(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 7****Licence Area for the Catering Outlets**

A total usable floor area of about 660 square metres for operating the catering outlets as delineated and shaded in **Annex D**.

**1. Restaurant****1.1 Usable Floor Area and Location**

An usable floor area of about 502 square metres as shown in **Annex D** comprising :

- 412 square metres (including dining area of about 378 square metres; toilets, store room and other miscellaneous area of about 34 square metres)
- 64 square metres (Kitchen) and 26 square metres (Food Preparation Area)

**1.2 Toilet Layout at Licence Area^**

- Male Toilet : 3 urinals, 2 cubicles and 3 wash basins
- Female Toilet : 2 cubicles and 3 wash basins
- Assessible Toilet: 1 cubicle and 1 wash basin

Restaurant	Serving Area	Kitchen (G/F)	Food Preparation Area (1/F)	Toilets	Store Room
Usable Floor Area: <b>502m<sup>2</sup></b>	<b>378 m<sup>2</sup></b>	<b>64 m<sup>2</sup></b>	<b>26 m<sup>2</sup></b>	<b>26 m<sup>2</sup></b>	<b>8 m<sup>2</sup></b>

Note: Bare shell toilets and disabled toilets are provided, so as to give the opportunity for the Contractor to match the atmosphere of the dining experience provide by the Contractor.

**2. Café****2.1 Usable Floor Area and Location**

An usable floor area of about 158 square metres as shown in **Annex D** comprising an indoor area of 60 square metres; and an outdoor dining area of about 98 square metres subject to the approval of the Government Representative.

**2.2 Toilet Layout at Licence Area^**

- Male Toilet : 1 urinal, 1 cubicle and 1 wash basin
- Female Toilet : 1 cubicle and 1 wash basin
- Assessible Toilet: 1 cubicle and 1 wash basin

Café	Serving Area		Toilets	Store Room
	Indoor	Outdoor		
Usable Floor Area: <b>158m<sup>2</sup></b>	<b>50 m<sup>2</sup></b>	<b>98 m<sup>2</sup></b>	<b>9 m<sup>2</sup></b>	<b>1 m<sup>2</sup></b>

(^ *Note: The Contractor shall be responsible for supply and installation of all sanitary fittings.*)

**CONTRACT SCHEDULE 7****Licence Area for the Catering Outlets**

Note: Bare shell toilets and disabled toilets are provided, so as to give the opportunity for the Contractor to match the atmosphere of the dining experience provide by the Contractor.

**3. Accessibility**

- An independent entrance from Tsim Sha Tsui waterfront
- An internal entrance for museum visitors from first floor of the Museum during Museum's opening hours
- Barrier free access

*(Note: The attached plans are approximates and for the purpose of identification and general reference only. The figures as to the respective areas of the Licence Area referred to in this Schedule are approximates and subject to final measurement. The layout of the Licence Area in the attached plans are also approximates and subject to final adjustment as may be shown in the final as-built plan(s) of the Licence Area. The Contractor is allowed to conduct Business for provision of other services at such other areas as the Government Representative at its absolute discretion may at any time and from time to time set aside.)*

**CONTRACT SCHEDULE 8****Technical Schedule****1. Electricity Supply**

- 1.1 The Contractor will be responsible for the application for his own meters (1 for Restaurant and 1 for Café) in the Main Switch Room near loading bay on ground floor and subsequent wiring from the MCCB boards in the Licence Area to the desired locations within the restaurant and café.
- 1.1.1 Restaurant with Kitchen:  
- A 300Amp 4 way TP&N MCCB board – “RES”, &  
- A 63Amp DP 8 way SP&N MCB board for lighting – “RESL”
- 1.1.2 Café:  
- A 200Amp 4 way TP&N MCCB board – “CAFÉ”, &  
- A 32Amp DP 8 way SP&N MCB board for lighting – “CAFÉL”, &  
- A 63Amp DP 8 way SP&N MCB board for power – “CAFÉP”
- 1.2 The contractor must engage a Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) to conduct electrical works and shall be responsible for all the costs involved. A copy of the Work Completion Certificate (WRI) attached with schematics and test reports should be submitted to the Government Representative for retention. All alteration works must be removed and all original provisions restored at the end of the Contract Period or sooner termination of the Contract.
- 1.3 The Licence Area must be lit in such a way that other building users will not be adversely affected by any glare or reflection.
- 1.4 The Contractor must take down all electrical alteration works and reinstate the original electrical works, light fittings provided by and to the satisfaction of the Government Representative at the Licence Area at the end of the Contract Period or sooner termination of the Contract.
- 1.5 The Contractor shall conduct periodic inspection, testing and certification on its electrical installations once every five (5) years, i.e. at least once within the in accordance with Electricity (Wiring) Regulation (Cap.406E). A copy of the endorsed Periodic Test Certificate (WR2) attached with schematics and test reports should be submitted to the Government Representative for retention.
- 1.6 All the electrical installation works to be carried out by the Contractor shall comply with the Building Energy Efficiency Ordinance (Cap.610).
- 1.7 The Contractor shall employ a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within 2 months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

**CONTRACT SCHEDULE 8****Technical Schedule**

1.8 The Contractor shall employ a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within 2 months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

**2. Air-conditioning and Kitchen Exhaust System**

2.1 The Contractor shall be responsible for supplying and installing of all ACMV equipment and air ducts.

2.2 Chilled water will be available and the Contractor shall be responsible for the consumption of this supply. Provisions for the Catering Outlets are as follows:

2.2.1 Restaurant:

- 1 pair of dia. 100mm chilled water pipes with flow meter for restaurant on first floor;

2.2.2 Café:

- 1 pair of dia. 50mm chilled water pipes with flow meter;

2.3 The Contractor shall connect the ventilation system in the kitchen area inside the Restaurant to the fresh air duct and exhaust air duct, which are terminated at the kitchen area. Provisions for the Catering Outlets are as follows:

