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本署檔號 OUR REF: (48) L/M in LCSD CS MH 1-30/10/2
本函檔號 YOUR REF:

30 May 2016

To: All Bidders

Dear Sir/Madam,

Addendum

Quotation for the Grant of Licence to Operate the Light Refreshment Cafeteria at the
Hong Kong Museum of Coastal Defence
(Quotation Ref.: LRT/HKMCD/01/2016)

In view of some enquiries were received on the above quotation issued on 12 May 2016 regarding the sliding door at the licence area and the museum development after the renovation period as specified in **clause 25.3** of the Conditions of Contract. Please take note of our reply as follows for your additional information:

Items	Our Reply
1	For the sliding door of the museum cafe, professionals of Architectural Services Department will arrange to conduct the assessment for the sake of public safety. The on-site assessment would be feasible on condition that we obtain the consent from the existing museum cafe operator and minimize the impact to the visitors.
2	The revamping project of the museum would include enriching the content of the indoor and outdoor exhibitions; improving the presentation and the museum facilities as well. It is aimed to give the visitors a better understanding the history of military and coastal defence of Hong Kong in a local and global perspectives. In addition, a series of educational programmes, family activities and workshop etc will be organized with different stakeholders to supplement the exhibition. The museum will be served as a facilitator for the visitors to learn about the artefacts and relics on display and gain an insight into this fascinating part of Hong Kong's history under the relaxed environment.

Please note that the above additional information shall form part of the quotation documents.

Apart from the above change(s), other terms and conditions will remain unchanged. The quotation should be submitted on or before **12:00 noon, 2 June 2016 (Thu)** by hand or by post

(no fax submission would be accepted) with marking the “Quotation Ref.: LRT/HKMCD/01/2016 – Quotation for the Grant of Licence to Operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence” on a sealed envelope to **The Chairman of Quotation Opening Committee, Leisure and Cultural Services Department**, 3/F, Hong Kong Museum of History, 100 Chatham Road South, Tsim Sha Tsui, Kowloon.

In case you have already submitted an offer and wish to revise your quotation, you can do so by submitting your revised quotation in a sealed plain envelope, addressed to **The Chairman of Quotation Opening Committee, Leisure and Cultural Services Department** and place it into the Quotation box situated at (3/F, Hong Kong Museum of History, 100 Chatham Road South, Tsim Sha Tsui, Kowloon) before 12:00 noon on 2 June 2016 (closing time).

Yours faithfully,



A handwritten signature in black ink, appearing to be "L", is written above the printed name.

(LEE Ka-lok)

for Director of Leisure and Cultural Services

QUOTATION FORM

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

QUOTATION FOR THE GRANT OF LICENCE TO OPERATE
THE LIGHT REFRESHMENT CAFETERIA AT THE
HONG KONG MUSEUM OF COASTAL DEFENCE

(Quotation Ref. : LRT/HKMCD/01/2016)

LODGING OF QUOTATION

To be acceptable as a quotation, this form, properly completed in triplicate and enclosed together with other documents of this quotation as listed in Paragraph 4.1 and 4.2 of the Terms of Quotation, which must also be properly completed as required in triplicate, in a sealed plain envelope

marked "Quotation for the grant of licence to operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence" and addressed to the Chairman, Leisure & Cultural Services Department Quotation Opening Committee, must be deposited in/mailed to the Leisure & Cultural Services Department Quotation Box situated at 3/F, Hong Kong Museum of History, 100 Chatham Road South, Tsim Sha Tsui, Kowloon

before 12:00 noon (time) on 2 June 2016 (date). Late quotations will not be accepted.

Dated this 12 May 2016

CHENG Chun-tak
Government Representative

Part I — Quotation Documents

These documents under the quotation reference
consist of three (3) complete sets of :

LRT/HKMCD/01/2016

- (a) Quotation Form (Parts I to II);
- (b) Interpretation (Sheets 1 to 6);
- (c) Terms of Quotation (Sheets 7 to 34);
- (d) Conditions of Contract (Sheets 35 to 83);
- (e) Contract Schedules 1 to 8 (Sheets 84 to 117);
- (f) Form of Security Deposit Election (Sheet 118)
- (g) Checklist before submitting Quotation (Sheet 119 to 121)
- (h) Draft Articles of Agreement (Sheet 122 to 124);
- (i) Annexes A to F (Sheets 125 to 142); and
- (j) Quotation Labels 1 to 3.

Part II — Offer to be Bound

1. Having read the Quotation 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 Conditions of Contract and pay the Monthly Licence Fee as quoted by me/us in the Contract Schedule 1, subject to and in accordance with the terms and conditions stipulated in the Quotation Documents.
3. I/We have read Paragraph 3 Quotation Preparation and Paragraph 5 Quotation Submission of the Terms of Quotation and certify that the particulars given by me/us in completing the Quotation Documents are true and correct.

(Note : (A) The Service Provider **MUST** complete the following parts of the Quotation Documents :

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

(B) The Bidder **shall** submit necessary documents such as documentary evidence of relevant experience as required in Contract Schedule 4 together with photocopies of other relevant documents required under the terms and conditions of this Quotation.)

4. I/We have read Paragraph 25 Restrictions on Assignment and Sub-contracting of the Terms of Quotation. Without prejudice to the generality of Paragraphs 1 and 2 above, I/We agree to be bound by the terms and conditions as stipulated therein.

5. In case the Bidder is a company/firm/corporation, the Bidder is required to complete 5(a) to 5(c). In case the Bidder is not a sole proprietor, the Bidder 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 / corporation / firm is

A letter certifying the person who signs this quotation is an authorized person to sign contracts/agreements on behalf of the said company/firm is required to be attached to this Quotation 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 Quotation 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 Bidder/Authorized Representative * _____
 (Name in block letters)

Signature of Bidder/Authorized Representative * _____
 (Signature) (with firm/company chop, if applicable)

Address(es) of person(s) signing : _____

Date : _____

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

* Delete as appropriate.

INTERPRETATION

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

‘Approved Food Items for Light Refreshment Restaurant’ means any combination of the food items in any one group of the **List of Approved Food Items for Light Refreshment Restaurant**, subject to such changes as prescribed by the Director of Food and Environmental Hygiene under the Light Refreshment Restaurant Licence.

‘Bidder’ means a legal person or firm or company which has submitted Quotation in response to this Invitation to Quotation.

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

‘conditional acceptance of quotation’ has the meaning given to it in **Paragraph 14.2** of the **Terms of Quotation**.

‘Contract’ means the contract between the Government and the Contractor comprising the following parts of the Quotation Documents and other items as specified below:

- (a) the “Articles of Agreement”;
- (b) the “Terms of Quotation”;
- (c) the “Contract Schedules” (or “Schedules”) in the form as appearing in the Quotation Documents and those which were submitted by the Contractor as part of its Quotation, and accepted by the Government Representative;
- (d) the “Conditions of Contract” containing a merged set of General and Special conditions of contract;
- (e) the “Annexes” A to F;
- (f) all other schedules, plans, drawings and other documents which form part of the Contractor’s Quotation 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 Quotation, 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 Quotation Documents and the Contract by their respective titles as appearing in quotation marks above.

References to “the Contract” or “this Contract” shall mean the same Contract as defined above.

‘Contractor’	means the Bidder whose quotation to operate the Business at the Licence Area is accepted by the Government Representative.
‘Contract Period’	means the period specified in Clause 2 of the Conditions of Contract .
‘Contractor Responsible Group’	has the meaning given to the term in Clause 36 of the Conditions of Contract .
‘Disabled Employees’	Means the employees who hold a valid “Registration Card for People with Disabilities”
‘Free Decoration Period’	means the maximum three months 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.
‘Government Provisions’	all items belonging to the Government specified in Contract Schedules 7 and such other Government property (moveable or immovable) which are from time to time made available to the Contractor for use in connection with the Business or in the Licence Area.
‘Government Representative’	means the Director of Leisure and Cultural Services Department or any public officer of LCSD acting on her behalf for the purpose of the Contract.
‘Hong Kong’	means the Hong Kong Special Administrative Region of the People’s Republic of China.
‘Inspection Officer’	means the officer appointed by the Government Representative for the purpose of inspecting the Business carried out by the Contractor under the Contract.

‘Invitation to Quotation’	means the invitation issued by the Government Representative inviting quotations for the Contract on the terms set out in the Quotation Documents.
‘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.
‘LCSD’	means The Leisure and Cultural Services Department.
‘Licence Area’	means the areas for operating Light Refreshment Cafeteria as more particularly described in Annex C (i) and the areas for placing vending machine as more particularly described in Annex C (ii) .
‘Light Refreshment Cafeteria’	means the light refreshment cafeteria to be operated in the Licence Area more particularly identified in the floor plan in Annex C (i) .
‘Monthly Licence Fee’	means the monthly licence fee quoted by the successful bidder in Contract Schedule 1 .
‘Original Quotation Closing Date’	means the date specified in the Quotation Form as the date for submission of quotation notwithstanding any extension.
‘party’	means a party to this Contract.
‘Person’	includes any body of persons, corporate or unincorporated; and “legal person” means any person which has the capacity to contract.
‘Prescribed Foods and Beverages’	means (a) the list of items of food and beverages for sale at the Light Refreshment Cafeteria as listed in Contract Schedule 8 ; and (b) other items approved by the Government Representative in writing in advance.
‘Quotation (upper or lower case)’	means a quotation submitted by a Bidder in response to this Invitation to Quotation.
‘Quotation Closing Date’	means the date specified in the Quotation Form as the latest date by which quotations must be lodged as the same may be extended.

‘Quotation Documents’		means the documents as specified in Paragraph 1 of the Terms of Quotation .
‘Quotation Period’	Validity	means the period of time as described in Paragraph 10 of the Terms of Quotation during which the quotation is to remain open.
‘Requisite Permits’		has the meaning given to it in Clause 9.1 of the Conditions of Contract .
‘Security Deposit’		means the deposit which the Contractor deposits with the Government Representative in accordance with Clause 7 of the Conditions of Contract for the due and proper performance of the Contract.
‘Venue’		means the Hong Kong Museum of Coastal Defence, located at 175 Tung Hei Road, Shau Kei Wan, Hong Kong, as indicated in Annex 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 context 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 unincorporate (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 Quotation Documents or the Contract;

- (d) references to a document shall:
 - i. include all schedules, appendices, annexures and other materials attached to such document; and
 - ii. mean the same as from time to time amended or supplemented in accordance with the terms of the Quotation Documents or the Contract;
- (e) references to “Bidder” 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 Quotation are to a paragraph in the Terms of Quotation; 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 Quotation Documents shall bear such meaning whenever it appears in the same and other parts of the Quotation 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 (March through September) and 0900-1700 hours (October through February);
- (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 were 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 were 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 Interpretation the whole;
- (q)
- (r)

- (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 Quotation 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 Quotation 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 (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- 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 any public officer.
- 2.3 All rights and powers of the Government under the Contract may be exercised by the Government Representative.
- 2.4 Unless otherwise provided for in the Quotation Documents, all quotations and payments shall be made in Hong Kong dollars.

PART 1
TERMS OF QUOTATION

<u>Content</u>	<u>Sheet No.</u>
1. Quotation Documents	8
2. Invitation to Quotation.....	9
3. Quotation Preparation	9
4. Contents of the Quotation	10
5. Quotation Submission.....	11
6. Essential Requirements and Information to be Submitted	12
7. Marking Scheme for the Assessment of Quotation.....	13
8. Monthly Licence Fee	14
9. Information of the Bidder	15
10. Quotations to Remain Open.....	15
11. Selection of Quotation	16
12. Basis of Acceptance	16
13. Negotiation.....	17
14. Award of the Contract.....	17
15. Counter-proposals	18
16. Request for Information.....	19
17. Bidder's Commitment	19
18. Government Discretion.....	20
19. Cancellation of the Invitation to Quotation	23
20. Undisclosed Agency	24
21. Consent to Disclosure	24
22. Personal Data Provided.....	25
23. Commencement Date of the Contract Period	25
24. Licence and / or Certificate.....	26
25. Restrictions on Assignment and Sub-contracting	26
26. Security Deposit.....	26
27. Employment of Disabled Employee	27
28. Free Decoration Period	27
29. State of Premises	27
30. Quotation Documents of the Unsuccessful Bidder.....	27
31. Costs of Preparation of Quotation	27
32. Performance Monitoring.....	28
33. New Information.....	28
34. Quotation Addenda	28
35. Disclaimer	28
36. Offering Gratuities.....	29
37. Authentication of Documents	29
38. Communication with the Government.....	30
39. Bidder's Enquiries	30
40. Quotation Briefing Session / Site Visit	31
41. Licence to Use the Quotation Documents	31
42. Anti-collusion	32
43. Complaints about Quotation Process or Contract Awards.....	33
44. Survival.....	34

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

PART 1
TERMS OF QUOTATION

ALL BIDDERS ARE ADVISED TO READ THE QUOTATION 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.

1. Quotation Documents

The Quotation Documents identified as **LRT/HKMCD/01/2016** consist of a complete set of:

- (a) Quotation Form (Parts I to II);
- (b) Interpretation (Sheets 1 to 6);
- (c) Terms of Quotation (Sheets 7 to 34);
- (d) Conditions of Contract (Sheets 35 to 83);
- (e) Contract Schedules (Sheets 84 to 117);
- (f) Form of Security Deposit Election (Sheet 118);
- (g) Checklist before Submitting Quotation (Sheets 119 to 121);
- (h) Draft Articles of Agreement (Sheet 122 to 124); and
- (i) Annexes A to F (Sheets 125 to 142).
- (j) Quotation Label 1 (Price Submission), Quotation Label 2 (Technical Submission) & Quotation Label 3 (Complete Quotation Submission);

2. **Invitation to Quotation**

Quotations are invited for the grant of licence to operate the Light Refreshment Cafeteria at the Licence Area at the Hong Kong Museum of Coastal Defence for a Contract Period of forty-eight (48) months, inclusive of the Free Decoration Period of not more than three (3) months, with the option of extension for another twenty-four (24) months, on such terms and conditions as set out in these Terms of Quotation, Conditions of Contract, Contract Schedules and Annexes. General information of the Hong Kong Museum of Coastal Defence and its Light Refreshment Cafeteria is at **Annex A**. The Conditions of Contract contain a merged set of general and special conditions of contract.

3. **Quotation Preparation**

3.1 All Quotation Documents shall be completed and submitted in **TRIPlicate** (**i.e. one original and two photocopies**) and put in **two envelopes** (as more particularly described in **Paragraph 5**) in the manner stipulated under 'Lodging of Quotation of the Quotation Form'.

3.2 Quotations shall be written in English or Chinese and in ink or typescript with the necessary information provided including documentary evidence, which are necessary for quotation evaluation.

3.3 Bidders shall complete the following parts of the Quotation Documents and provide all information they are required to submit in the Contract Schedules at the time of submission of the quotation –

- | | | | |
|-----|---|---|---|
| (a) | Quotation Form
(Cover Page) | – | Part II - 'Offer to be Bound'
(in technical submission envelope) |
| (b) | Contract Schedule 1
(Sheet 85 to 86) | – | Monthly Licence Fee
(in price submission envelope) |
| (c) | Contract Schedule 2
(Sheet 87 to 88) | – | List of Proposed Commodities for Sale at the Licence Area
(in technical submission envelope) |
| (d) | Contract Schedule 3
(Sheet 89 to 95) | – | Information of the Bidder
(in technical submission envelope) |
| (e) | Contract Schedule 4
(Sheet 96 to 102) | – | Experience and Business Plans
(in technical submission envelope) |

(f) Form of Security Deposit Election

(Sheet 111) (in technical submission envelope without any indication on the Monthly Licence Fee)

(g) Checklist before submitting Quotation

(Sheet 112 to 114) (in technical submission envelope)

- 3.4 When completing the Quotation Documents, any alteration by the Bidder 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 Bidder in ink.
- 3.5 **Quotations will be assessed according to the evaluation criteria as stipulated in Contract Schedule 5. Failure to submit in full the required information specified in this clause will affect the marks scored in quotation evaluation and lead to failure in the quotation assessment.**

4. Contents of the Quotation

- 4.1 Each Bidder shall submit the following information / items in its Quotation before 12:00 noon on the Quotation Closing Date:
- (a) the “Offer to be Bound” of the Quotation Form duly signed by the Bidder;
 - (b) the quotation for the Monthly Licence Fee as required in **Contract Schedule 1**; and
 - (c) **Contract Schedules 2, 3 and 4.**

Otherwise, the Bidder’s Quotation will not be considered further.

- 4.2 In addition to **Paragraph 4.1** above, each Bidder is required to provide all other information / supporting documents requested in the Quotation Documents or relevant to its Quotation, including but not limited to those information supporting documents and proposals required in the Quotation Documents listed in **Paragraphs 4.1(c)** and **Form of Security Deposit Election.**

The Bidder should provide all the above items specified in this **Paragraph 4.2** at the same time when it submits its Quotation. In the event that the Government does not exercise its discretion to request any of these items after the Quotation Closing Date but that they are found missing, the Quotation will be evaluated on an as is basis. In the event that the Government does exercise its discretion to request for these items, but it is still not provided upon the request by the Government, the Quotation will not be considered further.