2.3.1 Restaurant:

- 1 no. of 2,500x500mm and 1,250x1,000mm weatherproof louvre for seating area

2.3.2 Café:

- 2 nos. of 500x500mm weatherproof louvre for seating area, &

- 2 nos. of 500x500mm weatherproof louvre for toilets

2.3.3

The Contractor shall install additional air handling units, fan-coil units, or other air-conditioning equipment for provision of sufficient air-conditioning supply, if required, subject to the prior approval from the Government Representative;

2.3.4

The Contractor shall avoid the air-conditioning fittings causing nuisance, including but not limited to noise, which will affect the activities and the facilities of the Museum. The Government Representative is entitled to request the Contractor for prompt improvement;



**CONTRACT SCHEDULE 8****Technical Schedule****2.3.5**

The Contractor shall install a sufficient number of water scrubbers for the exhaust system of the Licence Area as appropriate. A 250L fiberglass water tank would be provided on ground floor for water scrubber;

**2.3.6**

The Contractor shall take down all air-conditioning and kitchen exhaust system alteration works provided by the Government Representative at the Licence Area and reinstate the original works to the satisfaction of the Government Representative at the end of the Contract Period or sooner termination of the Contract; and

**2.3.7**

The Contractor shall read this Clause in conjunction with **Clause 15 of Conditions of Contract**.

- 2.4 The Government Representative shall in no event whatsoever be held responsible for any failure or interruption of chilled water from any cause whatsoever or for any damage or loss (direct or indirect) whatsoever caused thereby.
- 2.5 All the air-conditioning installation works to be carried out by the Contractor shall comply with the Building Energy Efficiency Ordinance (Cap. 610).
- 2.6 The Contractor shall employ a qualified Registered Energy Assessor (REA) to obtain a Form of Compliance (FOC) and submit to the Electrical and Mechanical Services Department within 2 months after the completion of the major retrofitting works. A copy of the FOC certified by the REA shall be submitted to the Government Representative for retention.

**3. Gas**

- 3.1 Contractor will be responsible for the application of the gas meter. Gas Meter Room is near Kitchen on ground floor.
- 3.2 Town gas supply available in Kitchen on ground floor.  
- 80mm gas pipe terminated with dia. 80mm gate valve in Kitchen on ground floor and preparation areas on first floor.

**4. Water Supply and Drainage**

- 4.1 The Contractor shall be responsible for making application to the Water Supplies Department and the Government Representative for the installation of its own meter and the cost thereof for the fresh water supply (including sewage charges) to the Licence Area. Any alteration work for operational needs shall be approved by the Water Authority with the prior permission of the Government Representative.

**CONTRACT SCHEDULE 8****Technical Schedule**

- 4.2 The Contractor shall pay and discharge all deposits and charges in respect of water (including sewage charges) consumed by the Contractor on or in the Licence Area, charges for sewage services and all costs of installation of all meters in connection therewith.
- 4.3 The Contractor shall be responsible for applying and installing the water meters at Water Meter Room on ground floor near loading bay.
- 1 no. 15mm water meter for Café, &
  - 1 no. 40mm water meter for Restaurant and Kitchen, &
  - 1 no. 15mm water meter for hydro-vent water tank inside Kitchen on ground floor
- 4.4 Restaurant:
- 13 portable water points (for 6 sinks and 1 wash basin in Kitchen on ground floor, 2 wash basin in preparation area on first floor, 7 wash basins in toilets) , &
  - 8 flushing water points (for 5 water closets and 3 urinals in toilets), &
  - 1 no. of 250L fiberglass Hydro-vent water tank in Kitchen on ground floor
- 4.5 Café:
- 6 portable water points (for 2 sinks, 1 wash basin in café, 3 wash basins in toilets)
  - 4 flushing water points (for 3 water closets and 1 urinal in toilets)
- 4.6 Floor drain and grease traps are provided in related to the Licence Area. The Contractor is responsible for submission to the Licensing Section of the FEHD and the Government Representative for approval of any alteration works to the existing installations that it intends to suit the layout of the food preparation area of the Licence Area. All alteration works including but not limited to the raised flooring and surface channel shall be removed and all original provisions restored at the end of the Contract Period or sooner termination of the Contract.
- 4.7 The Contractor shall be responsible for cleansing and clearing of all the grease traps in related to the Licence Area for which the Contractor is liable on, at least, a daily basis and of all the drainage and sewerage pipes in the Licence Area for which the Contractor is liable at frequent intervals to the Government Representative's reasonable satisfaction to prevent choking and blockage of the installations, and to ensure that all water and liquids discharged from the Licence Area are free of grease. Where the Government Representative reasonably considers that hot or warm effluent can congeal and cause blockage within the drainage system, the Contractor shall forthwith on demand by the Government Representative undertake either an emulsifying or a neutralizing effect by using such equipment or by employing such contractor as may be approved or prescribed by the Government Representative.

**CONTRACT SCHEDULE 8****Technical Schedule**

- 4.8 The Contractor shall pay the Government on demand the cost incurred by the Government Representative in cleansing and clearing any of the drains, sewers and grease traps choked or blocked due to the act, default or negligence of the Contractor or any of its servants, agents, invitees, licensees or customers.

**5. Dumbwaiter**

In the Licence Area, there is one 100kg, 30m/min, window type dumbwaiter serving between the restaurant and café levels.

**6. Passenger Lift**

There is a 680kg, 9 persons, 1m/s, machine-room-less electric passenger/ accessible/ fireman's lift for transportation of patrons between the ground floor and the restaurant on first floor.

**7. Fire Services Installations**

If addition and alteration to the existing fire services installations is required, the Contractor shall be responsible for such works and the new installations must be fed from the existing system in the Licence Area to the satisfaction of the Government Representative and comply with any directions issued by the Government Representative or the Fire Services Department.

**8. Signage**

All signage shall not be erected without prior approval from the Government Representative. Any electrical works required for installation of the signage shall be carried out by a Registered Electrical Contractor.

**9. Toilet**

The Contractor shall be responsible for supply and installation of all sanitary fittings as stipulated in **Contract Schedule 7**. Any alternation works inside the lavatory of the Licence Area should not be undertaken unless prior approval is given by the Government Representative.

**10. Fitting Out Methods**

- 10.1 In conducting fitting-out works, the Contractor shall maintain the work place in a clean, safe and decent condition to the satisfaction of the Government Representative. The fitting-out works must be carried out in such a way that the public and other users of the Museum are protected from excessive risks, noise and dirt.

**CONTRACT SCHEDULE 8****Technical Schedule**

- 10.2 The works area is to be completely sealed off by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 10.3 The Government Representative must be informed before any welding work is carried out. Precautionary measures must be applied to the smoke detectors to prevent activating the Fire Alarm System unnecessarily.
- 10.4 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative. Prior approval by Government Representative is required for the designated material and debris storage area.
- 10.5 The Contractor shall, at its own cost, pay all required costs for the fitting-out works.
- 10.6 The fitting-out works should comply with the updated Barrier Free Access Design Manual.

**11. Working Hours for Fitting Out**

- 11.1 The noise level of all fitting-out works shall not affect the activities held in the Museum. The regulations issued by the Director of Environmental Protection shall be followed.
- 11.2 Fitting-out works which will cause nuisance, including but not limited to noise and smell, to the Museum's users should only be carried out at a mutually acceptable time. The Contractor is responsible to apply for permission from the Director of Environmental Protection if special arrangement is deemed necessary.
- 11.3 The Government Representative shall reserve its right to halt any fitting-out works undertaken by the Contractor at any time during the period of the fitting-out works if such works are deemed to have impaired or interrupted the operation or use of the Museum or the activities of the users of the Museum.
- 11.4 During the period of the fitting-out works, the Contractor shall only permit those Registered Workers with valid safety training certificates as defined and required under the Factories and Industrial Undertaking Ordinance (Cap. 59) and under the Construction Workers Registration Ordinance (Cap. 583) to carry out the works. The Contractor shall keep a register of daily attendance of all the workmen working on site for periodic inspection by the Government Representative.

**CONTRACT SCHEDULE 8****Technical Schedule****12. General**

- 12.1 The Contractor is responsible for designing, submitting for approval, and implementing the plan for obtaining a valid licence from the FEHD or other licensing authorities as appropriate. The Contractor should appoint an Authorized Person (AP) and/or Registered Structural Engineer (RSE) to implement the construction works in the Licence Area which shall fully comply with the Buildings Ordinance (Cap. 123) / Regulations and other relevant statutory requirements as well as the latest licensing requirements. The AP/RSE shall bear the full responsibility of his/her design, planning and supervision of the construction works. No part of the works may have any adverse effect, structurally or in any other ways, on the existing building.
- 12.2 The Contractor should undertake to implement all necessary improvement works in the Licence Area which do not comply with the Buildings Ordinance (Cap. 123) / Regulations and other relevant statutory requirements as well as the latest licensing requirements, at its own cost.
- 12.3 The Contractor's AP/RSE should advise on any improvement works which are necessary for the area(s) outside the Licence Area to meet the latest licensing requirements.
- 12.4 No claims should be allowed where the improvement works are necessary in either the Licence Area or outside the Licence Area, to comply with the Building Ordinance (Cap. 123) / Regulations and other relevant statutory requirements as well as the latest licensing requirements.
- 12.5 The repair and maintenance of all internal building elements, fixtures and fittings, including but not limited to plumbing and drainage pipe works, inside the Licence Area except the structure of the building should be the responsibility of and undertaken by the Contractor. The Contractor shall at all reasonable times with or without prior notice allow access by the Government Representative and/or its agent and/or contractor for inspection and/or maintenance of the Licence area or its adjoining area.
- 12.6 The Contractor shall at any time exercise due care for the fitting-out works which may result in any damage or loss of properties or injury to persons. The Contractor shall indemnify the Government Representative for any such claim from damage or loss of properties or injury to persons.
- 12.7 Demolition and alteration of structural elements of the Licence area are not allowed except with prior approval and consent from the Building Authority as well as the Government Representative.

**CONTRACT SCHEDULE 8**

**Technical Schedule**

12.8 The Contractor shall appoint adequate competent Safety Officers / Supervisors / representatives to ensure site safety for compliance with the relevant statutory requirements.

**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 Tender.**

To : The Chairman  
Tender Opening Committee, Government Logistics Department

If my/our Tender is accepted, I/we shall elect, pursuant to **Clause 7 of Conditions of Contract**, to deposit with the Government of the Hong Kong Special Administrative Region, within fourteen (14) days after the notification of award of Licence or at such time as shall be directed 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 Agreement –

- \* (a) In cash, or
- \* (b) In the form of a bank guarantee in the form attached at the Appendix to this Form of Tender and issued by a bank with a banking licence issued under Section 16 of the Banking Ordinance (Cap. 155) and approved by the Government Representative.

*\* Delete as appropriate. In the event that the Tenderer fails to select which method of providing the Security Deposit he 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*

**FORM OF BANK GUARANTEE**

HIS 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 Catering Outlets at the Hong Kong  
Museum of Art 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



**FORM OF BANK GUARANTEE**

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

**FORM OF BANK GUARANTEE**

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 three (3) 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, right and claim have actually been carried out, completed and discharged (as confirmed by the Government Representative in writing), or failing which 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

**FORM OF BANK GUARANTEE**

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, at the Leisure and Cultural Services Department of 9/F., 1 – 3 Pai Tau Street, LCS Headquarters, Shatin, New Territories, marked for the attention of the Director of Leisure and Cultural Services, facsimile number (+852) 2684 9634;
  - (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 \_\_\_\_\_.