- 4.3 To ensure completeness and consistency of the information provided, potential Bidders should complete the “**Checklist before Submitting Quotations**” and submit the completed checklist together with other documents / information required for the quotation.

5. **Quotation Submission**

- 5.1 Bidders are required to submit a Price Submission and a Technical Submission. Bidders should note that a marking scheme (as more particularly described in **Paragraph 7** hereof and **Contract Schedule 5**) will be used for the assessment of their quotations. Completed Quotation Documents shall be submitted separately in two sealed envelopes, the outside of which **should not** bear any indication which may relate the quotation to the Bidder, as set out under (a) and (b) below -

- (a) “The Price Submission” (the original copy and two (2) copies of **Contract Schedule 1** - Monthly Licence Fee, fully completed, signed, stamped with the Bidder’s chop and dated), must be enclosed in a sealed envelope clearly marked “Quotation Ref.: LRT/HKMCD/01/2016 – Quotation for the Grant of Licence to Operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence – Price Submission” (Quotation 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 quotation as stipulated in **Contract Schedules 2, 3 and 4** as well as the **Quotation Form, Form of Security Deposit Election and Checklist before submitting Quotation**, fully completed, signed, stamped with the Bidder’s chop and dated), must be enclosed in another sealed envelope clearly marked “Quotation Ref.: LRT/HKMCD/01/2016 - Quotation for the Grant of Licence to Operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence – Technical Submission” (Quotation Label 2 provided), **but without any indication on the Monthly Licence Fee.**
- 5.2 Completed Quotation Documents shall be addressed to **The Chairman of Quotation Opening Committee, Leisure and Cultural Services Department** by using of the Quotation Label 3 provided. They must be deposited in / mailed to the Leisure and Cultural Services Department Quotation Box located at the Third floor, Hong Kong Museum of History, 100 Chatham Road South, Tsim Sha Tsui, Kowloon before 12:00 noon (Hong Kong time) on the Quotation Closing Date. Late quotations will not be considered.

- 5.3 In case a black rainstorm warning signal is issued or Tropical Cyclone Warning signal No. 8 or above is hoisted between 9:00 am (Hong Kong time) and 12:00 noon (Hong Kong time) on the Quotation Closing Date, the closing time will be extended to 12:00 noon (Hong Kong time) on the next working day when the black rainstorm warning signal or Tropical Cyclone Warning signal No. 8 or above is cancelled any time before 9:00 am (Hong Kong time) on that day.
- 5.4 The Government Representative will not accept any quotation submitted by methods other than as indicated under this paragraph.

6. Essential Requirement and Information to be Submitted

- 6.1 The essential requirement(s) for this quotation are listed below. In the event that a **Bidder fails to meet the essential requirement(s), its quotation will not be considered further.** Quotations from those Bidders meeting all the essential requirements will be evaluated further according to the Marking Scheme specified in **Contract Schedule 5.**

Bidders must have at least **THREE (3) CONTINUOUS** years of experience in managing and operating catering business with seating accommodation and table services¹ within the past ten (10) years prior to the Original Quotation Closing Date; and

- 6.2 The following are further explanatory notes concerning the scope and interpretation of the essential requirements set out in **Paragraph 6.1** above:
- (i) The Original Quotation Closing Date will be the cut-off date for calculation of years of experience.
 - (ii) The overlapping periods of the claimed experience will only be counted once when counting the length of cumulative years of experience.
 - (iii) Reference to “catering business” or “catering outlet” shall mean a physical premises for the supply in the course of a retail business of food and beverages (which shall be cooked and/or prepared and/or reprocessed at a food preparation room located in the same premises) to customers for immediate consumption at that premises but excluding the supply through an automatic vending machine.
 - (iv) Each Bidder is required to submit documentary proof such as a copy of lease agreement for the catering business showing the agreement description, the agreement commencement and expiry dates and the scope of the catering business to substantiate its claim of experience. Failure to submit the documentary proof within the time stipulated by the Government will result in the offer not being considered further.

¹ “Seating accommodation and table services” is defined as a catering entity that offers customers with tables and seats for dining at the location provided.

- (v) Only the Bidder's experience in the name of the Bidder will be counted..
- (vi) Experience gained outside Hong Kong is not counted.
- (vii) If the Bidder is a partnership or unincorporated joint venture or incorporated joint venture, only the years of joint venture experience gained by the partnership or unincorporated joint venture or incorporated joint venture, but not the individual experience of the participants to the partnership or unincorporated joint venture or shareholders of incorporated joint venture, will be counted.

6.3 Failure to comply with the requirements specified in this **Clause 6** will result in the quotation not being considered further.

7. Marking Scheme for the Assessment of Quotations

7.1 Before submitting their quotations, Bidders are advised to note the marking scheme set out in **Contract Schedule 5** for assessment of their quotations. Under the marking scheme, the quality and the price weightings will carry 50% and 50% respectively. Offers failing to meet any of the essential requirements in Stage 1 (viz the same as repeated in **Paragraph 6.1**) will not be considered further. Those meeting all the essential requirements will be marked in Stage 2 technical assessment according to the Marking Scheme and price assessment on the Monthly Licence Fee offered by Bidders at Stage 3. The weighting of the quality score in Stage 2 and the price score in Stage 3 is 50:50.

7.2 The overall passing mark for technical assessment is 25 out of 75 of total marks before applying the 50% weighting for the quality score. Bidders failing to obtain the passing mark of 15 for Criteria 1 or the passing mark of 5 for Criteria 2.1 or the passing mark of 3 for Criteria 3 or the passing mark of 1 for any one of the Criteria 4 to 5 or the overall passing mark of 25 will not be considered further.

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

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

- 7.4 A maximum score of 50 will be allocated to the Bidder with the highest offer of the Monthly Licence Fee which has passed the technical assessment while the score for other Bidders who have passed the technical assessment will be calculated based on the following formula:

$$\text{Weighted Price Score} = 50 \times \frac{\text{Monthly Licence Fee offered by the Bidder}}{\text{Highest offer of the Monthly Licence Fee amongst the offers has passed stage 2 technical assessment}}$$

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

8. Monthly Licence Fee

- 8.1 In return for the right to operate the catering business at the Licence Area, apart from in respect of the decoration period not exceeding three (3) months from the commencement date of the Contract Period 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 Bidders in **Contract Schedule 1**. Such Monthly Licence Fee shall be denominated in Hong Kong dollars.
- 8.2 The Monthly Licence Fee quoted by Bidders shall remain valid and binding throughout the duration of the Contract Period. No request for price variation will be considered. A Bidder who proposes any price variation mechanism may be disqualified and its Quotation will not be considered further.
- 8.3 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.
- 8.4 Bidders should make certain the Monthly Licence Fee quoted is accurate before submitting their Quotations. Without prejudice to the powers of the Government to seek clarification or to negotiate with a Bidder, the Government 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.
- 8.5 Should it be found on examination by the Government after the Quotation Closing Date that a Bidder has made unintentional errors in the figures stated in its Quotation, the Government, may but is not obliged, seek clarification from the Bidder or request the Bidder to confirm in writing whether it is prepared to abide by what the Government considers should be the correct figures.

9. **Information of the Bidder**

Each Bidder shall provide the following details relating to itself in Contract Schedule:

- (a) name and address;
- (b) date of incorporation or establishment;
- (c) shareholders / partners / proprietor of the Bidder and their percentage of ownership;
- (d) names and correspondence addresses of the following:
 - (i) managing director / partners;
 - (ii) other directors; and
 - (iii) sole proprietor;
- (e) a copy of a valid Business Registration Certificate and copies of other documents evidencing its business status;
- (f) where the Bidder is a 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 or equivalent documents where the Bidder is not a company incorporated under the laws of Hong Kong; and;
- (g) where the Bidder is a partnership or joint venture, a copy of the partnership agreement or joint venture agreement.

10. **Quotations to Remain Open**

- 10.1 It is an essential requirement of this Invitation to Quotation that a Quotation shall remain valid and open for acceptance for a period not less than one hundred and fifty (150) days from the Quotation Closing Date (“Quotation Validity Period”).
- 10.2 A Bidder who counter-proposes a shorter Quotation Validity Period than the period specified in **Paragraph 10.1** will be disqualified and its Quotation will not be considered further.
- 10.3 Without prejudice to the Government’s rights and claims vis-à-vis any Bidder who withdraws its Quotation during the Quotation Validity Period, due notice will be taken of any withdrawal during the Quotation Validity Period and without prejudice to any other rights and remedies that the Government may have against the Bidder, such withdrawal may prejudice the Bidder’s future status as a Government supplier or Bidder.

11. Selection of Quotation

Without prejudice to other rights and powers of the Government not to consider a Quotation under other applicable provisions in the Quotation Documents, the evaluation of Quotations will be conducted as follows:

(a) **Completeness Check**

A completeness check will be conducted by checking whether the Quotation has been submitted in accordance with the requirements of the Quotation Documents. If a Bidder fails to submit any of the items stipulated in **Paragraph 4.1** before 12:00 noon on the Quotation Closing Date, its Quotation will **NOT** be considered further. For those items stipulated in **Paragraph 4.2**, in the event that the Government does not exercise its discretion to request any of these items after the Quotation Closing Date but that they are found missing, the Quotation will be evaluated on an as is basis. In the event that the Government does exercise its discretion to request for these items, but it is still not provided upon the request by the Government, the Quotation will not be considered further.

(b) **Assessment of Compliance with Essential Requirements**

- (i) A Quotation will be checked for its compliance with the essential requirement as specified in **Paragraph 6.1**.
- (ii) A Bidder which fails to meet any of the essential requirements will not be considered further.

(c) **Technical and Price Assessment**

- (i) Bidders will be evaluated according to the selection criteria and the marking scheme specified in **Contract Schedule 5** and the Monthly Licence Fee offered.
- (ii) A Bidder which has passed the completeness check with highest combined weighted score (weighted quality plus weighted price scores) will normally be selected.

12. Basis of Acceptance

- 12.1 The Government Representative is not bound to accept the Quotation with the highest combined score or any quotation. Without prejudice to the generality of the foregoing, in case the Monthly Licence Fee offered by the Bidder 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 Service Provider.

- 12.2 Bidders should note that their offers will be considered on a complete overall basis. Bidders with only partial offers (for example to operate the Licence Area to sell food only or beverages only) 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 Quotation Documents, the Contract will normally be awarded to the Bidder who passes the completeness check and assessment as mentioned in **Paragraph 11** with the highest combined weighted score (weighted quality plus weighted price scores) as determined in accordance with **Contract Schedule 5**, or the Bidder whom the Government considers to be fully capable of performing the Contract .

13. Negotiation

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

14. Award of the Contract

- 14.1 Unless and until the Articles of Agreement have been executed by both the successful Bidder and the Government Representative, there is to be no contract between the Government Representative and any Bidder.
- 14.2 The successful Bidder will be notified within the Quotation Validity Period (such notification is referred to as “conditional acceptance of quotation”). Upon receipt of such conditional acceptance of quotation, the successful Bidder shall be obliged to fulfil 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 Security Deposit as required under **Paragraph 26**;
 - (b) a document known as “Letter of Requirements” issued by the Director of Food and Environmental Hygiene (“DFEH”) setting out the requirements to be fulfilled before a Provisional Licence may be issued as referred to in **Clause 9.2** of the **Conditions of Contract** or a Full Licence may be issued as referred to in **Clause 9.4** of the **Conditions of Contract**;
 - (c) the payment of the Monthly Licence Fee in respect of the fourth month of the Contract Period; and
 - (d) such other conditions as the Government Representative may stipulate in the conditional acceptance of quotation.

- 14.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Bidder 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 Bidder by signing the Articles of Agreement. The Contract will incorporate, to the extent accepted by the Government, the Quotation submitted by the successful Bidder (subject to such other changes as the Government may stipulate in exercise of its powers under the Quotation Documents or such changes as the parties may agree). If a Bidder fails to fulfil 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 Bidder”), the conditional acceptance of quotation will become void and be of no further force.
- 14.4 The Government will disqualify the defaulting Bidder, and it may, but is not obliged to, award the Contract to another Bidder. Without prejudice to other rights and remedies of the Government, the defaulting Bidder shall be responsible for the difference in the total Monthly Licence Fee submitted by that defaulting Bidder and the eventual Contractor who will be awarded the Contract whether appointed pursuant to this Invitation to Quotation exercise or another subsequent invitation exercise. On the other hand, notwithstanding anything in the Quotation Documents or in the conditional acceptance of quotation 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 Bidder even if the Bidder has received a conditional notification of acceptance and fulfilled all the conditions specified in **Paragraph 14.2**.
- 14.5 Bidders who do not receive any Quotation Acceptance within the Quotation Validity Period shall assume that their quotations have not been accepted.

15. Counter-proposals

- 15.1 The Bidder must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Quotation Documents; and (b) all provisions in the Quotation Documents concerning the preparation, submission and evaluation of Quotations and award of Contract.
- 15.2 If a Bidder 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 Quotation 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 Bidder may make any counter-proposals to any such requirement. Counter-proposals from a Bidder in contravention of this restriction will entitle the Government to disqualify the Bidder unless the Government in its absolute discretion elects to negotiate with the Bidder concerning such counter-proposal. Following such negotiation, if the Bidder is still unwilling to withdraw such counter-proposal, or otherwise revise it on terms acceptable to the Government, the Government may still disqualify the Bidder. Any accepted counter-proposal following from a successful negotiation shall be deemed as part of the Bidder's Quotation and forms part of the Contract and shall be binding on the Bidder if the Contract is eventually awarded to it
- 15.4 Without prejudice to **Paragraph 15.1**, any Bidder who submits a quotation that directly or indirectly attempts to preclude or limit the effect of any provisions of these Terms of Quotation may also be disqualified

16. Request for Information

In the event that the Government determines that:

- (a) clarification in relation to any Quotation 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 Quotation;

it may, but is not obliged to, request the Bidder concerned to make the necessary clarification, or submit the required document or information. The Bidder shall thereafter within seven (7) 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 quotation 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 Quotation 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 quotation further or may proceed to evaluate the quotation on an "as is" basis.

17. Bidder's Commitment

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

18. Government Discretion

- 18.1 Notwithstanding anything to the contrary in these Quotation Documents, the Government reserves the right to disqualify a Bidder 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 Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder or its related person;
 - (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Quotation or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Quotation;
 - (c) in the event of a claim or allegation made any time during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award or the Government having grounds to believe that any thing(s), service(s) or material(s) supplied or previously supplied by the Bidder or its related person infringe or will infringe any Intellectual Property Rights of any person;
 - (d) any time during the twenty-four (24) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract, the Bidder or a related person of the Bidder 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 Bidder or a related person or a director or management staff of the Bidder has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) 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 Quotation Closing Date and thereafter up to the time of Contract award;
 - (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 Quotation Closing Date and thereafter up to the time of Contract award that adversely reflects on or casts doubt on the commercial integrity of the Bidder or a related person or a director or management staff of the Bidder; or

- (g) any failure of the Bidder or its related person to pay taxes to the Government during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award.

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 Bidder shall provide in **Contract Schedule 3** at the time of submission of its Quotation (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) 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 Bidder 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 relevant sub-paragraph in **Paragraph 18.1**, the Bidder shall provide a statement to that effect by completing the relevant part of the **Contract Schedule 3** at the time of submission of its Quotation. 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 Bidder or from other source and take into account all information about:

- (a) the Bidder 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 Bidder (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 Bidder (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 Bidder 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 Bidder pursuant to **Paragraph 16**. If the Bidder has submitted false, inaccurate or incomplete information, the Government may disqualify the Bidder pursuant to **Paragraph 18.1(b)** above.
- 18.6 In providing the information required under **Paragraphs 18.2** and **18.3** above, the Bidder may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim or allegation, or Contract Default, any professional misconduct or acts or omissions as the case may be, does not cast doubt on the fitness, propriety or capability of the Bidder to perform the Contract to be awarded in this Invitation to Quotation.
- 18.7 If the Bidder is a company, the expression "related person" of the Bidder 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 Bidder ("majority shareholder"); or

- (b) a holding company or a subsidiary of the Bidder; or
- (c) a holding company or a subsidiary of a majority shareholder of the Bidder; or
- (d) a company in which a majority shareholder (being an individual) of the Bidder 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 (Chapter 622 of the Laws of Hong Kong).

18.8 If the Bidder is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Bidder (if it is a partnership); or
- (b) the spouse, parent, child, brother or sister of the Bidder, and, in deducing such a relationship, an adopted child shall be deemed to be a child 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 Bidder or any partner of the Bidder 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 Bidder or of a related person include persons who were in such capacity at such time of the incident referred to in any of **Paragraphs 18.1(c), 18.1(d), 18.1(e), 18.1(f), or 18.1(g)**.