**FORM OF BANK GUARANTEE**

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.

**ARTICLES OF AGREEMENT**

THIS ARTICLES OF 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 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.: LRQ/MA/CO/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 a notification of 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 notification of 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
  - (iii) Interpretation
  - (iv) Terms of Tender
  - (v) Conditions of Contract
  - (vi) Contract Schedules
  - (vii) Form of Security Deposit Election
  - (viii) Annexes

**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): \_\_\_\_\_

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**

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

- 1.1 The Hong Kong Museum of Art (the Museum) is located at the hub of Tsim Sha Tsui with fabulous view of the Victoria Harbour, and adjacent to the Hong Kong Cultural Centre and Hong Kong Space Museum. The museum has been undergoing major expansion and renovation since December 2015. When the current renovation is completed, the Museum will house twelve galleries in which new galleries on rooftop and in new Annex block with double height are added in the building. The galleries will gradually be opened from mid-2019 onwards. The Museum also comprises an open art corridor, a restaurant and café, a museum shop and other supporting facilities. A location map of the Museum is at **Annex B**.
- 1.2 The Museum curates Hong Kong's leading fine art collection. Professional curatorship offers visitors a unique view into the city's 16,000+ pieces of fine art. Core collections include Modern Art (Hong Kong Art), Chinese Painting and Calligraphy, Chinese Antiquities and Historical Painting, etc. With its newly renovated premises unveiled in mid-2019 in Tsim Sha Tsui, the Museum offers a brand new space that allows for an immersive visitor experience and world-class exhibitions. For details of the Museum, please browse to <http://hk.art.museum>

**2. Vision, Mission and Value of the Museum**

- 2.1 Opened in 1991, the Hong Kong Museum of Art (HKMA) is undergoing a major expansion and renovation with a view to strengthening its positioning as a premier art museum as well as enhancing its accessibility, visibility and connectivity with the revitalized Tsim Sha Tsui harbourfront. The vision, mission and value of the Museum are summarized as follows:

**2.2 Vision**

A leading art museum of excellence in the region. We connect and share with everyone using the language of art to foster creativity.

**2.3 Mission**

- 2.3.1 Embody the mission of cultural legacy research
- 2.3.2 Make our collection accessible and in so doing provide a major platform for promoting artistic talent locally and globally
- 2.3.3 Deliver emotive, inspiring and enjoyable experiences in artistic appreciation and lifelong learning
- 2.3.4 Strive for close partnership with the art community and all social sectors to achieve the objective of vitalizing the cultural lives of people through means of innovation and creativity



## 2.4 Values

- 2.4.1 Professionalism
- 2.4.2 Whole-person learning
- 2.4.3 Passion
- 2.4.4 Openness
- 2.4.5 Sharing
- 2.4.6 Connectivity

## 3. Catering Outlets at the Museum

- 3.1 To serve the growing needs of local and overseas visitors, sponsors and VIP guests, appropriate catering service should be provided in the Museum for enhancing the vibrancy and branding of the Museum. The style and quality of the proposed catering service of the restaurant and café should adequately commensurate with unique image, positioning and ambiance of the Museum.
- 3.2 The restaurant is situated on first floor of the new Museum. It has an usable floor area of about 502m<sup>2</sup> of indoor serving area, food preparation area & kitchen. Besides the direct entrance within the Museum on first floor, it also has an independent entrance from Tsim Sha Tsui waterfront. The café of about 158m<sup>2</sup> is situated on ground floor comprising an indoor area of 60 m<sup>2</sup> and an outdoor dining area of 98m<sup>2</sup>. Both the restaurant and the café offer a stunning panoramic view of the harbour. Illustrative photos for the locations of the catering outlet are at **Annex C**.
- 3.3 The restaurant should provide a classy and quality lunch and dining service and experience primarily meeting the needs of the Museum patrons and other users, sponsors and VIPs visiting the Museum on business. The restaurant on first floor should blend in with the Museum environment to serve and reflect its iconic image. The ground floor café is planned to provide light refreshments and drinks and a brief resting place to the museum visitors though customers might not be restricted to museum visitors. Preferably, it is expected that the restaurant and the café should preferably also serve to complement the image of the Museum rather than simply chain stores of any common brands in the market.

## 4. Opening Hours

- 4.1 The opening hours of the Catering Outlets, although negotiable, should at least include those of the Museum's opening hours which may be changed by the Government Representative when needed. The opening hours of the Hong Kong Museum of Art are as follows:

Monday to Friday (except Thursdays)	: 10am - 6pm
Saturday, Sunday and public holidays	: 10am - 7pm
Christmas Eve and Chinese New Year's Eve	: 10am - 5pm

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

- 4.2 The Catering Outlets must be open daily except on the aforesaid closed days of the Museum. However, as the restaurant and café are provided with independent accesses and utilities supplies, they can be, subject to the prior agreement of the Government, opened for business for longer hours than those of the Museum.
- 4.3 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.
- 4.4 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 shelters 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.

## 5. Catering Service at 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 is obliged to provide catering or refreshment services at the areas of the Museum to serve the users, presenters and participants of such functions and activities upon request.

## 6. Attendance of the Museum

Number of visitors for the blockbuster exhibitions in 2010-2014 are listed below for reference.

Calendar Year	Total Attendance	Blockbuster Exhibition
2010	326,417	N/A
2011	305,507	N/A
2012	615,926	<ul style="list-style-type: none"> <li>· <i>Fantastic Creatures from the British Museum</i> (20/1/2012 - 11/4/2012)</li> <li>· <i>Secret Garden of Emperor Qianlong</i> (22/6/2012 - 14/10/2012)</li> <li>· <i>Andy Warhol: 15 Minutes Eternal</i> (16/12/2012 - 1/4/2013)</li> </ul>
2013	535,326	
2014	438,047	<ul style="list-style-type: none"> <li>· <i>Ju Ming - Sculpting the Living World</i> (28/2/2014 - 15/6/2014)</li> <li>· <i>Paris • Chinese Painting: Legacy of the 20th Century Chinese Masters</i> (20/6/2014 - 21/9/2014)</li> </ul>

(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 his own independent assessment for preparation of his tender submission.)

## 7. Visitor Profile from the Opinion Surveys on Museum Services of LCSD (2013) of the Hong Kong Museum of Art

### 7.1 Gender

7.1.1 Male: 42.9%

7.1.2 Female: 57.1%

### 7.2 Age Groups

Age	8-11	12-19	20-39	40-59	60 or above	Total*
%	0.9%	24.7%	36.5%	26.4%	11.4%	99.9%

\* Due to rounding, some of descriptive figures may not add up to 100%.

### 7.3 Origin of Visitors

7.3.1. Local Residents: 58.3%

7.3.2. Visitors from the Mainland: 23.0%

7.3.3. Visitors from other Asian countries: 7.0%

7.3.4. Visitors from Europe: 5.4%

7.3.5. Visitors from other countries/regions: 6.3%

### 7.4 Education Level

Education level	Primary or below	Secondary/ matriculation	Tertiary or above
%	4.6%	39.2%	56.2%

Annex B

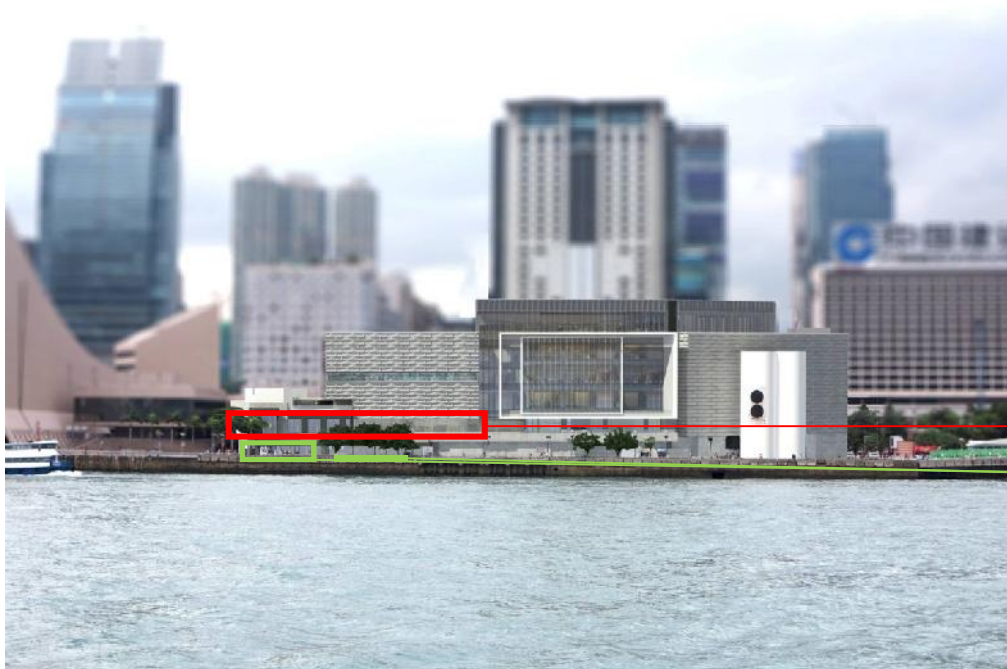
Location Map of the Hong Kong Museum of Art



(Not to scale)

**Annex C**

**Illustrative photos of Hong Kong Museum of Art (after renovation)**



**Front view**

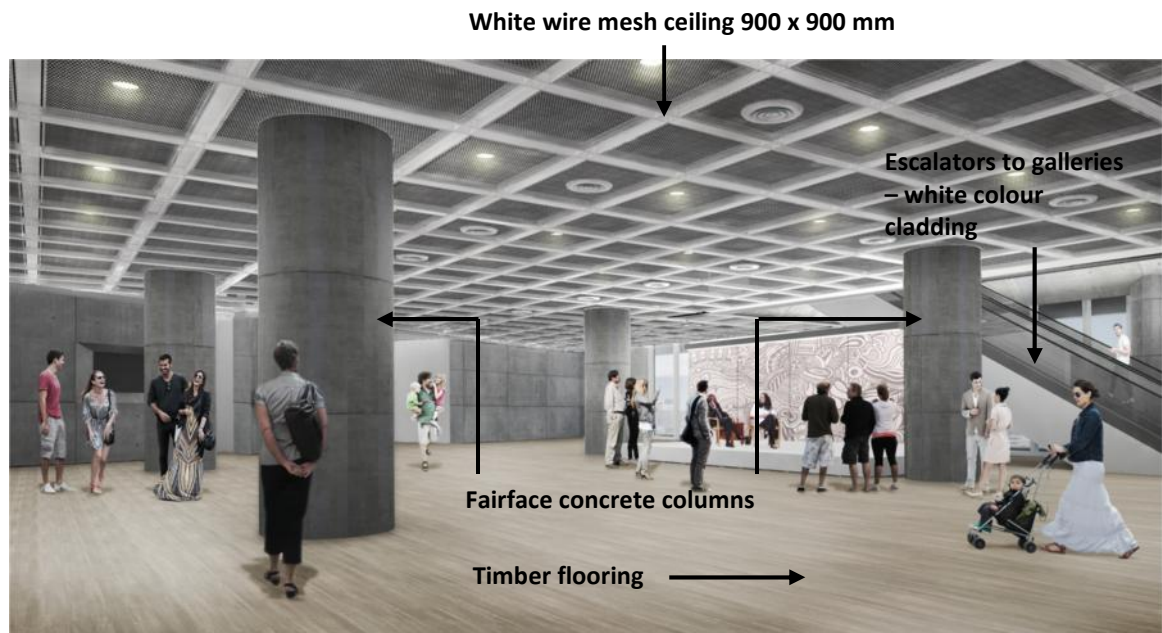


**Side view**

(Note: Photos for reference only and the Government gives no warranty as to the accuracy, completeness or future change of such information.)