19. Cancellation of the Invitation to Quotation

19.1 Notwithstanding anything to the contrary in the Quotation Documents, if it is in the public interest to do so, (a) the Government reserves the right to cancel this Invitation to Quotation, and not award the Contract; or (b) reconduct the evaluation specified in **Paragraph 11** to identify the successful Bidder notwithstanding the issue of any conditional acceptance of quotation under **Paragraph 14.2** to the same or another Bidder.

19.2 After cancellation pursuant to **Paragraph 19.1(a)** above, if and when it considers fit, the Government reserves the right to re-issue an Invitation to Quotation on such terms and conditions as the Government considers appropriate.

20. Undisclosed Agency

The person who signs a quotation as Bidder 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 its 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 Bidder) without any further reference to or consent from the successful Bidder or any other Bidder, the Quotation Documents, particulars (including the nature and quantity) of the Business to be provided by the successful Bidder, the date of the award, the name and address of the successful Bidder, and the total Monthly Licence Fee.

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 (Chapter 1 of the Laws of Hong Kong) 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 Bidder, with the prior written consent of that Bidder.

22. Personal Data Provided

- 22.1 All personal data provided in a Quotation will be used by the Government for the purposes of the Invitation to Quotation and all other purposes arising from or incidental to it (including for the purposes of quotation evaluation, the award of the Contract and resolution of any dispute arising from this Invitation to Quotation). In the case of the successful Bidder, 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 Quotation, a Bidder is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Quotation, 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 and 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, and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Quotation.
- 22.4 Enquiries concerning the personal data collected by means of the quotation, 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 2.4** 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 and / or Certificate

The award of Contract to a Bidder is conditional on the Bidder's obtaining the Letter of Requirements from DFEH in accordance with **Paragraph 14.2(b)**. Bidders 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 Quotation 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 quotation will only be accepted from any Bidder who shall occupy the Licence Area for the operation of the Business by that Bidder. 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 right 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 thirty (30) 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 Annex F, and the bank guarantor shall be approved by the Government Representative and in accordance with **Clause 7** of the **Conditions of Contract**. Bidders are therefore required to state their option in the **Form of Security Deposit Election**.
- 26.2 In the event that a Bidder fails to elect the method of paying a Security Deposit in the Form of Security Deposit Election, it will be assumed that the Bidder will pay the Security Deposit by way of cash in accordance with **Clause 7** of the **Conditions of Contract**.

27. Employment of Disabled Employee

Bidders should note that, pursuant to Clause 19.1 of the Conditions of Contract, the successful Bidder should employ such number of Disabled Employees which at any time during the Contract Period constitutes no less than 50% of the number of all employees employed to run the Business.

28. Free Decoration Period

The successful Bidder may, upon the commencement of the Contract Period, be allowed a decoration period of not exceeding three (3) months from the commencement date of the Contract Period for fitting out the Licence Area more particularly specified in **Clause 2** of the **Conditions of Contract**. No Licence fee will be payable during the period in the manner as specified in **Clause 5.2** of the **Condition of Contract** but the successful Bidder shall pay and bear all outgoings and charges, including but not limited to water charges, electricity charges and rates, in respect of the Licence Area. Notwithstanding the aforementioned, the Licence fee shall be immediately payable on a pro-rata basis in accordance with the Monthly Licence Fee if the successful Bidder commences Business or any part thereof during the Free Decoration Period.

29. State of Premises

Bidders are strongly advised to visit the Licence Area before submitting the quotations and the successful Bidder 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 day of the Contract Period).

30. Quotation Documents of the Unsuccessful Bidder

Quotation Documents of unsuccessful Bidders will be destroyed three (3) months after the Contract has been awarded and the Articles of Agreement signed by the successful Bidder and the Government Representative.

31. Costs of Preparation of Quotation

Each Bidder shall submit its quotation 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 Bidder in connection with the preparation or submission of its quotation 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 Bidder, whether before or after the Quotation Closing Date.

32. Performance Monitoring

Where a Bidder is awarded the Contract, its subsequent performance will be monitored and will be taken into account to determine whether the Government will exercise the option to extend under **Clause 2.2** of the **Conditions of Contract** and / or when its future tenders or quotations exercises are evaluated.

33. New Information

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

34. Quotation Addenda

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

34.2 Quotation documents downloaded from the website of Leisure and Cultural Services Department may be subject to updating and notwithstanding **Paragraph 34.1**, it is the responsibility for Bidders to check for any latest updates or addendum to the Quotation Documents online before the quotation closing time. These addenda shall form a part of the Quotation Documents and shall take priority over the documents previously issued. Should potential Bidders would like to be informed of any updates or addendum to the Quotation Documents, they should let the Department to have their email addresses for contact.

35. Disclaimer

35.1 The Bidder should study all attachments to the Quotation Documents (including the Annexes, and Contract Schedules) carefully before submitting their quotations. The Bidder should note that all information and statistics provided by the Government and the Government Representative in connection with this quotation are for reference only.

- 35.2 Forecast or estimation and all other information, statistics and forecast set out in the Quotation Documents or any information or clarification provided from time to time or given at the briefing session (collectively “briefings”), are provided purely for the Bidder’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 Quotation 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.
- 35.3 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 Bidder arising from the use of, or reliance on, any information, statistics or forecast provided in the Quotation 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 Bidder or do not recoup the investment cost incurred or by any margin.

36. Offering Gratuities

The Bidder 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 of the Laws of Hong Kong to any public officer or employee of the Government. Any breach of or non-compliance with this Paragraph by the Bidder shall, without affecting the Bidder’s liability for such breach or non-compliance, invalidate its quotation, and if the Contract has been awarded to the Bidder, the Government Representative shall be entitled to immediately terminate the Contract under the **Clause 42.1** of the **Conditions of Contract**.

37. Authentication of Documents

By submitting a quotation in response to the Invitation to Quotation, each Bidder authorizes the Government to obtain from

- (a) any person whose particulars are set out in the quotation submitted by the Bidder, and

- (b) any issuing body of any of the certificates or documentary evidence required in the Quotation Documents, all information which the Government considers appropriate and relevant to the evaluation of the quotation including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Bidder. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Bidder represents that such consent has been duly obtained.

38. Communication with the Government

- 38.1 All communications given or made by the Government Representative or a Bidder in relation to the Invitation to Quotation 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 Bidder, require the Bidder to send or deliver a written communication by post or facsimile only. The Bidder should note that the Government Representative will not accept the use of a postal box as the Bidder's correspondence address for any purpose whether before or after the award of the Contract.
- 38.2 All communications in relation to the Invitation to Quotation shall be conducted directly between the Government Representative and the Bidder.
- 38.3 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 Bidder 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 Bidder or prospective Bidder to rely on such statement. No such statement shall form part of the Quotation Documents or alter, negate or constitute a waiver of any provision of the Quotation Documents.

39. Bidder's Enquiries

- 39.1 Any enquiries concerning this Quotation Documents up to the date of lodging his quotation with the Government Representative shall be in writing and submitted to Assistant Curator I, Hong Kong Museum of Coastal Defence, 175 Tung Hei Road, Shau Kei Wan, Hong Kong or fax at (852) 2569 1637.
- 39.2 After lodging the quotation with the Government, the Bidder shall not attempt to initiate any contact, whether direct or indirect, with the Government Representative on his quotation or the Quotation Documents. The Government Representative shall have the sole right to initiate any such further contact and all such contacts and any replies of the Bidder thereto shall be in writing or formally documented in writing.

40. Quotation Briefing Session / Site Visit

- 40.1 Bidders are invited to attend a quotation briefing / site visit session to be held by the Government Representative on **19 May 2016 (Thursday) at 11:00 a.m. at the Hong Kong Museum of Coastal Defence, 175 Tung Hei Road, Shau Kei Wan, Hong Kong** before submitting their quotations in order to acquaint themselves with the requirements of the Government Representative.
- 40.2 Each Bidder may send no more than two (2) representatives to attend the quotation briefing session / site visit.
- 40.3 Bidders are required to fill in the “Enrolment Form for Quotation Briefing Session” of **Annex E** and send it by fax to Assistant Curator I, Hong Kong Museum of Coastal Defence at (852) 2569 1637 before 3:00 p.m. on 18 May 2016 (Wednesday) for registration.

41. Licence to Use the Quotation Documents

- 41.1 A Quotation once submitted will become the property of the Government. Quotations of unsuccessful Bidders may be destroyed in accordance with **Paragraph 30**. In consideration of the Government considering its Quotation, without prejudice to all other rights and powers of the Government under the Quotation Documents (including in particular its right to disclose information in the Quotation) and under the Contract, each Bidder 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 Quotation for the purposes of quotation 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 Quotation (or any part thereof) under any applicable law, including the laws of Hong Kong.
- 41.2 The Bidder 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 Bidder is not empowered to grant licences pursuant to **Sub-paragraph 41.1** above and any restrictions whatsoever affecting the use thereof.
- 41.3 The Bidder 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 the licence under **Paragraph 41.1**.

- 41.4 The Bidder hereby waives and undertakes to procure at its own costs and expense all authors including his employees, sub-contractors and agents to waive all moral rights (whether past, present or future) in all materials Bidder comprised in the Quotation, 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.
- 41.5 The Bidder shall at his own costs and expense do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Government to give full effect to this **Paragraph 41** and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 41.6 By submitting a quotation, the Bidder represents and warrants that none of the materials comprised in the Quotation submitted infringes the Intellectual Property Rights of any person.
- 41.7 The Bidder shall indemnify the Government, the Government Representative, their respective assigns, successors-in-title, and authorized users from and against everything stated in **Clause 41.2(a) to (c)** of the **Conditions of Contract** in the event that the exercise by any of them of the rights set out in **Paragraph 41** above infringes or is alleged to infringe the Intellectual Property Rights of any person.

42. Anti-collusion

- 42.1 By submitting a quotation, the Bidder represents and warrants that in relation to the quotation :
- (a) it has not communicated and will not communicate to any person other than the Government the amount of the Monthly Licence Fee ("quotation price");
 - (b) it has not fixed and will not fix the amount of any quotation 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 quotation; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the quotation process.

- 42.2 In the event that the Bidder is in breach of any of the representations and / or warranties in **Sub-paragraph 42.1** above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the quotation;
 - (b) if the Government has accepted the quotation, withdraw its acceptance of the quotation; and
 - (c) if the Government has entered into the contract with the Bidder, terminate the contract.
- 42.3 The Bidder 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 **Sub-paragraph 42.1** above
- 42.4 Any breach of any of the representations and / or warranties in **Sub-paragraph 42.1** above by the Bidder may prejudice the Bidder's future standing as a Government contractor.
- 42.5 **Sub-paragraph 42.1** shall have no application to the Bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the quotation price, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of quotation submission.
- 42.6 The rights of the Government under **Sub-paragraphs 42.2 to 42.4** above are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

43. Complaints about Quotation Process or Contract Awards

The quotation process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Bidder 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 quotation boards for consideration if it relates to the quotation system or procedures followed. Bidder shall lodge the complaint before disposal of documents of unsuccessful Bidders which shall be within three (3) months upon the award of Contract.

44. Survival

All rights powers and licences of the Government under the Quotation 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 Quotation.

PART 2
CONDITIONS OF CONTRACT

<u>Content</u>	<u>Sheet No.</u>
1. Nature of Contract.....	37
2. Contract Period	37
3. The obligation to carry on the Business.....	38
4. Conduct of Business.....	39
5. Payment of Monthly Licence Fee	40
6. Non-exclusive Right of the Contractor	41
7. Security Deposit.....	42
8. Restriction on Assignment and Sub-contracting.....	44
9. Licence, Permit and / or Certificate	44
10. Warranties and Representations	46
11. Fitting Out.....	47
12. Government Premises and Government Property.....	49
13. Operation of the Business	51
14. Other Covenants.....	52
15. Premises Hygiene and Safety.....	53
16. Outgoings	54
17. Air-conditioning.....	54
18. Cleansing, Collection and Disposal of Refuse and Litter	55
19. On-site Personnel	57
20. Water Supply	59
21. Discharge of Waste Water	60
22. Electricity Supply.....	60
23. Arrangement during Epidemic Illness	61
24. Suspension of the Business	61
25. Temporary Closure of the Licence Area	62
26. Stock and Sale of Food Commodities.....	63
27. Food Hygiene	65
28. Display of Prices	65
29. Erection of Structure	66
30. Watchman.....	66
31. Store of Dangerous Goods and Prohibited Goods	66
32. Fire Precautions.....	66
33. Access by the Government for Repair	67
34. Inconvenience or Annoyance Caused at the Museum	67
35. Inspection and Rejection.....	68
36. Contractor's Act, Default, etc	68
37. Government to Recover Cost.....	69
38. Set-off.....	69
39. Recovery of Sums Due	69
40. Liability and Indemnity.....	69
41. Public Liability Insurance	71
42. Termination	73

43. Effect of Termination	75
44. Corrupt Gifts	77
45. Monies or Valuables Found.....	77
46. Publicity and Advertisement	77
47. Notice to be Displayed or Circulated in the Licence Area.....	78
48. Service of Notice.....	78
49. Waiver of Remedies	79
50. Severability	79
51. Entire Agreement	80
52. Amendment	80
53. Future Assurance.....	80
54. Relationship of the Parties	81
55. Governing Law and Jurisdiction	81
56. Intellectual Property Rights	81
57. Mediation	83
58. Order of Precedence.....	83

PART 3
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 by the Government Representative to entitle the Contractor to offer Prescribed Food and Beverages at the Licence Area at the Hong Kong Museum of Coastal Defence.

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 provision of the Contract, the Contract Period shall be for a term of forty-eight (48) months to commence from a date specified in **Clause 2.4**, inclusive of a Free Decoration Period not exceeding three (3) months for fitting out the Licence Area upon the commencement of the Contract Period, with the option to extend in accordance with **Clause 2.2**.
- 2.2 The Government shall have the option to extend the Contract Period for another twenty-four (24) months (“Extension Period”). The Government shall be entitled to exercise such option, not less than nine (9) months prior to the expiry of the Contract Period, by giving the Contractor a written notice to that effect (“Option Notice”). Upon the Government issuing an Option Notice and the Contractor issuing an Extension Acceptance in accordance with **Clause 2.3** and within the deadline specified therein, the Contract Period shall be deemed to be so extended on and subject to the same terms and conditions set out in the Contract apart from this **Clause 2.2** and **Clause 2.3**.
- 2.3 A Licence Fee review will be conducted in respect of the Monthly Licence Fee payable during the Extension Period provided that the Government does issue a notice under **Clause 2.2** proposing to extend the Licence Period. The Government Representative’s decision of whether the Licence Fee shall remain unchanged or be increased during the Extension Period shall be final and binding on the Contractor. The Monthly Licence Fee to be determined following from the Licence Fee Review will be notified to the Contractor in the same Option Notice under **Clause 2.2**. The Contractor shall reply if it agrees to the Contract Period to be extended for the duration of the Extension Period based on the Monthly Licence Fee as specified in the Option Notice but otherwise on the same terms and conditions set out in the Contract (apart from **Clause 2.2** and this **Clause 2.3**) no later than one (1) month from the date of Option Notice. Any agreement shall be referred to as “Extension Acceptance”.

- 2.4 The commencement date of the Contract Period is **1 Nov 2016 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 at its sole and absolute discretion)**, and subject to prior termination or extension as provided in this Contract, shall expire upon the end of forty-eight (48) months from the commencement date, both dates inclusive.
- 2.5 If the total number of accumulated days of suspension or closure of the entire Licence Area under **Clause 25.1** and **25.2** exceeds thirty (30) days, notwithstanding **Clauses 2.1** and **2.4**, 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 hereby grants to the Contractor during the Contract Period the right to-
- (a) operate the Light Refreshment Cafeteria located at the Hong Kong Museum of Coastal Defence at the area shaded yellow in **Annex C (i)** for the supply and sale of Prescribed Food and Beverages; and ;
 - (b) sell drinks by a vending machine (“Business”) at the area shaded green in **Annex C(ii)**;
- in compliance with all terms and conditions set out in the Contract (“Business”).
- 3.2 In consideration of the entitlement to operate the Business at the Licence Area in the Contract Period, the Contractor undertakes to carry out the Business in compliance with all requirements set out in the Contract no later than three (3) months after the date of commencement of the Contract Period.
- 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 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 (a) **The Contractor should employ such number of Disabled Employees which at any time during the Contract Period constitutes no less than 50% of the total number of employees employed to run the Business.**
- (b) The Contractor should submit a monthly roster showing the work distribution of employees seven (7) days before the first day of each and every calendar month of the Contract Period.
- 4.2 This Contract only entitles the Contractor to conduct the Business at the Licence Area, but not any other area within or outside the Venue or otherwise and shall maintain at the Licence Area for the purpose of the Business an efficient and adequate service of a style, type and quality in conforming to the Theme and Positioning of the Hong Kong Museum of Coastal Defence as specified in **Annex A** to the satisfaction of the Government Representative.
- 4.3 The Contractor shall not use, cause, suffer or permit to be used for any purpose whatsoever any part of the Venue other than the Licence Area.
- 4.4 The Contractor shall use the Licence Area only for the Business and shall not use, cause, suffer or permit to be used the Licence Area or any part thereof for any other purpose.
- 4.5 The Contractor shall conduct its Business only within Licence Area and shall not use, cause, suffer or permit to be used or any purposes whatsoever any part of the Museum outside the Licence Area without the prior written consent of the Government Representative for such purpose or for any other purpose.
- 4.6 The name of the Light Refreshment Cafeteria shall be such as the parties hereto may mutually agree, or in default of agreement, as the Government Representative at his 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.
- 4.7 (a) The Contractor shall provide one vending machine for the sale of drinks at the designated area shaded in green in **Annex C(ii)**.
- (b) The Contractor shall be responsible for payment of all operation fees and charges, including but not limited to electricity charges, arising from and related to the operation of the vending machine.

- (c) The Contractor shall comply with the direction of the Government, which may be given at any time and from time to time, to relocate the vending machine within such period of time as shall be specified on each occasion by the Government Representative. All costs and expenses arising from the relocation shall be borne solely by the Contractor and that the Government shall not be liable whatsoever to make any payment or compensation to the Contractor.
- (d) The Contractor shall keep the vending machine operational at all times or during such periods as shall be directed by the Government from time to time.
- (e) The Contractor shall be responsible for the cleaning, maintenance, repair, removal and replacement of the vending machine.

5. Payment of Monthly Licence Fee

5.1 In consideration for the entitlement to operate the Business at the Licence Area 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 in advance a Monthly Licence Fee in the amount as specified in **Contract Schedule 1** (exclusive of rates, Government rent, taxes and all other outgoings payable in respect of the Licence Area, and all costs of utilities incurred the operation of the Business including water, waste discharge, and electricity) on or before the first day of each and every calendar month of the Contract Period (after the Free Decoration Period) without any deduction or set-off whatsoever.

5.2 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 shall be payable immediately on a pro-rata basis as soon as the Contractor commences the Business in whole or in part during the Free Decoration Period (where applicable); and
- (c) without prejudice to the obligation of the Contractor to start the Business no later than the beginning of the fourth month from the date of commencement of the Contract Period, the entire Monthly License 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.

- 5.3 If the Contractor fails to pay a Monthly Licence Fee by the due date specified in the demand note issued by the Government Representative or any other amount payable by the Contractor under the Contract, the Contractor shall pay a surcharge on the Monthly Licence Fee calculated at a rate equivalent to the average of the best lending rates of the three 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.
- 5.4 No money shall be payable by the Government or the Government Representative to the Contractor or any other person under the Contract. The Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses regardless of whether it is specifically stated to be the case in individual provisions of the Contract.
- 5.5 In each of periods mentioned in the following cases of (i) to (iii) (each a “relevant period”), there shall be adjustment of the Monthly Licence Fee 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 by dividing the Monthly Licence Fee by the actual number of days in the month in which the relevant period falls:
- (i) In the event that the first (1st) day of the forth (4th) month of the Contract Period does not start on the first (1st) day of a calendar month, there shall be adjustment of the Monthly Licence Fee for the forth (4th) 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 Licence Fee for such remaining period.
 - (iii) In the event that there is any temporary closure of the Licence Area under **Clause 25** for more than seven (7) days caused by any one single event (but not on an aggregate basis) within a month of the Contract Period, there shall be pro rata adjustment of the Monthly Licence Fee for that month.

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 and performance of all other obligations under the Contract which are required to be performed at the Licence Area.

- 6.2 The right of access and use as specified in **Clause 6.1**, unless approved otherwise by the Government Representative, will only be limited to the opening hours of the Licence Area as stated in **Annex A**.
- 6.3 Notwithstanding **Clause 6.1**, the Government Representative reserves the right to provide or allow any Person or contractor to provide any vending machine service within any other areas of the Licence Area during the Licence Period of the Contract. Irrespective of whether or not the Business of the Contractor might be affected by such arrangement, the Government shall not be liable to pay any compensation whatsoever to the Contractor.
- 6.4 The Contractor shall not set aside or reserve the whole or any part of the Licence Area for the exclusive use of any person or organization or for any other purpose or function, save and except where the Government Representative at its absolute discretion may permit or require.
- 6.5 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.
- 6.6 The Government Representative shall have the right to allow any prospective Bidders to enter and view the Licence Area at any reasonable time upon prior notice having been given to the Contractor during the twelve (12) months immediately preceding the expiry of this Contract.
- 6.7 Nothing in this Contract shall confer on the Contractor any exclusive right to carry on the Business at the Venue.
- 6.8 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 Venue. The Contractor is not entitled to claim for any compensation or prohibition for whatsoever cause resulting from the grant of the said permissions and authorizations.

7. Security Deposit

- 7.1 The Contractor shall, within thirty (30) days from the notification of award of the conditional acceptance of quotation, deposit with the Government in cash or in the form of bank guarantee in the form set out in the **Annex F** issued by a bank licensed under the provisions of the Banking Ordinance (Cap. 155), a sum equivalent to four (4) times the Monthly Licence Fee (hereinafter referred to as the 'Security Deposit') as specified in **Contract Schedule 1** as security for the due and proper performance of the Contract.

- 7.2 The Security Deposit, if in the form of cash, will be retained by the Government Representative, or if in the form of a bank guarantee, must 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 (3) months after the expiry or early termination of the Contract Period; or
 - (b) there is no forfeiture but 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, the date on which all such obligations and liabilities 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 shall be 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.

7.6 In the event that this Contract is early terminated under **Clause 42.1**, 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 personal to it.

8.2 The Government Representative may refrain from giving any written consent under **Clause 8.1** without giving any reason. If the Government Representative 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 level), and employees and agents of any such sub-contractor 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 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. The Contractor shall make no claim of any kind whatsoever against the Government or Government Representative in the event of the Contractor's failure or inability for any reason to obtain or renew any such licences, permits and/or certificates.

9.2 The Contractor shall apply and successfully obtain a provisional licence to operate the Business at the Licence Area under section 33C of Food Business Regulations (Cap 132X) ("Cap 132X") ("Provisional Licence") before commencement of the Business at the Licence Area, and in any event within three (3) months from the commencement date of the Contract Period.

- 9.3 After having obtained such Provisional Licence, it is required that the Contractor will eventually be issued with a full licence under section 31 of Cap 132X to operate the Business at the Licence Area 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 shall fail to do so, the Government Representative shall be at liberty to terminate the Contract under **Clause 42.1** or suspend the Contractor’s right to carry on the Business at the Licence Area under **Clause 24.1**.
- 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 (3) months from the date of commencement of the Contract Period in order that it can commence the Business no later than three (3) 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 42.1** or suspend the Contractor’s right to carry on the Business at the Licence Area under **Clause 24.1**.
- 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 and obtain all other Requisite Permits for the operation of the Business at the Licence Area.
- 9.6 The entitlement to operate the Business at the Catering Business is conditional on the Contractor to have 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 Light Refreshment Cafeteria at the 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 fourth 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 non-payment or 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 Representations

- 10.1 The Contractor warrants and undertakes to the Government Representative that :-
- (a) it has the full capacity and authority and all necessary licences, permits and consents to enter into this Contract and to operate the Business on 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 and the performance by the Contractor of its obligations under it and the operation of the Business will not conflict or result in breach of:
 - (i) any provision of the constitutional documents governing the Contractor (including its memorandum and articles of association); or
 - (ii) any contract or arrangement to which it is a party or by which it is bound; or
 - (iii) any order, judgment or decree of any court or government agency to which it is a party or by which it is bound; or
 - (iv) any applicable laws and regulations.
 - (d) it shall comply with and observe all applicable laws and regulations in the operation of the Business in the Licence Area;

- (e) The Contractor shall, within fifteen (15) days after the expiry of each calendar month during the continuance of the Contract and within fifteen (15) days after the termination or expiry of the Contract, howsoever caused, submit to the Government Representative a statement of accounts in the form as the Government Representative may at its absolute discretion prescribe showing the monthly Gross Sales Receipts generated from the Business in the Licence Area. Gross Sale Receipts means the total amount of gross proceeds generated from the sale of the Business at the Licence Area by the Contractor.
- (f) The Contractor shall keep and maintain proper books and records in respect of the Business including, inter alia, record of Gross Sales Receipts and cause all such books and records to be made up on a monthly basis and retain the same throughout the Contract Period plus three (3) years. The Contractor shall allow such person or persons as may be authorized by the Government Representative at all reasonable times upon prior notice access to all such books and records of the Contractor, and if required, to make copies of the same.
- (g) The Contractor shall allow the Government to disclose whenever it considers appropriate or upon request (in writing or otherwise) by any third party all or any information of the Business, including but not limited to releasing information related to the Gross Sales Receipts and other financial information relating to the Business obtained from the Contractor including disclosure to prospective Bidders 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 in which possession is given with effect from the first (1st) day of the Contract Period. The Government Representative makes no warranty or representation of whatsoever nature concerning the Licence Area. The Licence Area shall be provided on an “as is” basis.

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 and specifications as shall have been first submitted to and approved in writing by the Government Representative (including the Facilities and Decoration Plan set out in **Contract Schedule 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 the **Contract Schedule 6**. The Contractor, whether he is new or incumbent of the last contract ("Last Contract"), is required to renovate the Cafeteria front including the furnishing at the commencement of a new Contract unless otherwise approved by the Government. It is not acceptable for the Contractor who is incumbent of the last Contract to continue using the same facilities for the new Contract. 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 his own cost and expense.
- (b) Prior to the commencement of any work, to 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 décor design and ambience 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, decorate the Licence Area in a décor previously 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. The proposed overall design theme for the decoration, shop front design and furniture and facilities of the Licence Area should be compatible with the image and functions of the Museum.

12. Government Premises and Government Property

- 12.1 The Contractor shall accept the Licence Area in the state and condition in which possession is given. The Government Representative makes no warranty or representation of whatsoever nature concerning the Licence Area. The Licence Area shall be provided on an “as is” basis.
- 12.2 The Contractor shall furnish and provide all such equipment and furniture necessary for the efficient operation of the Business including those facilities as specified in the Facilities and Decoration plan and other plans submitted in **Contract Schedule 4**. All such equipment and furniture shall be of a design and standard to the satisfaction of the Government Representative.
- 12.3 The Contractor shall keep and maintain at all times all Government Provisions stated in **Contract Schedule 7** and all other Government property located at the Licence Area (movable or immovable) or otherwise from time to time provided for the Contractor for use (including the Government Provisions) (collectively, “Government Property”) in good repair, clean and serviceable conditions to the Government Representative’s satisfaction. The Contractor shall be responsible for the due and immediate return of all such Government Property in good repair, clean and serviceable condition at any time upon request by the Government Representative and / or at the end or sooner termination of the Contract.
- 12.4 The Contractor shall keep and maintain at all times 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 materials to walls, floors and ceilings and all fixtures and fittings therein including all doors and windows (both interior and exterior), electrical installations and wiring and fire-fighting apparatuses in good repair, clean and proper condition (fair wear and tear excepted) and as may be appropriate from time to time to paint and decorate the Licence Area.
- 12.5 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.
- 12.6 The Contractor shall keep and maintain at all times to the satisfaction of the Government Representative all lavatories and water apparatus approved for designated use by patrons of the Licence Area in good repair and clean and serviceable condition (fair wear and tear excepted) and in accordance with all relevant statutory regulations.

- 12.7 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.
- 12.8 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.
- 12.9 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 any such Licence Area or 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**.
- 12.10 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.

12.11 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 **Clause 41.2** including claims arising from any incident occurring within the Licence Area which constitutes a breach by the Contractor of its common duty of care to the visitors of the Licence Area as specified in Section 3 of Cap. 314. To the extent permitted under Cap. 314, neither the Government nor the Government Representative shall be regarded as a landlord, and the Contractor shall not be regarded as a tenant, of the Licence Area under Section 5 of Cap. 314.

13. Operation of the Business

13.1 The Contractor shall ensure that during the continuance of this Contract and during the opening hours of the Licence Area there is provided and maintained at the Licence Area an efficient and adequate supply of Prescribed Food and Beverages of a style, type and quality to the satisfaction of the Government Representative. Without prejudice to the generality of the foregoing, the Contractor shall at all times ensure that the 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 not request or receive any charges for admission to the Licence Area or its surroundings, nor to 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 of the Prescribed Food and Beverages (or such increased rate as the Government Representative may from time to time approve in writing).

13.3 For consumption of Food and Beverages in any one single bill over a certain price limit, the Contractor shall accept payment for all items sold at the Licence Area by all internationally recognized credit cards as the Government Representative and the Contractor may from time to time agree.

13.4 The Contractor shall provide seating accommodation in the Licence Area not in excess of the number as in accordance with the seating layout as approved by the Government Representative and the relevant authority thereof in writing.

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 plans as set out in **Contract Schedule 4** and in the final form as approved by the Government Representative upon signing of the Articles of Agreement and as the same may from time to time be revised in accordance with the applicable provisions of the Contract.

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 any cooking of food, other than boiling of water or heating or re-heating of food, without the approval of the Government Representative nor 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. Premises Hygiene and Safety

- 15.1 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.
- 15.2 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.
- 15.3 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 to maintain and repair such installation in safe and proper condition at his own expense as well as to remove the same should the Government Representative so direct.
- 15.4 The Contractor shall assume full responsibility for the safety all operations and methods of operations.
- 15.5 The Contractor shall be responsible for the safety of any vehicle, equipment or furniture, signboards, displays, chattels, etc, which he uses or brings alongside or onto the Museum and he shall indemnify each of the Government and the Government Representative from and against everything specified in **Clause 40.2(a) and (b)** arising from the use of such vehicles.

16. Outgoings

- 16.1 The Contractor shall pay all the charges and deposits for 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 equipment and any other equipment, machinery and installation whatsoever installed in the Licence Area under **Clause 17.2** or otherwise but excluding air-condition ventilation made available to the Licence Area under **Clause 17.1**). The Contractor must at its cost arrange the relevant utility companies to install separate meters in its own name for measurement of the utilities consumed by the Contractor and settle the charges, deposits and installation charges directly with the utility companies.
- 16.2 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.
- 16.3 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. Air-conditioning

- 17.1 The Government Representative shall use its best endeavors to provide the Licence Area with central air-conditioned ventilation during the opening hours of the Venue and to maintain the same in good repair and condition. Provided always that the Government Representative shall in no event whatsoever be held responsible for any failure or interruption of any such air-conditioning service at the Licence Area from any cause whatsoever or for any damage or loss (direct or indirect) whatsoever caused thereby. Provided further that notwithstanding any failure or interruption as aforesaid, the Government shall be entitled to charge the Contractor for such amount as shall be reasonably assessed or estimated at the rate to be solely determined by the Government, shall remain payable in full at all times.

17.2 The Contractor may, at its own cost, install separate / additional air-conditioning system at the Licence Area with the prior written consent of the Government Representative. All electricity supplied to such air-conditioning system shall be separately metered by meters separately arranged by the Contractor with the power company as user. 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 Venue.

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 his reasonable opinion considers that the Contractor has failed to satisfactorily clean and service the Licence Area or any part thereof the Government Representative may give written notice to the Contractor to carry out within twenty-four (24) hours or such longer period as the Government Representative in its reasonable opinion may allow the necessary cleaning and servicing work in the Licence Area. In the event that the Contractor fails to carry out the works as directed, the Government Representative may without further notice suspend the right of the Contractor to carry out the Business at the Business at the Licence Area under **Clause 24.1** 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 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 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 thus 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 carry out cleansing and clearing of all grease traps in 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 interval to the Government Representative's reasonable satisfaction to prevent chokage and blockage of the installations. 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 at his own expense 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.
- 18.5 The Contractor shall thoroughly clean all kitchen and other food preparation areas on, at least, a daily basis, and at least twice a year to 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.
- 18.6 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.
- 18.7 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 and grease traps, kitchen exhaust and ventilation systems choked or blocked due to the act, default or negligence of the Contractor or any of his employees or agents.
- 18.8 At the sole cost of the Contractor, the Contractor shall employ or use only such cleaner or cleansing contractor 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 ground for such withdrawal.

19. On-site Personnel

- 19.1 **The Contractor shall employ such number of Disabled Employees which at any time during the Term of this Contract constitutes no less than 50% of the number of all employees employed to run the Business.**

In deploying staff for operating the Business, the Contractor shall comply with the operation and staff 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 and as thereafter from time to time revised under the applicable provisions of the Contract.

- 19.2 The Contractor shall require all persons employed 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.
- 19.3 The Contractor shall ensure that his managerial or supervisory staff shall be in attendance at the Licence Area at all times to supervise On-site Personnel when his staff is at work.
- 19.4 The Contractor shall be responsible for the good conduct of On-site Personnel while they are in the Licence Area or any other parts of the Museum in carrying out the Business, and shall ensure that they will behave accordingly.
- 19.5 The Contractor should establish strategies, including but not limited to provide customer services training to On-site Personnel engaged for the business for enhancing customer services to encourage repeat visits.
- 19.6 The Contractor should set up policies on refund / exchange of substandard goods and handling of customers' complaints, etc.
- 19.7 The Government Representative shall be entitled to demand on reasonable grounds, including but not limited to medical, security and disciplinary grounds, the removal or replacement of any of the Contractor's On-site Personnel.
- 19.8 The Government Representative shall be entitled to refuse to admit to the Licence Area or any part thereof any person employed by the Contractor, whose admission will be, in the reasonable opinion of the Government Representative, undesirable.
- 19.9 Any removal demanded or refusal made under **Clauses 19.7** and **19.8** shall not be construed as a breach of the Contract by the Government Representative and the Contractor shall continue to carry out his obligations under the Contract.