Annex C

**Illustrative photos of Hong Kong Museum of Art (after renovation)**



**1/F Reception / Multi-function Hall**



**1/F Escalator Lobby**

**Annex C**

**Illustrative photos of Hong Kong Museum of Art (after renovation)**



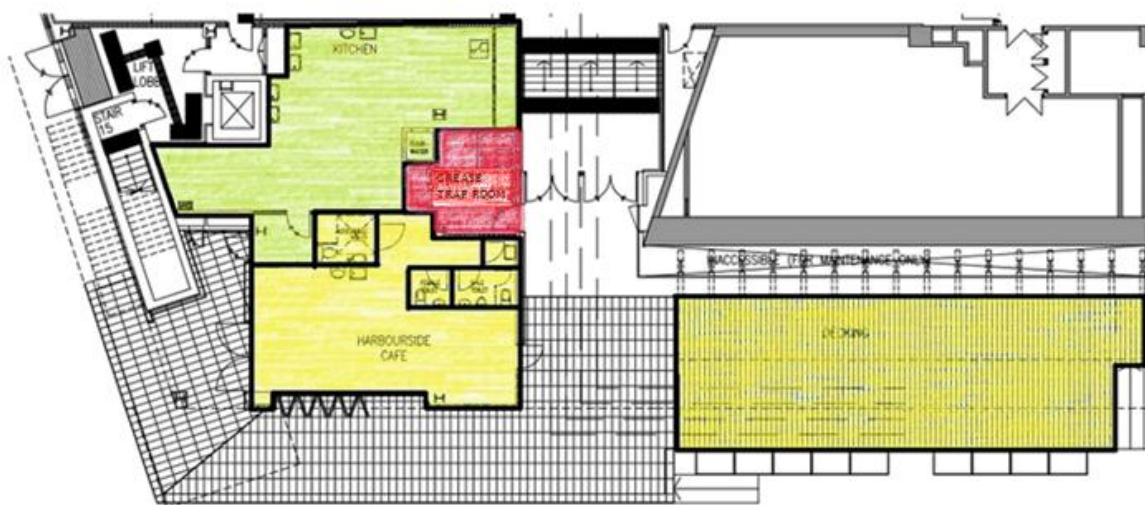
**G/F Annex Gallery**

**Annex D**

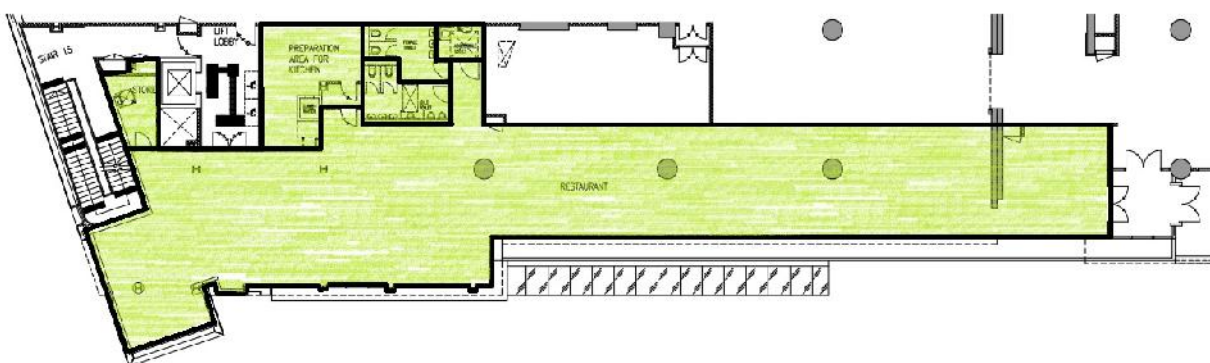
**Floor Plan of the Licence Area**

**Restaurant & Café**

The area as shaded green (Restaurant) and shaded yellow (Café) in the following layout plan is the Licence Area. The area as shaded red (Grease Trap Room) shall be maintained by the Contractor.



**Layout Plan for Restaurant and Café – Ground Floor**




**Layout Plan for Restaurant – First Floor**

(Not to scale)



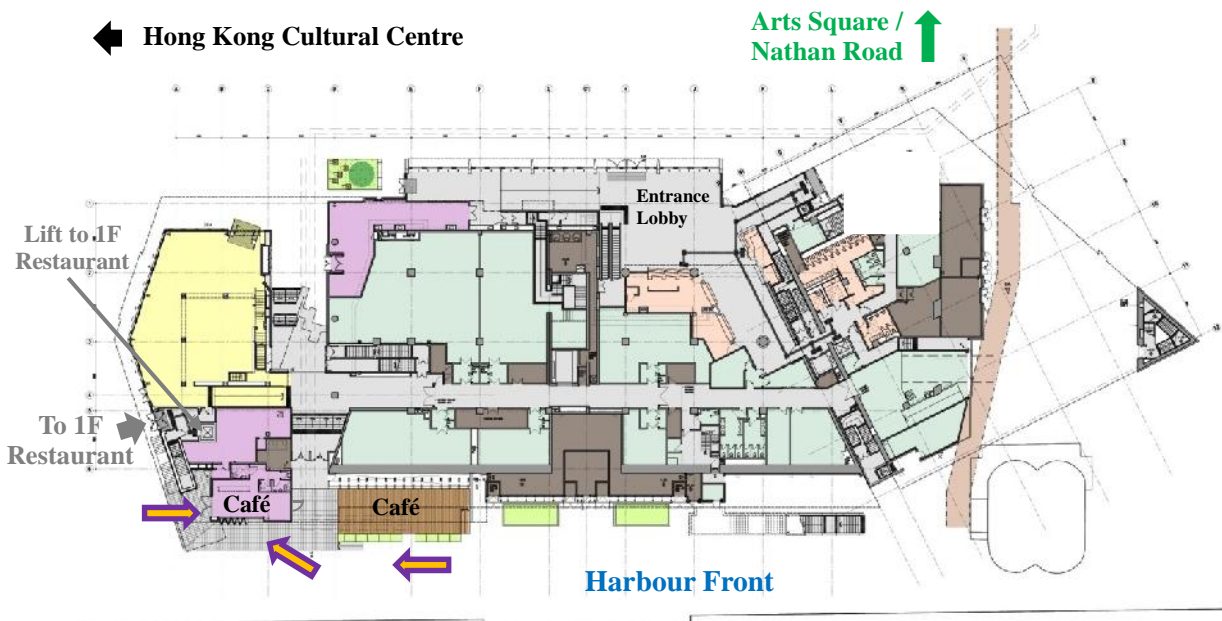
### Floor Plan of the Licence Area

#### Restaurant & Café

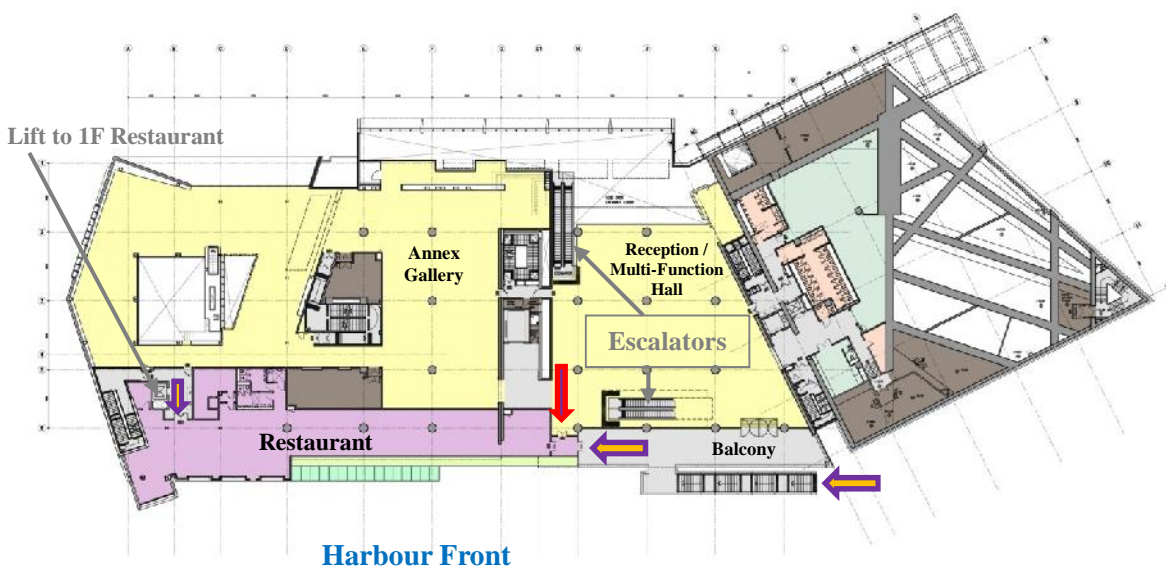
 Customer flow during catering outlets operating hours