- 19.10 The Government Representative shall in no circumstances be liable either to the Contractor or to his employees or agents in respect of any liabilities, losses or damages occasioned by such removal demanded or refusal made as stipulated in **Clauses 19.7** and **19.8** and the Contractor shall fully indemnify the Government Representative against everything stated in **Clause 40.2(a)** and **(b)** arising from any such removal or refusal.
- 19.11 The Contractor shall provide a sufficient quantity of clean uniforms with clear identifications of his Business and of a type approved by the Government Representative for the use of all On-site Personnel at the Licence Area.
- 19.12 The Contractor shall provide lockers for On-site Personnel to store their clothing and personal effects and not to allow personal effects such as clothing, footwear, luggage, umbrellas and other articles to be stored or left in any other places inside or outside the Licence Area.
- 19.13 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.
- 19.14 The Contractor shall ensure that a 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.
- 19.15 The Contractor shall ensure that a high standard of customer services is maintained, sufficient On-site Personnel shall be able to communicate with customers in Cantonese, Putonghua and English and On-site Personnel conduct themselves in a courteous manner to the satisfaction of the Government Representative.
- 19.16 The Contractor shall maintain a proper current and accurate record of all On-site Personnel employed for the carrying out of the Business. Such record shall include the name, Hong Kong Identity Card number, photograph, copy of Registration Card for People with Disabilities and shall be produced such record 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. The Contractor shall obtain consent from all On-Site Personnel, for disclosure of their personal data and all other records of employment to the Government Representatives and the representatives of the Labour Department when required for the purposes of the Contract.
- 19.17 The Contractor shall not employ any persons who are forbidden under the laws of Hong Kong Special Administrative Region or not entitled for whatever reasons to undertake any employment in Hong Kong Special Administrative Region. If there is any breach of this Clause by Contractor, the Government Representative may, by notice in writing, terminate this Contract under **Clause 42.1**.

- 19.18 The Contractor shall comply with the Employment Ordinance (Cap. 57). The Government Representative may terminate the Contract under **Clause 42.1** if the Contractor is convicted of any offence under the Employment Ordinance.
- 19.19 The Contractor shall comply with the Minimum Wage Ordinance (Cap. 608). The Government Representative may terminate the Contract under **Clause 42.1** if the Contractor is convicted of any offence under the Minimum Wage Ordinance.
- 19.20 The Contractor shall comply with the Employees' Compensation Ordinance (Cap. 282). The Government Representative may terminate the Contract under **Clause 42.1** if the Contractor is convicted of any offence under the Employees' Compensation Ordinance.
- 19.21 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, the Government Representative may terminate the Contract under **Clause 42.1**.
- 19.22 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 his 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 his Business. The Government Representative may terminate the Contract under **Clause 42.1** if the Contractor is convicted of any offence under the Occupational Safety and Health Ordinance.
- 19.23 The Contractor shall comply with the Mandatory Provident Fund Schemes Ordinance (Cap. 485). The Government Representative may terminate the Contract under **Clause 42.1** if the Contractor is convicted of any offence under the Mandatory Provident Fund Schemes Ordinance.
- 19.24 Any conviction mentioned in **Clauses 19.18 to 19.23** or any other provision of this Contract does not have to relate to this Contract.

20. Water Supply

- 20.1 The Contractor, if so permitted by the Government Representative, may use water supply which is available at the Licence Area to operate his Business and shall pay all deposits, fees and charges in connection therewith as more particularly described in **Paragraph 4** of the **Technical Schedule** in **Contract Schedule 6**.
- 20.2 If water supply is not available at the Licence Area, or permission to use available supply is not granted or withdrawn, the Contractor shall at his own expense install and provide such supply required for his Business and pay all fees and charges in connection herewith.

- 20.3 Any installation of tubing and piping, and all other water supply works, be it permanent or temporary, shall be approved by the Government Representative in writing in advance and the works shall be carried out by 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 to maintain and repair such installation at his own expense as well as to remove the same should the Government Representative so direct.

21. Discharge of Waste Water

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. The Contractor shall be responsible for any expenses or loss that the Government Representative may incur or suffer due to the breach of this Clause.

22. Electricity Supply

- 22.1 The Contractor, if so permitted by the Government Representative, may consume electricity from supply points which are available at the Licence Area to operate his Business and shall pay all deposits, fees and charges in connection therewith as more particularly stipulated in **Paragraphs 3 and 6** of the **Technical Schedule in Contract Schedule 6**. 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. In the event that any such supply is not metered, the Contractor shall pay such amount in respect of electricity consumption as shall be reasonably assessed or estimated by the Government Representative. The Contractor shall maintain, repair and replace the electrical wiring or cables or apparatus 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.
- 22.2 If electricity supply is not available at the Licence Area, or permission to use available supply is not granted or withdrawn, the Contractor shall at his own expense install and provide his own source of electricity supply required for his Business and pay all fees and charges in connection herewith.

- 22.3 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 Registered Electrical Contractor (REC) / Registered Electrical Worker (REW) registered under the Electricity (Registration) Regulations (Cap. 406, Sub. Leg. D) and to the satisfaction of the Government Representative, and such installation shall thereupon become the property of the Government Representative free of any costs or charges. The Contractor shall be responsible to maintain and repair such installation in safe and proper condition at his own expense as well as to remove the same should the Government Representative so direct. A copy of Work Completion Certificate (WR1) attached with schematics and test reports should be submitted to Government Representative for retention.

23. 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 Representative 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.

24. Suspension of the Business

- 24.1 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 by notice in writing to the Contractor for a period as specified in such notice and the suspension may take place on the next day following from the date of such notice at the earliest or such other date as specified in the notice ("Suspension for Default"). 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 34.2** or the failure of the Contractor to obtain the Requisite Permits as mentioned in **Clause 9.3** or **Clause 9.4** where applicable.
- 24.2 Upon a Suspension for Default under **Clause 24.1**, the Contractor shall have no right to operate the Business at the Licence Area during the period of such Suspension for Default. The Contractor shall still remain liable to pay the Monthly Licence Fee in respect of the period of Suspension for Default and remain liable to perform and observe all other obligations under the Contract.

- 24.3 In the event that any default leading to the Suspension for Default under **Clause 24.1** has been remedied to the satisfaction of the Government, the Government Representative may cancel the Suspension for Default by notice in writing to the Contractor (“notice of resumption”). Upon receipt of such notice, the Contractor shall resume the Business at the Licence Area by such date as specified in the notice of resumption. The Contract Period will not however be correspondingly extended due to any suspension under **Clause 24.1**.
- 24.4 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 24.1**.
- 25. Temporary Closure of the Licence Area**
- 25.1 Without prejudice to the rights and powers of the Government Representative (including under **Clause 24** to effect a Suspension for Default), the Government Representative may require a temporary closure of the Licence Area for any operational or other reason (including any of the reasons as specified in **Clause 25.2**) which is otherwise than due to any default of the Contractor or the reason as specified in **Clause 25.3** by giving not less than seven (7) days’ notice to the Contractor specifying the period of the temporary closure. Upon such temporary closure (including a temporary closure due to any ground specified in **Clause 25.2**) for more than seven (7) days (on a single occasion basis but not on an accumulative basis), the Monthly Licence Fee shall not be payable for so long as such closure continues and the Contract Period will be correspondingly extended after the temporary closure.
- 25.2 Without prejudice to the generality of **Clause 25.1**, 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 23** (not being the result of willful default or misconduct or negligence of the Contractor, his 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.
- 25.3 **Hong Kong Museum of Coastal Defence, including the Licence Area, will be closed for a period of approximately nine (9) months during the Contract Period for renovation. Without prejudice to the rights and powers of the Government Representative, the Government Representative may require a temporary closure of the Licence Area for a period of approximately nine (9) months for carrying out the renovation of Hong Kong Museum of Coastal Defence by giving the Contractor at least one (1) month’s prior notice. For the avoidance of doubt, the Contract Period will not be correspondingly extended after such temporary closure as specified in Clause 25.3.**

- 25.4 During the period of temporary closure of the entire Licence Area for seven (7) days or more (but not otherwise), no Monthly Licence Fee shall be payable in respect of such period, and there shall be a pro rata deduction of the Monthly Licence Fee based on the number of days of temporary closure based on the calculation as stated in **Clause 5.5**.
- 25.5 Upon any temporary closure pursuant to this **Clause 25**, the Contractor shall cease carrying on the Business at the Licence Area for so long as the temporary closure continues.
- 25.6 The Contractor may request to suspend its Business for a reasonable period of time when the weather conditions warrant such suspension in view of the safety of its employees. Prior approval from the Government Representative shall be obtained as far as it is practicable in the circumstances and the Government Representative's decision on the duration of such period of suspension shall prevail. The Contractor shall remain liable to pay the Monthly Licence Fee in full and all fees and charges in respect of the Licence Area and the Business during such approved period of suspension of Business.
- 25.7 Subject to **Clause 25.4**, 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 25**.
- 25.8 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.
- 25.9 For the avoidance of doubt, temporary closure of the Licence Area or any part thereof arising from one single event (but not on an aggregate basis) for a period of less seven (7) days' will not entitle the Contractor to claim any deduction from the Monthly Licence Fee.

26. Stock and Sale of Food Commodities

- 26.1 The Contractor only has the right to sell Prescribed 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 Prescribed Food and Beverages as stipulated in **Contract Schedule 2** (in the final form as approved by the Government Representative upon signing of the Articles of Agreement and as from time to time revised in accordance with the applicable provisions of the Contract) and such other food and beverages approved by the Government Representative of a standard to the satisfaction of the Government Representative.

- 26.2 Any addition or deduction of items from the Prescribed Food and Beverages may only be made after obtaining the prior written approval of the Government Representative.
- 26.3 The Contractor shall abide by any directions as to the quality of the Prescribed Food and Beverages sold or offered for sale at the Licence Area as may be given by the Hong Kong Consumer Council.
- 26.4 The Contractor shall provide to customers upon request receipts for any food and beverage sold at the Licence Area specifying the commodities and the respective price.
- 26.5 Notwithstanding the prior approval of any items appearing in Contract Schedule 2 or other prior approval from time to time, the Contractor shall remove forthwith from display and not to 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;
 - (b) of which there is 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.

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.

- 26.6 The Contractor shall not stock, sell or provide at the Licence Area any alcoholic products, cigarettes, cigars or tobacco products whatsoever.
- 26.7 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.
- 26.8 The food and beverages or commodities and services to be provided by the Contractor for sale in the Licence Area shall 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.

26.9 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.

27. Food Hygiene

27.1 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.

27.2 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.

27.3 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.

27.4 The Contractor shall cleanse and immerse in boiling water for no less than one minute and dry by evaporation before each use of crockery, cutlery and utensils used in the preparation or serving of food or drink and when not in use to store such implements in vermin-proof and dust proof cupboards.

27.5 The Contractor shall adopt all necessary measures to protect food from risk of contamination during conveyance from the food preparation area to the accommodation areas.

28. Display of Prices

28.1 The Contractor shall prominently display at all times the prices of all items sold at the Licence Area. The displays must 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.

28.2 The Contractor shall give all annual, half year Museum Pass Holders and such other discount and discount packages as may be agreed from time to time between the Government Representative and the Contractor, to all persons as specified by the Government Representative, 5% discount off the display price of all items, except for special sales items that are clearly specified.

29. Erection of Structure

- 29.1 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 28** and apart from signboard(s) bearing the trade name for the Business in both English and Chinese which has been approved in writing by the Government Representative.
- 29.2 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.

30. Watchman

No watchman deployed by the Contractor shall be permitted to remain at the Licence Area or other part of the Venue outside the business hours of the Licence Area. 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.

31. Store of Dangerous Goods and Prohibited Goods

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

32. Fire Precautions

- 32.1 The Contractor shall provide and maintain in proper and serviceable condition firefighting 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.
- 32.2 The Contractor shall only use electricity as fuel to heat or cook food or boil water in the Licence Area. No naked flame is permitted in the Licence Area.

33. Access by the Government for Repair

Whilst the Government Representative has no obligation to do so, the Contractor shall permit the Government Representative or any of its servants or agents with or without workmen to enter upon the Licence Area or any part thereof at all reasonable times to examine the conditions thereof and 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.

34. Inconvenience or Annoyance Caused at the Museum

- 34.1 The Contractor shall ensure that On-site Personnel, suppliers, and permitted sub-contractors 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.
- 34.2 The Contractor shall not do anything in or upon the Licence Area or any part of the Venue 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 Venue, 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 24.1** for non-compliance with this **Clause 34.2** for so long as the nuisance or annoyance or damage or inconvenience or discomfort continues.
- 34.3 The Contractor shall not place or leave, or cause, suffer or permit to be placed or left any of his 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.

35. Inspection and Rejection

- 35.1 The performance of any obligation by the Contractor of this Contract including the food and beverage provided at the Licence Area shall be subject to inspection by the Government Representative at any time.
- 35.2 Without prejudice to any other rights provided under the Contract, the Inspection Officer or the Government Representative may reject any action undertaken by the Contractor (which action is purportedly for the compliance or observance of any term or condition of the Contract), or result of such action which does not strictly conform to the terms and conditions of the Contract.
- 35.3 Within twenty-four (24) hours of being notified in writing of the rejection of any action undertaken by the Contractor or result of such action the Contractor shall take necessary action to rectify such rejected action or result of action to the satisfaction of the Government Representative.
- 35.4 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 0900 to 1730 hours from Mondays to Fridays during October to February and from 0900 to 1830 hours from Mondays to Fridays during March to September. If such rectification is carried out by the staff of the Government Representative outside these normal working hours, the Contractor shall be responsible for the overtime remuneration, subsistence allowances and traveling expenses of such staff.

36. Contractor's Act, Default, etc

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

37. Government to Recover Cost

If the Contractor fail 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 cost and expense 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.

38. Set-off

Whenever under the Contract any sum of money shall be 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. 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.

40. Liability and Indemnity

40.1 Neither the Government, the Government Representative nor any of 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 however caused (whether by any Negligence of the Government or the Government Representative or any of employees or agents of the Government); 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 employees of the Government (in the course of employment).

40.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, the Government Representative, their respective assigns, successors-in-title and public officers (each an “Indemnified Person”) from and against

- (a) all and any claims, actions, investigations, demands, proceedings, or arbitration, threatened, brought or instituted by any person against an Indemnified Person (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part and whether alone or jointly with another) (“Third Party Claims”); and
- (b) all and any liabilities and indebtedness, all and any losses, damage, injury, death, and all and any costs, charges and expenses (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 Party may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to –

- (i) the performance or breach of any provisions of the Contract by the Contractor or by any member of the Contractor Responsible Group; or
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, or by any member of the Contractor Responsible Group; or
- (iii) any warranty or representation made by the Contractor in the Contract or in the quotation submitted for the Contract or from time to time in the course the Contract which is incorrect, inaccurate, incomplete or misleading; or
- (iv) the non-compliance by the Contractor, or by any member 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 40.1** except for any death or injury caused by the Negligence of the Government or the Government Representative or any of employees of the Government (in the course of employment).

- 40.3 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 (Chapter 71 of the Laws of Hong Kong).
- 40.4 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, his employees and agents.
- 40.5 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 comes 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.

41. Public Liability Insurance

- 41.1 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.
- 41.2 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.

- 41.3 The Product Liability Insurance Policy shall indemnify the Contractor in respect of all sums which 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.
- 41.4 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.
- 41.5 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 Government Representative or the Government be responsible for the premium payable under the policy or the premium payable for the renewal thereof.
- 41.6 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.
- 41.7 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.
- 41.8 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.
- 41.9 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.

41.10 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 **Clause 40.2** which may arise from any failure of the Contractor to observe and comply with this Clause.

42. Termination

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

- (a) if the Contractor fails or neglects to observe or perform any of the terms and conditions of the Contract or fails to pay any of the sums payable by the Contractor under the Contract or in the case of a breach capable of being remedied, will have failed within fourteen (14) days (or such longer period as the Government Representative may allow) to remedy the breach following from the issue of a notice in writing from the Government Representative requiring it to do so (such notice shall contain a warning of the Government Representative's intention to terminate the Contract); or
- (b) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance (Cap.6) for the time being in force, or make any conveyance or assignment of his effects or composition or arrangements for the benefit of his creditors or purports so to do, or suffers any execution to be levied on his goods and assets in the Licence Area, or a petition is filed for the bankruptcy or winding up of his 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, shall pass 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 shall have arisen entitled the court or debenture holders to appoint a receiver or manager, provided that such determination shall not prejudice or affect any right or action or remedy which have accrued or accrue thereafter to the Government; or

- (d) if the Contractor assigns or transfer or purports to assign or transfer all or any part of the obligations or rights of the Contract without the prior written consent of the Government Representative; or
 - (e) if the Contractor unilaterally ceases its Business at the Licence Area and / or unilaterally terminate 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 9.3 or Clause 9.4** (Licence Permit and / or Certificate)
 - (ii) any of **Clauses 19.18 to 19.24** (Contractor's Employees and Agents); or
 - (iii) **Clause 44** (Corrupt Gifts).
- 42.2 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.
- 42.3 For the purpose of **Clause 42.2**, "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.
- 42.4 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.
- 42.5 The grounds for termination specified in this Clause are separate and independent, and shall not be limited by reference to or inference from the other of them.

43. Effect of Termination

43.1 In the event of Termination or expiry of the Contract for whatever reason whether under any of the applicable provisions set out in **Clause 42** or otherwise (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government Representative’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government Representative to terminate the Contract);
 - (ii) the rights and claims which have accrued to a party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including **Clauses 5, 8, 10, 36 to 56** (apart from **Clause 56.1**));
- (b) neither the Government nor the Government Representative shall be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government Representative including the right to seek indemnity under **Clause 40.2**, in the event that this Contract is terminated under **Clause 42.1**, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the Government and the Government Representative arising from the Termination including without limitation (i) all actual loss of revenue (as represented by the Monthly Licence Fee) (where and whilst no replacement contract is awarded) and shortfall in such revenue (where a new replacement contract is awarded), for the remainder of the Contract Period had there been no Termination; (ii) all administrative and legal costs incurred by the Government and the Government Representative for 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 5.3**;

- (e) in the event that the Termination is under **Clause 42.1**, there shall be a forfeiture of the Security Deposit in its entirety without prejudice to the Government Representative's claims and demands under the Contract which cannot be satisfied by the Security Deposit;
- (f) the Contractor shall immediately deliver up vacant possession of the Licence Area and all Government Property including Government Provisions and all other appliances, furniture, fixtures and fittings provided by the Government Representative in good repair (fair wear and tear excepted) and in clean and hygienic condition. Provided always that where the Contractor has made any alterations or installed any fixtures, fittings or additions to the Licence Area with or without the Government Representative's consent, the Government Representative may at its discretion require the Contractor to reinstate or remove at the Contractor's own expenses such alterations, fixtures, fittings or additions or such part or portion thereof as the Government Representative may require and to make good and repair in a proper and workmanlike manner any damage to the Licence Area and to the Government Representative's fixtures and installations thereof by such deadline date as specified by the Government Representative (whether to fall before or after the Termination) before delivering up the Licence Area to the Government Representative. Alternatively, the Government Representative may choose to retain all such fixtures, fittings and alterations made by the Contractor to the Licence Area if the Government Representative so chooses without any compensation to the Contractor whatsoever;
- (g) the Contractor shall at his own expense forthwith retreat all his employees or agents and remove from the Licence Area all removable objects which do not belong to the Government and the Government Representative does not desire to take over, including any materials, machinery, equipment, plant and all other properties. The Contractor shall at his own expense make good any damage to the Licence Area, Government property, machinery and equipment arising from such removal;
- (h) all employees, agents, visitors and patrons of the Contractor shall vacate the Licence Area, deliver up all keys and access cards and return all Government premises, property, machinery and equipment provided by the Government Representative to the Licence Area;

- (i) if the Contractor shall fail to comply with **Clause 43.1(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.

44. Corrupt Gifts

- 44.1 If the Contractor or any employee or officer of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 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 42.1**.
- 44.2 Without prejudice to the Government's other rights and remedies, the Contractor shall be liable for all costs and expenses incurred by the Government as the result of the termination of the Contract.

45. Monies or Valuables Found

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

46. Publicity and Advertisement

- 46.1 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.

- 46.2 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.
- 46.3 Without prejudice to the generality of the **Clause 46.2**, 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.

47. 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 authority or for the purpose of the operation of his Business under the Contract, it shall first seek the prior written consent of the Government Representative and such consent can be withdrawn at any time at the discretion of the Government Representative. All notices displayed or circulated by the Contractor in the Licence Area shall be written in both Chinese and English.

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 of the recipient set out below (in the case the recipient is the Government) or in **Clause 4** of the **Draft Articles of Agreement** (in the case the recipient is the Contractor) 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 address and facsimile of the Government Representative are as follows:

Address: 175 Tung Hei Road, Shau Kei Wan, Hong Kong
Attention: Assistant Curator I
Facsimile Number: 2569 1637

- 48.3 Any notice shall be deemed given –
- (a) when left at the address of the recipient if delivered by hand during normal business hours;
 - (b) one (1) working day after despatch by post; or

- (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 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 the 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, 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 shall be adjudged by a court of Hong Kong Special Administrative Region to be invalid or 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 Hong Kong Special Administrative Region may be waived, they are hereby waived by the parties hereto 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 undertaking between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

52. Amendment

52.1 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 made by a written instrument signed by each of the Government Representative and the Contractor.

52.2 In addition to its other powers, the Government Representative may at any time review the plans in **Contract Schedules 2 and 4** even after approval by the Government Representative. Where the Government Representative finds on reasonable grounds that any of these plans should be revised, the Contractor shall, upon request by the Government Representative, make such revisions to these plans to ensure compliance and observance of the Contract to the satisfaction of the Government Representative. The Contractor shall not implement the revised plans unless and until it has obtained the Government Representative's approval to do so. Where the Government Representative has given approval for the revised plans, the Contractor shall implement the revised plans forthwith or on such date specified by the Government Representative.

52.3 The Contractor may not initiate any revision to the plans set out in **Contract Schedules 2 and 4** without seeking the prior written approval of the Government Representative.

53. Further Assurance

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

54. Relationship of the Parties

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 Contractor and the Government. Unless otherwise expressly provided for in the Contract or obtained prior approval in writing of the other party to any obligation, 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 Hong Kong Special Administrative Region and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region in relation to any dispute arising from or in connection with or in relation to the Contract.

56. Intellectual Property Rights

- 56.1 (a) The Contractor warrants to the Government Representative that:
the Contractor will not infringe, or cause, suffer or allow infringement of, any Intellectual Property Rights of any person in the operation of the Business in the Licence Area or the performance of this Contract;
- (b) all food, beverage, service and other items and materials of whatsoever nature to be stocked, displayed, for sale, or for use by the Contractor, in or from the Licence Area do not consist of or contain any materials which infringe the Intellectual Property Rights of any person;
- (c) in respect of any food, beverage, service, or other items or materials of whatsoever nature to be stocked, displayed, for sale, or for use by the Contractor, in or from 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, sell or use 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 or use of any food, beverage, service or other item or material of whatsoever nature 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 this Contract by the Contractor;

- (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 item or material in which Intellectual Property Right subsists is required for performing the Contract, it is either the owner of the Intellectual Property Rights or has a valid and continuing licence under which it is entitled to use or sub-license such item or material and the Intellectual Property Rights for itself and for the Government Representative and its authorized users to use such item or material;
 - (g) all and any items and materials to be supplied or provided by the Contractor to the Government Representative under the Contract including those plans submitted and form part of the Contract Schedules (collectively, "Materials") are not eligible for and does not enjoy any Intellectual Property Rights including copyright protection and moral right protection or confidentiality or non-disclosure protection. Without prejudice to the generality of the foregoing, the Materials do not possess the degree of originality to warrant copyright protection. The Government Representative shall not be subject to any restriction and does not require any licence or consent or clearance from the Contractor or any other person in the use or disclosure of any such Materials; and
 - (h) the Contractor will do, and will procure all other necessary parties to do, all things and sign all documents necessary to ensure consummation of the transactions contemplated in **Clauses 56.2 and 56.3.**
- 56.2 Notwithstanding the warranty in **Clause 56.1(g)**, in the event and to the extent that any part of the Materials are treated as original materials created by the Contractor or any other person ("original materials"), the Contractor hereby agrees that, and shall ensure the creator of such original materials will agree, that the copyright and all other Intellectual Property Rights in such original materials (if any, and whether existing as at the date of the Contract or any time thereafter) shall vest in the Government absolutely immediately upon creation.
- 56.3 Notwithstanding the warranty in **Clause 56.1(g)**, in the event that any moral right does subsist in the Materials or any part thereof, the Contractor hereby irrevocably waives and undertakes to procure at its own cost and expense all relevant authors of the Materials or any part thereof to irrevocably waive all moral rights (whether past, present or future) in the respective items. The waiver shall operate in favour of the Government, its authorized users assigns and successors-in-title and shall take effect upon creation of such items or upon delivery of such items to the Government Representative (as the case may be).

57. Mediation

- 57.1 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 or is terminated in accordance with the Mediation Rules, then each of the parties hereto submit to the exclusive jurisdiction of the courts of Hong Kong for resolving such dispute or difference.
- 57.2 The Contractor shall be obliged to carry out the Business in accordance with the Contract irrespective of a notice of mediation or arbitration having been served by either party or whether a mediation or arbitration is in progress.

58. Order of Precedence

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

- (a) these Conditions of Contract
- (b) Contract Schedules 1 to 8 in the original form set out in the Quotation Documents;
- (c) Terms and Conditions;
- (d) Annexes A to F;
- (e) Contract Schedules 1 to 4 as submitted by the Contractor and in their form final as approved by the Government after the award of the Contract.

PART 3
CONTRACT SCHEDULES

<u>Content</u>	<u>Sheet No.</u>
Contract Schedule 1 – Monthly Licence Fee.....	85
Contract Schedule 2 – List of Proposed Commodities and Services for Sale at the Licence	Area 87
Contract Schedule 3 – Information of the Bidder.....	89
Contract Schedule 4 – Experience and Business Plans	96
Contract Schedule 5 – Marking Scheme for Quotation Evaluation	103
Contract Schedule 6 – Technical Schedule.....	112
Contract Schedule 7 – Government Provisions Made Available to the Contractor at the Licence Area.....	116
Contract Schedule 8 – List of Approval Food Items for Sale at the Licence Area.....	117
Form of Security Deposit Election	118
Checklist before submitting Quotation	119
Draft Articles of Agreement.....	122

CONTRACT SCHEDULE 1

Monthly Licence Fee

Failure to submit this Contract Schedule 1 or the amount of Monthly Licence Fee below by 12:00 noon on the Quotation Closing Date will result in the Quotation not being considered further.

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

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

- (a) 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; and
- (b) the Business shall be operated by the Contractor as principal and all profits and losses and liabilities arising therefrom shall be for the sole account of the Contractor with no recourse against the Government or the Government Representative; and
- (c) all 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 shall be borne by the Contractor and will not be covered by the Monthly Licence Fee.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 1

Monthly Licence Fee

<u>Period</u>	<u>Monthly Licence Fee</u>	
	In Figure (HK\$)	In Words (Note)
For each month of the Contract Period of forty-eight (48) months#, subject to the Free Decoration Period.	HK\$ _____ per month	Hong Kong Dollars _____ _____ _____ only per month

#Note:

1. The Monthly Licence Fee submission must be enclosed in a sealed envelope clearly marked ‘Quotation Ref: LRT/HKMCD/01/2016 – Quotation for the grant of licence to operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence’ – Price Submission’ (Quotation Label 1 provided).
2. The Contract Period may at the option of the Government be extended for another twenty-four (24) months in accordance with the terms set out in **Clause 2.2** and **2.3** of the **Conditions of Contract**.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 2

Proposed list of Menu Items including Meals, Refreshments, Drinks and other Food Commodities and Services for Sale at the Licence Area (Put in Technical Submission Envelope)

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

1. Bidders are reminded to complete this Contract Schedule in conjunction with **Item 3 of Contract Schedule 4** – Food / Service Plan. Bidders must provide the food/ service plan with the proposed menu of all meals, refreshments, drinks and other food commodities and services to be supplied and for sale at the Licence Area.

2. The proposed list of menu items shall comply with the List of Approved Food Items for Sale at the Licence Area as specified in **Contract Schedule 8**.

3. Bidders may also include other materials as appropriate to facilitate consideration of their offer by the Government.

Item	Description

Note:

1. If there is not enough space, please use additional sheets.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

Signature of Bidder or
Authorized Representative
for an on behalf of the Bidder * : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 2

**Proposed list of Menu Items including Meals, Refreshments, Drinks
and other Food Commodities and Services for Sale at the Licence Area
(Put in Technical Submission Envelope)**

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

2. The proposed list of menu items and services, once accepted and approved by the Government Representative, shall become the Prescribed Food and Beverages which are allowed to be supplied and sold at the Light Refreshment Cafeteria. The Contractor shall seek the Government Representative's prior approval on any subsequent deletion or addition of items. Subject to the observation and compliance with all other requirements in the Contract, the Contractor will nonetheless be allowed, according to market demand, to introduce extra items of food or beverages apart from the existing items of Prescribed Food and Beverages which are consistent with the style of the Light Refreshment Cafeteria, with prior written approval of the Government Representative. Despite the above, the sale of any food/drink in the Licence Area is subject to the stipulations as stated in the restaurant/food licences to be issued by the Food and Environmental Hygiene Department.

3. The information and documents required as stipulated in **Contract Schedules 2, 3, 4 and 6** as well as the **Quotation Form, Form of Security Deposit Election** and the **Checklist before submitting Quotation** must be enclosed in another sealed envelope clearly marked "Quotation Ref. LRT/HKMCD/01/2016 - Quotation for the Grant of Licence to Operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence (HKMCD) – Technical Submission" (Quotation Label 2 provided).

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

Signature of Bidder or
Authorized Representative
for an on behalf of the Bidder * : _____

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope)

1. In support of my / our* offer for the grant of the Contract, I / we* would provide the following information –

(A) If the Bidder is a Sole Proprietor

(If the Bidder is not a sole proprietor, please strike out (A) and go to (B). If the Bidder is a sole proprietor, please complete (A) and strike out (B) and (C).)

(a) Name of Sole Proprietor: _____ (in English)

_____ (in Chinese)

(b) Hong Kong Identity Card No.: _____

(c) Residential Address: _____

(d) Tel No.: _____ Fax No.: _____

(e) Date of establishment of the sole proprietorship: _____

(f) Business Registration Certificate Number of the business being operated (if any):

Expiry Date of Business Registration Certificate (if applicable):

(g) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch: _____

Bank Account Number: _____

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope)

(h) I submit this quotation personally as the sole proprietor with details as shown above.

Signature of Sole Proprietor (i.e. the Bidder): _____

Date: _____

(B) If the Bidder is a partnership (i.e. firm)

(If the Bidder is a company, please strike out (B) and go to (C).)

(a) Name of Firm: _____ (in English)
_____ (in Chinese)

(b) Address of the Firm: _____

(c) Tel No.: _____ Fax No.: _____

(d) Date of establishment of the Firm : _____

(e) Business Registration Certificate Number of the Firm:

Expiry Date of Business Registration Certificate: _____

(f) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch:

Bank Account Number: _____

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope

(g) Names of all Partners (in BLOCK letters):

Residential Address(es) of Partners (in above order):

(h) I myself am a partner of the above-mentioned firm and am duly authorized to bind the firm and all its partners by my signature.

Signature of the Partner: _____
(with firm chop)

Name of the Partner: _____

Date: _____

(C) If the Bidder is a company or a corporation incorporated under an Ordinance

(a) Name: _____ (in English)
_____ (in Chinese)

(b) If a Subsidiary, _____ (in English)
Name of Parent Company: _____ (in Chinese)

(c) Address of Registered Office: _____

(c) Tel No.: _____ Fax No.: _____

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

Draft Articles of Agreement

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope)

(d) Certificate of Incorporation Number of the Company: _____

Limited or Unlimited Liability: _____

Year of Establishment: _____

OR

Name of Ordinance under which Bidder was incorporated: _____

(e) Business Registration Certificate Number:

Expiry Date of Business Registration Certificate: _____

(f) Name (in BLOCK letters) and Residential Address of the Managing Director:

(g) Name (in BLOCK letters) and Residential Address of the Company Secretary: _____

(h) Name (in BLOCK letters) and Residential Address of the Authorized Representative: _____

(i) Name of Banker and Branch dealing with the business being operated:

Address of Banker and Branch:

Bank Account Number: _____

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope)

(j) I am the Managing Director / Company Secretary / Authorized Representative* (please specify) of the above-mentioned company / corporation* and am duly authorized to bind the above-mentioned company / corporation* by my signature. I attach to the Quotation Form a certified true copy of the above-mentioned company / corporation's* Minutes of its board of directors / governing body* or other documentary evidence to the satisfaction of the Government Representative showing that I have been duly authorized by its board of directors / governing body* to sign and submit this Quotation for and on behalf of the above-mentioned company.