 Customer flow during Museum opening hours

#### Licence Area at G/F



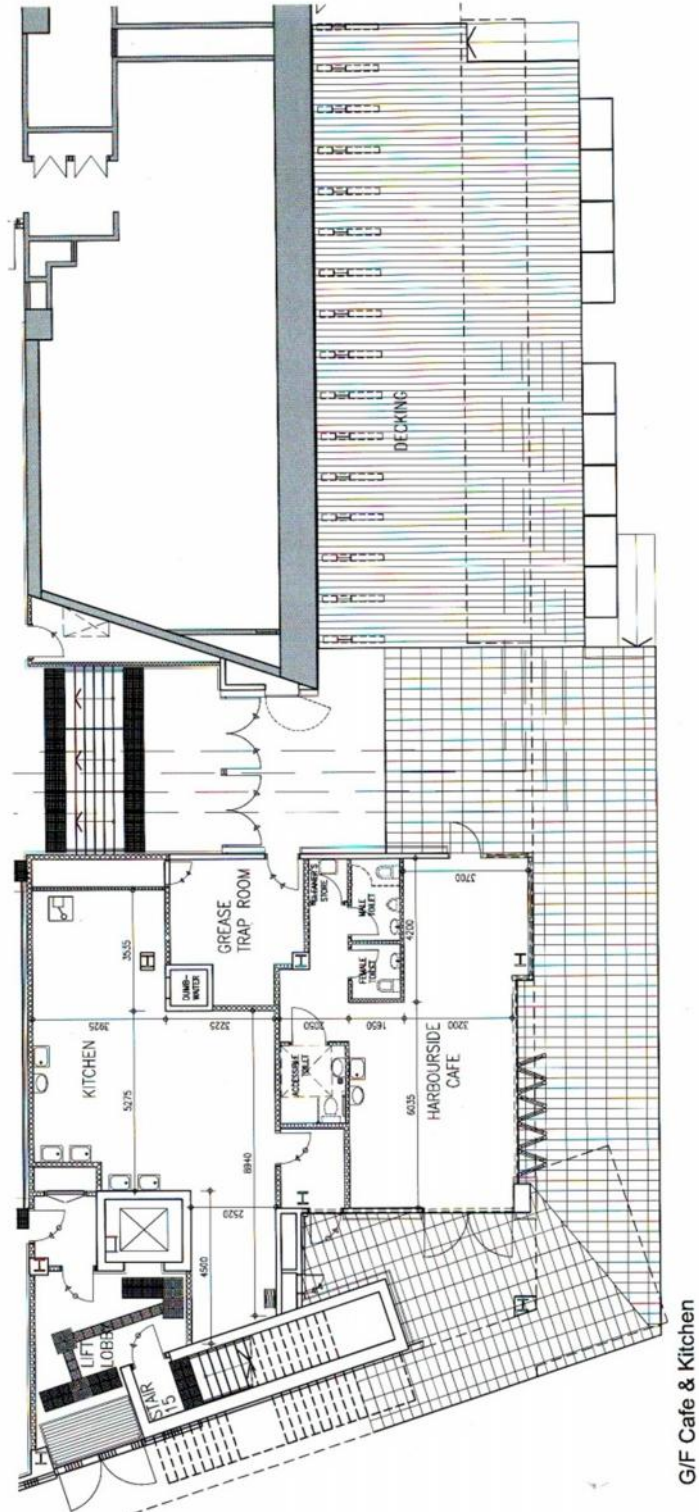
#### Licence Area at 1/F



Annex D

Floor Plan of the Licence Area

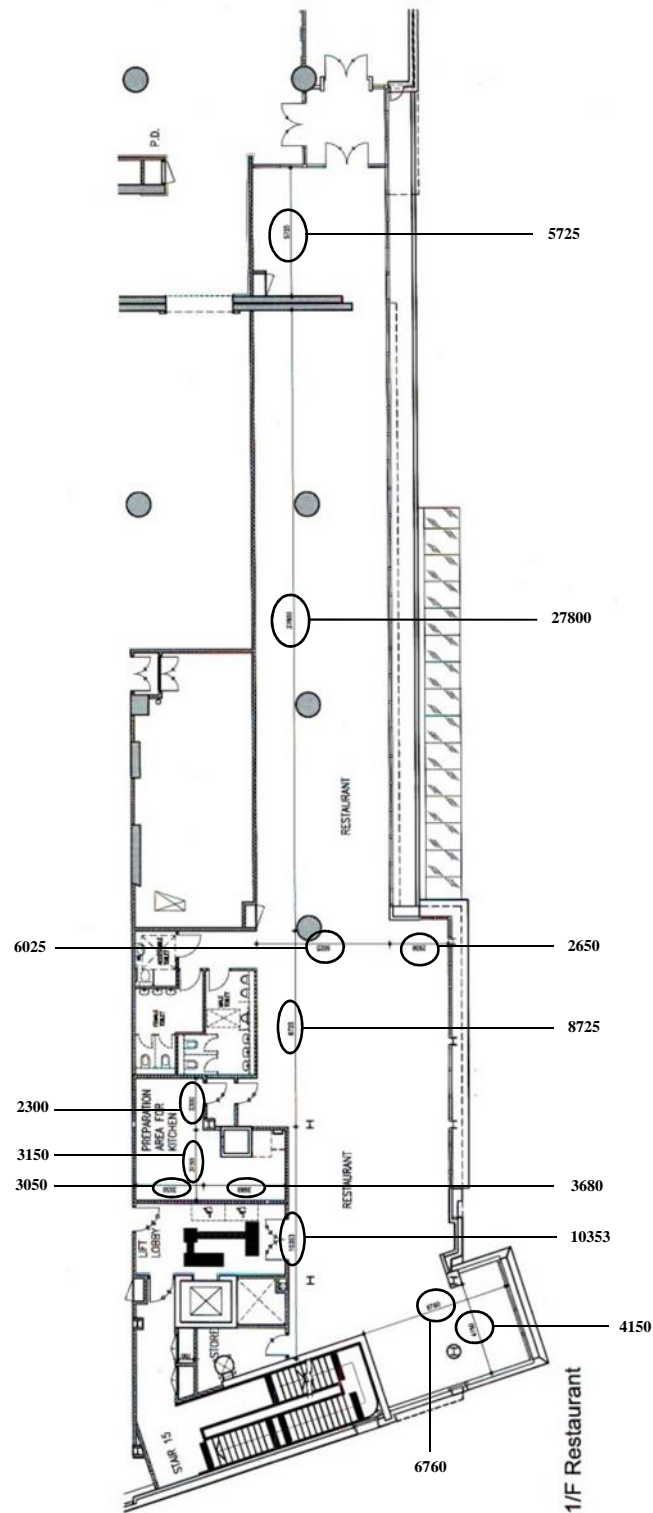
Layout Plan for Restaurant and Café – Ground Floor  
(with dimensions)



**Annex D**

**Floor Plan of the Licence Area**

**Layout Plan for Restaurant – First Floor**  
**(with dimensions)**



(Not to scale)

**Annex E**

**Enrolment Form for the Tender Briefing Session  
on 13 April 2018 (Friday) at 10:30 a.m.**  
(Venue: AC2, 4/F, Administration Building, Hong Kong Cultural Centre)

To: Assistant Manager, Hong Kong Museum of Art  
Email: amahm@lcsd.gov.hk  
Fax No. : 2723 7666

**Tender Ref.: LRQ/MA/CO/2018**  
**Tender for the Grant of Licence to Operate the Catering Outlets  
at the Hong Kong Museum of Art**  
(Please return this form by fax on or before 3:00pm on 11 April 2018)

Name of Company: \_\_\_\_\_ (Chinese)  
\_\_\_\_\_ (English)

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

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Detail of the Organization/Company:

Contact Person \_\_\_\_\_  
Post \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_  
Fax \_\_\_\_\_  
E-mail \_\_\_\_\_

**The Tenderer is advised to bring along the tender document to the Tender Briefing Session.**