Signature of Authorized Representative
for and on behalf of the above-mentioned
company / corporation*:

_____ (with company chop)

Name of Authorized Representative: _____

Date: _____

(D) Other business being run at present:

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

(E) Proposed investment:

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

(F) Proposed number of staff to be employed for operating the business bidding for:

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* Delete as appropriate

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope

(G) Other information:

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

2. In the event of any queries relating to my / our* offer, please contact –

Name: _____ Tel No. _____

Contact information of Bidder or Authorized Representative signing this document:

Name(s): _____ Tel. No.: _____

Address(es): _____

Fax No.: _____ Email: _____

3. I / we* confirm that none of the events as mentioned in **Paragraphs 18.2(a) to 18.2(f)** of the **Terms of Quotation** has ever occurred within the applicable period as mentioned in the relevant sub-paragraph of **Paragraph 18.1 OR**

I / we* hereby provide the details as required in **Paragraphs 18.2(a) to 18.2(f)** where applicable:

Name of Bidder : _____ Date : _____

Name and title of Authorized Representative: _____

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* Delete as appropriate

CONTRACT SCHEDULE 3

Information of the Bidder
(Put in Technical Submission Envelope)

- Notes:
- (i) All the particulars required above shall be accurately completed and the supply of any untruthful particulars or willful omission may lead to rejection of this quotation.
 - (ii) Any alternatives, which are not applicable, should be struck out.
 - (iii) Bidders are requested to read carefully each and every part of the Quotation Documents.
 - (iv) The information provided will be used solely for processing of this quotation exercise.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 4

**Experience and Business Plans
(Put in Technical Submission Envelope)**

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

In accordance with **Paragraph 6** of the **Terms of Quotation**, Bidders are required to submit the following information for evaluation. A Quotation will not be considered further if a Bidder fails to provide the required information upon request by the Government Representative under Paragraph 16 of the Terms of Quotation (in the event that the Government Representative in its absolute discretion requests such information) or fails to provide the required information by 12:00 noon on the Quotation Closing Date (in the event that the Government Representative in its absolute discretion does not request for resubmission of such information after the Quotation Closing Date).

1.1. Trade Experience (Essential Requirement – at least THREE (3) CONTINUOUS years of experience in managing and operating catering business with seating accommodation and table services within the past ten (10) years)

Bidders must provide description and history of their relevant experience in managing and operating catering outlet(s) during the past ten (10) years prior to the Quotation Closing Date with clear indication on the years of relevant experience and should provide documentary proof to substantiate claims of relevant experience.

Note:

- (i) Please refer to the notes in **Paragraph 6.2** of the **Terms of Quotation** for further definitions of the terms and expressions specified above and counting of experience.

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 4

Experience and Business Plans
(Put in Technical Submission Envelope)

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

In accordance with **Paragraph 5.1 of Terms of Quotation**, Bidders are required to submit the following information for evaluation according to the marking scheme in **Contract Schedule 5**. **Information provided by Bidders hereunder will be binding on the successful Bidders upon the award of the Contract.** Bidders should note the marking scheme in **Contract Schedule 5** and that zero (0) mark will be given if Bidders fail to provide information on any one of the requisite items required under the relevant plan. An offer will not be considered further if a Bidder fails to obtain the passing mark stipulated therein.

The Contractor has to seek written approval from Government Representative to revise plan(s) and proposal(s) incorporated in **Contract Schedule 2** and **Sections 2 to 6 of Contract Schedule 4** after award of Contract to accommodate the operational need.

2. Facilities and Decoration Plan (Maximum 30 scores)

- (a) Bidders shall provide information on the following items:
 - (i) facilities and decoration plan with details such as the description of the proposed overall design theme for the decoration, shop front design and furniture and facilities of the Licence Area to blend with the image and function of the Venue. (ii) sketch drawing of design layout.
- (b) Bidders may also include other materials as appropriate to facilitate consideration of their offer by the Government.

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 4

**Experience and Business Plans
(Put in Technical Submission Envelope)**

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

3. Food/ Service Plan (Maximum 25 scores)

Bidders must provide the food/ service plan with the proposed menu of all meals, refreshments, drinks and other food commodities and services to be supplied and for sale at the Licence Area and specify the proposed items in **Contract Schedule 2** above. The Bidder shall also propose strategies in providing food / service at the Licence Area to meet the demand of the Museum users and to tie in with the services, image and functions of the Museum, its exhibitions and activities. Bidders may also include other materials as appropriate to facilitate consideration of their offer by the Government.

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

(with firm/company chop)

* *Delete as appropriate*

CONTRACT SCHEDULE 4

**Experience and Business Plans
(Put in Technical Submission Envelope)**

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

4. Marketing Plan for Promoting the Image and Functions of the Venue (Maximum 10 scores)

Bidders must provide the marketing plan in attracting more customers to the catering outlet and promoting the image and functions of the Museum and the Licence Area to blend with the image and functions of the Museum. Bidders may also include other materials as appropriate to facilitate consideration of their offer by the Government.

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* Delete as appropriate

CONTRACT SCHEDULE 4

**Experience and Business Plans
(Put in Technical Submission Envelope)**

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

5. Operation and Staff Plan (Maximum 5 scores)

Bidders must provide the operation and staff plan in running the Business. The operation and staff plan shall include but not limited to aspects of comprehensive guidelines on food hygiene and safety, operational health and safety, proposed staff deployment plan in running the business and information of the proposed work force including number of staff for the Licence Area, employment of Disabled Employee, the requirement of staff’s working experience and qualification. Bidders may also include other materials as appropriate to facilitate consideration of their offer by the Government.

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 4

Experience and Business Plans
(Put in Technical Submission Envelope)

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

6. Customer Services Plan (Maximum 5 scores)

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

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

Name of Bidder : _____ Date : _____

Name of Authorized Representative : _____

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

* *Delete as appropriate*

CONTRACT SCHEDULE 5

Marking Scheme for Quotation Evaluation

Marking Scheme for Quotation Evaluation

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

Quotations will go through an assessment on “essential requirements” and must meet all the essential requirements set out in Stage 1 below before they will be considered further in accordance with a marking scheme which carries a quality to price weighting of 50 : 50.

The technical proposal of those quotations which meet all the essential requirements will be marked in Stage 2 technical assessment. There is passing mark in each assessment criteria (except criterion 2.2). Bidders failing to attain the passing mark will not be considered further. The Bidder who passes all the assessment criteria in Stage 2 and attains the highest technical mark will be awarded with a weighted quality score of 50 while the weighted quality scores for other Bidders who pass the Stage 2 technical assessment will be calculated in accordance with the following formula:

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

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

CONTRACT SCHEDULE 5

Marking Scheme for Quotation Evaluation

Stage 1 Essential Requirements

1. Bidders must have at least **THREE (3) CONTINUOUS** years of experience* in managing and operating catering business with seating accommodation and table services¹ within the past ten (10) years. They must state clearly their relevant years of experience and should provide documentary proof to substantiate claims of relevant experience. The closing date of this quotation will be the cut-off date for calculation of years of experience. **Failure to submit the documentary proof within the time stipulated by the Government will result in the offer not being considered further.**
2. Bidders must submit **Contract Schedules 2, 3 and 4** for evaluation. Bidders must also submit with their quotations the plans as described in **Contract Schedule 4**, including:
 - i) facilities and decoration plan, ii) food/service plan, iii) marketing plan for promoting the image and functions of the museum, iv) operation and staff plan and v) customer services plan.A Quotation will not be considered further if any of the above aforesaid documents are not provided during quotation submission.

***Remarks:**

- i) Only the Bidder's experience in the name of the Bidder will be counted.
- ii) Experience gained outside Hong Kong is not counted.
- iii) If the Bidder is a partnership/unincorporated joint venture or incorporated joint venture, only the years of joint venture experience gained by the partnership/ unincorporated joint venture or incorporated joint venture, but not the individual experience of the participants to the partnership/ unincorporated joint venture or shareholders of incorporated joint venture, will be counted. A quotation shall not be considered further if any or all of the above aforesaid documents are not provided during quotation submission.

¹ "Seating accommodation and table services" is defined as a catering entity that offers customers with tables and seats for dining at the location provided.

CONTRACT SCHEDULE 5

Marking Scheme for Quotation Evaluation

Stage 2 - Technical Assessment

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

Assessment Criteria	Mark	Marks obtained by Bidder
<p>1. <u>Facilities and Decoration plan (passing mark = 15)</u> Proposed plan in décor design and facilities and its compatibility with the Museum's image and functions</p> <p>a. Proposed plan is practicable, ties in with the image of the museum and is expected to enhance the ambiance of the museum² and contains detailed supporting information on each item as listed in Item 2 of Contract Schedule 4</p> <p>b. Proposed plan is practicable, ties in with the image of the museum or is expected to enhance the ambiance of the museum with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 2 of Contract Schedule 4</p> <p>c. Proposed plan is impracticable; or does not benefit the image/ ambiance of the museum and unlikely to enhance the ambiance of the museum; or fails to provide information on any required items listed in Item 2 of Contract Schedule 4</p>	<p>(Max.:30)</p> <p style="text-align: center;">30</p> <p style="text-align: center;">15</p> <p style="text-align: center;">0</p>	

² Bidders can make inferences on museum's image and functions having regard to the information stated in the quotation document **Annex A**.
Quotation Evaluation

CONTRACT SCHEDULE 5

Marking Scheme for Quotation Evaluation

Assessment Criteria	Mark	Marks obtained by Bidder
<p>2. <u>Food/ Service Plan (passing mark = 5 under 2.1)</u></p> <p>2.1 Food & drinks/ services offering in proposed plan to meet visitors' demand and to blend with the image and functions of the Museum</p> <p>a. Proposed plan is practicable, attractive³, blends well with the image and functions of the museum that can meet visitors' demand⁴ and with detailed plan explanation on each item as listed in Item 3 of Contract Schedule 4</p> <p>b. Proposed plan is practicable, blends well with the image and functions of the museum that can meet visitors' demand and with detailed plan explanation on each item as listed in Item 3 of Contract Schedule 4</p> <p>c. Proposed plan is practicable, blends well with the image and functions of the museum that can meet visitors' demand and with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 3 of Contract Schedule 4</p> <p>d. Proposed plan is impracticable; or fails to provide information on any required items as listed in Item 3 of Contract Schedule 4; and/or unlikely to meet visitors' demand; and/or does not benefit the image and functions of the museum</p>	<p>(Max.:15)</p> <p>15</p> <p>10</p> <p>5</p> <p>0</p>	

³ "Attractive" plan include but are not limited to: the design of the food menu (size of the menu, any specialties or signature/award winning dishes, seasonal change of menu, menu to tie in with special events/festivals, availability of vegetarian menu etc); range of offer (e.g. express meal, fine dining); design of the drink menu (coffee/tea selection, wine selection/matching with food menu etc). Any proof on award winning dish or chef can be provided if available.

⁴ Bidders can make inferences on visitors' demand having regard to the information on visitor profile stated in the quotation document **Annex A**.

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

Assessment Criteria	Mark	Marks obtained by Bidder
2.2 Special features in support of the museum and/or value-added service	(Max.:10)	
a. Operator to provide space and facilities in the catering outlet to display at least 2 museum posters (the size is at least 20' x 30') and at least 3 types of museum pamphlets (at least 50 copies for each type of pamphlet at one time) at prominent locations	3	
b. Provide additional payment options (e.g. Octopus, EPS etc, 1 mark for each item, maximum 2 marks) on top of payment options already specified in the contract	1 - 2	
c. Free computer facilities with Internet access available for use by patrons ⁵	2	
d. Provision of at least 5 recent publications and magazines related to the theme of the museum and/or lifestyle magazines and publications	1	
e. Any other practicable and good suggestion by operator (1 mark for each suggestion, maximum 2 marks for this item)	1 - 2	

⁵ If this factor is not applicable for a particular museum, the 2 marks under Section.2.2(c) will be transferred to Section 2.2(e) as follows: "any other practicable and good suggestion by the operator (1 mark for each suggestion, maximum 4 marks for this item)".

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

Assessment Criteria	Mark	Marks obtained by Bidder
<p>3. <u>Marketing Plan for Promoting the Image and Functions of the Museum (passing mark = 3)</u> Provision of marketing plan in promoting the image and functions of the Museum and the Licence Area to blend with the functions and image of the Museum</p> <p>a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 4 of Contract Schedule 4 and at least 2 good suggestions⁶ which will enhance publicity and/or the image of the museum and/or the catering outlet</p> <p>b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 4 of Contract Schedule 4</p> <p>c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 4 of Contract Schedule 4</p> <p>d. Proposed plan is impracticable; or fails to provide information on any required items as listed in Item 4 of Contract Schedule 4</p>	(Max.:10)	
	10	
	6	
	3	
	0	

⁶ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed marketing measure is practical and effective, the extent of its publicity or outreach impact.

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

Assessment Criteria	Mark	Marks obtained by Bidder
4. <u>Operation and Staff Plan-(passing mark = 1)</u> Provision of operation and staff plan in running the Business	(Max.:5)	
a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 5 of Contract Schedule 4 and at least 2 good suggestions ⁷ which will enhance the services of the catering outlet	5	
b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 5 of Contract Schedule 4	3	
c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 5 of Contract Schedule 4	1	
d. Proposed plan is impracticable; or fails to provide information on any required items as listed in Item 5 of Contract Schedule 4.	0	

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

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

Assessment Criteria	Mark	Marks obtained by Bidder
5. <u>Customer Services Plan (passing mark = 1)</u> Proposed strategy in enhancing customer services and providing staff training to encourage repeat visits	(Max.:5)	
a. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 6 of Contract Schedule 4 and at least 2 good suggestions ⁸ which will enhance the services of the catering outlet	5	
b. Proposed plan is practicable and includes information with detailed plan explanation on each item as listed in Item 6 of Contract Schedule 4	3	
c. Proposed plan is practicable and includes information with either (i) detailed explanation on some items and a brief explanation on the remaining items or (ii) brief explanation on each item as listed in Item 6 of Contract Schedule 4	1	
d. Proposed plan is impracticable; or fails to provide information on any required items as listed in Item 6 of Contract Schedule 4	0	

The overall passing mark for technical assessment is 25 out of 75 of total marks before applying the 50% weighting for the quality score. Bidders failing to obtain the passing mark of 15 for Criteria 1 or the passing mark of 5 for Criteria 2.1 or the passing mark of 3 for Criteria 3 or the passing mark of 1 for any one of the Criteria 4 to 5 or the overall passing mark of 25 will not be considered further.

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

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

⁸ Factors for considering whether a proposal contains “good suggestions” include whether a certain proposed measure is practical and effective, whether it will have significant impact in enhancing the quality and efficiency of services of the shop.

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

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

$$50 \quad \times \quad \frac{\text{Monthly Licence Fee Offered by the Bidder}}{\text{Highest Offer of the Monthly Licence Fee Amongst the Offers Has Passed Stage 2 Evaluation}}$$

Stage 4 - Calculation of Combined Score

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

CONTRACT SCHEDULE 6**Technical Schedule****1. Shop Doors****1. Gross Floor Area and Location of Licence Area**

A gross floor area of around 84 square metres as delineated and shown in **Annex C(i)** and **Annex C(ii)**.

2. Toilet Provision outside Licence Area

Toilet is not provided inside the Licence Area. One female and one male communal toilets are provided for the customers and staff of Licence Area as shown in **Annex C(i)**.

3. Provisions given by the Government for the Licence Area are shown on the **Contract Schedule 7**.

4. No fixing on the glass panels and structural frames will be permitted.

2. Floor and Walls

2.1 Concrete floor finished with granite boarder around the external full height glass wall panel of the Licence Area. The flooring in the Licence Area, which should not be removed but may be covered. No fixing, drilling and cutting of the flooring will be allowed without the prior approval of the Government Representative. Raised flooring is permissible but it must be removed at the end of the Contract Period or sooner termination of the Contract.

2.2 Internal wall of the internal areas in the Licence Area a may be covered up with plasterboard or plywood with decoration, which shall be removed at the end of the Contract Period or sooner termination of the Agreement. Any alteration work is not allowed without prior permission of the Government Representative.

2.3 The existing glass panels shall not be lined with plaster board or plywood, etc. No coating or painting on the glass panels is allowed.

3. Electricity Supply

3.1 A 60Amp three-phase power supply is available for the Licence Area. The Contractor will be responsible for the wiring from the main power point there to the desired locations within the Licence Area.

- 3.2 The Contractor must engage a Licensed Electrical Permit Holder to make the necessary electrical connections and shall be responsible for all the installation costs involved as well as maintenance. The Licensed Electrical Permit Holder shall assess the total electricity consumption to avoid overloading the incoming switch and also certify the works upon completion in accordance with the requirements of the Electricity Ordinance. Alteration works must be removed at the end of the Contract Period or sooner termination of the Contract.
- 3.3 The Light Refreshment Cafeteria must be lit in such a way that other building users will not be adversely affected by any glare or reflection.
- 3.4 The Contractor must take down all alteration works and reinstate the original lighting fittings provided by the Government Representative at the Licence Area at the end of the Contract Period or sooner termination of the Contract.

4. Water Supply

Fresh water supply is provided at the Licence Area. The Contractor will be responsible for making application to the Water Authority for the transfer of water meter and the cost thereof for the water supply 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.

5. Drainage

The Museum did not provide grease trap to the Licence Area but floor drain is provided in the Licence Area. The Contractor shall be responsible to install with the grease traps as required. The Contractor is responsible for submission to the Licensing Section of the Food and Environmental Hygiene Department for approval of any alteration works to the existing installations that he intends to suit the layout of food preparation area of the Light Refreshment Cafeteria. All alteration works including but not limited to raised flooring and surface channel shall be removed at the end of the Contract Period or sooner termination of the Contract.

6. Air-conditioning System

2 units of ceiling exposed split air-conditioning have been installed for the indoor Licence Area of the Light Refreshment Cafeteria. The Contractor is responsible, at his own cost, for the installation of an independent system if additional cooling is required subject to the prior approval from the Government Representative.

7. Fire Services Installations

If addition and alternation to the existing FS sprinkler layout is required, the new pipes must be fed from the existing sprinkler system in the Museum subject to the prior approval from the Government Representative.

8. Signage

All signages 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 Licensed Electrical Permit Holder. No moving signs or flashing lights will be permitted.

9. Photo Record

A photo record, capturing the state and condition of the Licence Area and the Government Provisions in which possession is given, will be provided to the Contractor upon commencement of the Contract Period. Any subsequent modification or alteration to the Government Provisions at the Licence Area by the Contractor shall be reinstated to the original state and condition as captured in the photo record prior to delivering up the vacant possession of the Licence Area to the Government Representative upon the expiry of the Contract Period or early termination of the Contract, as the case may be.

10. Fitting Out Methods

- 10.1 All the works shall be executed by competent Contractor and Workers.
- 10.2 All relevant Ordinances, Regulations and Codes of Practice shall be fully complied with.
- 10.3 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.
- 10.4 The works area is to be completely sealed off from the remaining Café Block of the Museum by full height hoarding or sheeting to prevent the egress of dust and dirt.
- 10.5 No welding work can be carried out without the prior approval of the Government Representative. Temporary covers must be applied to the nearby smoke detectors to prevent activating the Fire Alarm System unnecessarily.
- 10.6 All building debris and rubbish must be regularly carted away from time to time as directed by the Government Representative.

11. Working Hours for Fitting Out

- 11.1 Provided that the noise level of the fitting-out works emitted is acceptable to the Director of Environmental Protection, the works will not be permitted after opening hours.

- 11.2 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.
- 11.3 During the period of the fitting-out 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 7**Government Provisions Made Available to the Contractor at the Licence Area**

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
1.	W40" x H76" x D18" plywood storage rack	1 no.
2.	Exhaust fan	2 nos.
3.	Fan	1 no.
4.	Air-conditioner (split unit)	2 units
5.	Air-conditioner remote control	1 no.
6.	Emergency Lights	3 nos.
7.	Fire Extinguishers	3 nos.
8.	Fluorescent Tubes	7 nos.
9.	Lamps	16 nos.
10.	Power meter reader and 2 MCB boards	1 set

Contract Schedule 8

List of Approval Food Items for Sale at the Licence Area

Bidders are only allowed to prepare and sell the following food items under Group C **or** Group D as prescribed in the “A Guide to Application for Restaurant Licences” published by Food and Environmental Hygiene Department” for consumption at the Licence Area:

Group C (any combination of the following seventeen items)

- (1) Bread, cakes and biscuits;
- (2) Toast including French toast;
- (3) Sandwiches;
- (4) Hot cakes, pancakes and waffles;
- (5) Oatmeal porridge and instant cereals;
- (6) Pastries (baking is not allowed but an electric warmer may be used to keep the pastries warm);
- (7) Eggs (boiled, poached or scrambled);
- (8) Ham, bacon, western sausages, tinned meat and tinned fish;
- (9) Soup (prepared from tinned soup or powdered soup);
- (10) Macaroni / spaghetti in soup prepared from tinned soup or powdered soup;
- (11) Tea, coffee, cocoa, any non-alcoholic drink or beverage made by adding water to prepared liquid or powder;
- (12) Hot dogs;
- (13) Cold cuts (from pre-cooked meat and served cold on the premises) and vegetables/fruit salads;
- (14) Hamburgers (made from ready-to-cook hamburger meat from a licensed food factory or from an approved source);
- (15) Jelly, tinned or prepared from jelly powder;
- (16) Instant noodles / vermicelli in soup from pre-prepared ingredients enclosed in the packet; and
- (17) Five self-specified snack items as specified in **Annex D** [pre-prepared and supplied from approved / licensed sources, ready to eat after warming / reheating by electricity (excluding deep-frying and stir-frying)].

Group D (any combination of the following ten modified items)

- (1) Bread, cakes and biscuits;
- (2) Toast excluding French toast;
- (3) Sandwiches, neither cooked nor fried;
- (4) Sausage rolls and other pastries containing pre-cooked meat (baking not allowed, but a warming oven may be permitted for warming pre-baked meat pies);
- (5) Boiled eggs;
- (6) Tea, coffee, cocoa, any non-alcoholic drink or beverage made by adding water prepared liquid or powder;
- (7) Hot dogs;
- (8) Cold cuts (pre-cooked roast chicken and roast meat to be served cold on the premises);
- (9) Waffles; and
- (10) Five self-specified snack items as specified in **Annex D** [pre-prepared and supplied from approved / licensed sources, ready to eat after warming / reheating by electricity (excluding deep-frying and stir-frying)].

- Notes:
- (i) The sale of these items of food and beverages is subject to the grant of all Requisite Permits required under all applicable laws and regulations.
 - (ii) Bidder may offer for sale any commodity which is compatible with the requirements of all Requisite Permits.

FORM OF SECURITY DEPOSIT ELECTION

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

To: The Chairman of Quotation Opening Committee,
Leisure and Cultural Services Department

If my / our Quotation is accepted, I / we shall elect, pursuant to **Clause 7 of Conditions of Contract**, to deposit with the Government , within thirty (30) days from the date of the notification of conditional quotation acceptance or at such time as shall be directed by the Government Representative, a sum equivalent to four (4) months' quoted Monthly Licence Fee as specified in **Contract Schedule 1**, as security for the due and faithful performance of the Contract –

- * (a) In cash, or
- * (b) By way of a bank guarantee in the form set out in **Annex F** and issued by a bank licensed under Section 16 of the Banking Ordinance (Cap. 155).

Note: In the event that the Bidder fails to elect which method of providing the Security Deposit he prefers, it will be assumed that the Bidder will deposit cash with the Government.

**Delete as appropriate.*

Name of Bidder : _____ Date : _____

Name and title of Authorized Representative: _____

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

** Delete as appropriate*

CHECKLIST BEFORE SUBMITTING QUOTATION

(The checklist serves to assist in completing the quotation documents.
Please complete as appropriate.)

**Please ✓ if
completed**

Completion of Part II of Quotation Form - “Offer to be Bound”

1. Have you completed **Part II** of the **Quotation Form** - “Offer to be Bound” with all the required information (i.e. name of Bidder, address, name of authorized representative (if applicable), etc.)?
2. If you are a sole proprietor, have you crossed out **5(a)** to **5(c)** in **Part II** of the **Quotation Form**?
3. If you are a firm / body corporate, have you completed **5(a)** to **5(c)** in **Part II** of the **Quotation Form**?
4. Have you / your authorized representative **signed Part II of the Quotation Form**?

Completion of Contract Schedule 1 – Monthly Licence Fee

5. Have you completed the **Contract Schedule 1** of the Quotation Documents with the quotation of the Monthly Licence Fee?
6. Have you / your authorized representative **signed the Contract Schedule 1**?

Completion of Contract Schedule 2 – Proposed list of Menu Items

7. Have you submitted with the quotation the proposed menu as described in **Contract Schedule 2**?

Completion of Contract Schedule 3 – Information of the Bidder

If you submit the quotation in the capacity of a Sole Proprietor -

8. Have you crossed out **Paragraphs 1(B)** and **1(C)** of **Contract Schedule 3**?
9. Have you filled in the required information in **Paragraph 1(A)** (i.e. your name, ID no., address, telephone number, date of establishment, Business Registration Certificate No., bank account no., etc.).
10. Have you signed **Contract Schedule 3** (as per the requirement under **Paragraph 1(A)(h)**)?

CHECKLIST BEFORE SUBMITTING QUOTATION***If you submit the quotation in the capacity of a firm -***

11. Have you crossed out **Paragraphs 1(A) and 1(C)** of the **Contract Schedule 3**?
12. Have you filled in the required information in **Paragraph 1(B)** (i.e. name of the firm, address of the firm, telephone number, date of establishment, Business Registration Certificate No., name and address of partners, bank account no., etc.)?
13. Has one of your partners **signed Contract Schedule 3**?

If you submit the quotation in the capacity of a company or a corporation incorporated under an Ordinance -

14. Have you crossed out **Paragraphs 1(A) and 1(B)** of **Contract Schedule 3**?
15. Have you filled in the required information in **Paragraph 1(C)** (i.e. name of company, and its parent company, address of registered office, telephone number, Certificate of Incorporation No., Business Registration Certificate No., name and address of the managing director and company secretary, bank account no., etc.)?
16. Have you attached a certified true copy of the minutes of the meeting of the Board of Directors of your company or other documentary evidence showing that your authorized representative is authorised to sign and submit the quotation on behalf of your company as per **Paragraph 1(C)(j)** of **Contract Schedule 3**?
17. Have your authorized representative **signed Contract Schedule 3 for and on your behalf**?

Completion of Contract Schedule 4 –Experience and Business Plans

18. Have you provided the information required in **Contract Schedule 4** the descriptions and history of your past service experience to show that you have the minimum years of experience in operating **catering business with seating accommodation and table services** as required under **Paragraph 6.1** of the **Terms of Quotation**.
19. Have you **attached documentary proofs** such as licences issued by the Food and Environmental Hygiene Department, contracts, reference letters, etc., to substantiate the claimed experience?
20. Have you submitted with the quotation the proposed plans as described in **Contract Schedule 4**, including (i) Facilities and Decoration Plan, (ii) Food/ Service Plan; (iii) Marketing Plan for Promoting the Image and Functions of the Museum; (iv) Operation and Staff Plan and (v) Customer

CHECKLIST BEFORE SUBMITTING QUOTATION

Services Plan as required under **Paragraph 4.1(c)** of the **Terms of Quotation**

21. Have you or your authorized representative **signed Contract Schedule 4**?

FINAL CHECK

22. Have you initialed against any marked amendments on the Quotation Documents to be submitted?

23. Have you / your authorized representative **signed** on all required documents in particular:

(a) Part II of Quotation Form and

(b) Contract Schedules 1 to 4

DRAFT ARTICLES OF AGREEMENT

THESE ARTICLES OF AGREEMENT made this _____ day of _____, 201____ BETWEEN the Assistant Director (Heritage and Museums) of Leisure and Cultural Services Department whose office is situated at Leisure and Cultural Services Headquarters, 1-3 Pai Tau Street, Sha Tin, N.T., Hong Kong acting for and on behalf of THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA of the one part ("Government")

AND _____, whose address is at _____ ("the Contractor") of the other part.

WHEREAS:

- (A) By an Invitation to Quotation (Quotation Ref.: LRT/HKMCD/01/2016), the Government has invited quotations for the grant of licence to operate the Light Refreshment Cafeteria at the Hong Kong Museum of Coastal Defence.
- (B) The Contractor's quotation for the Contract was accepted in principle by the Government by a notification of conditional acceptance of quotation to the Contractor pursuant to Paragraph 14.2 of Terms of Quotation.
- (C) The Contractor has apparently fulfilled all conditions specified in the notification of conditional acceptance of quotation.
- (D) Pursuant to Paragraph 14.3 of the Terms of Quotation, the parties hereto enter into these Articles of Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. All terms and expressions defined in the Quotation Documents published by the Government in connection with the Invitation to Quotation 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 which are:
 - (i) These Articles of Agreement
 - (ii) Interpretation
 - (iii) Terms of Quotation
 - (iv) Conditions of Contract
 - (v) Contract Schedules 1 to 8 (in their original form as found in the Quotation Documents)
 - (vi) Annexes A to F
 - (vii) Contract Schedules 1 to 4 (Submitted by the Contractor)

DRAFT ARTICLES OF AGREEMENT

All of the above items are annexed to these Articles of Agreement for identification purposes.

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

- 4. For the purposes of Clause 48 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): _____

DRAFT ARTICLES OF AGREEMENT

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

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

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

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

SIGNED BY THE ASSISTANT DIRECTOR)
(HERITAGE AND MUSEUMS) OF)
LEISURE AND CULTURAL SERVICES)
DEPARTMENT FOR AND ON BEHALF OF)
THE GOVERNMENT OF THE SPECIAL)
ADMINISTRATIVE REGION OF THE)
PEOPLE’S REPUBLIC OF CHINA)

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

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

ANNEXES

<u>Content</u>	<u>Sheet No.</u>
Annex A – General Information of the Hong Kong Museum of Coastal Defence.....	126
Annex B – Location Map of Hong Kong Museum of Coastal Defence.....	130
Annex C(i) – Operation Area of the Light Refreshment Cafeteria	131
Annex C(ii) – Operation Area - Vending Machine	132
Annex D(i) – Specified Snack List.....	133
Annex D(ii) – List of Drinks for Sale by Means of Vending Machine.....	135
Annex E – Enrolment Form for Quotation Briefing Session	136
Annex F – Form of Bank Guarantee.....	137

ANNEXES

Annex A

General Information of the Hong Kong Museum of Coastal Defence

1. Vision, Mission and Value of Hong Kong Museum of Coastal Defence

1.1 Embark on a journey into Hong Kong's 600-year military history at the Museum of Coastal Defence, built on the preserved site of Hong Kong's most formidable British military fortifications.

1.2 Vision

We are an open platform for fostering interest in and promoting an understanding of history for enjoyment and connecting people through inspiring museum experiences.

1.3 Mission

- 1.3.1 Collect, preserve, research, interpret and exhibit collections related to Hong Kong and South China
- 1.3.2 Engage people to understand and interpret our history
- 1.3.3 Promote an understanding of local history to enhance people's identity and enrich people's cultural lives
- 1.3.4 Network with similar cultural institutions to create synergy to promote history learning
- 1.3.5 Maintain open access to everyone

1.4 Values

- 1.4.1 Professionalism
- 1.4.2 Openness
- 1.4.3 Integrity
- 1.4.4 Creativity
- 1.4.5 People-orientation
- 1.4.6 Passion

ANNEXES

2. Facilities of the Hong Kong Museum of Coastal Defence

The Hong Kong Museum of Coastal Defence (HKMCD), premises at Shau Kei Wan was opened in 2000. It was converted from the hundred years' old Lei Yue Mun Fort. The Museum is made up of three main areas, namely the Reception Area, the Redoubt, and the Historical Trail. The Redoubt is renovated as the major exhibition area to house the standing exhibition entitled "600 years of Hong Kong's coastal defence". There are also a Children's Corner, a theatre, a thematic exhibition gallery, and a souvenir shop in the Redoubt and a purpose-built building at the eastern end of the Redoubt to house a cafeteria and toilet facilities.

3. Attendance of the Museum

Number of visitors and daily average attendance on opening days of the Museum in 2012/13, 2013/14 and 2014/15 are listed below for reference.

Year	Number of visitors	Daily average attendance on opening days
2012/13	117,664	378
2013/14	121,300	387
2014/15	120,800	379

(Note: Bidder 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. Bidder should conduct his own independent assessment for preparation of his quotation submission.)

4. The Light Refreshment Cafeteria

The Light Refreshment Cafeteria is located at the Café Block east of the Redoubt. The Light Refreshment Cafeteria is intended to provide a glamorous and comfortable environment, which serves wide variety of meals, refreshment, tea, drinks and other food commodity. The style and quality of service of the Light Refreshment Cafeteria should be commensurate with the unique image, ambiance and operation of the Museum. It has a total floor area of about 83 square metres, including 48 square metres for indoor serving

ANNEXES

area, and about 35 square metres of food preparation area and store. The layout plan of the Light Refreshment Cafeteria and the Operation Area is at **Annex C(i)**. The Contractor is also required to install a vending machine for drinks at the area shaded green in **Annex C(ii)**.

(Note: The attached plans at **Annexes B, C(i)** and **C(ii)** are approximate and for the purpose of identification only. The figures referring to the respective areas of the Operation Area referred to in this Schedule are approximates and subject to final measurement. The layout of the Operation Area in the attached plans is also approximate and subject to the final adjustment as may be shown in the final as-built plan(s) of the Operation Area.)

5. Opening Hours of the Light Refreshment Cafeteria

The opening hours of the Light Refreshment Cafeteria within the Licence Area should be the same as the Museum's opening hours which may be changed by the Government Representative when needed. The opening hours of the Hong Kong Museum of Coastal Defence are as follows:

Monday to Wednesday, Friday to Sunday and public holidays (March – September)	10:00am - 6:00pm
Monday to Wednesday, Friday to Sunday and public holidays (October – February)	10:00am - 5:00pm
Christmas Eve and Chinese New Year's Eve	10:00am - 5:00pm

Closed on Thursday (except public holidays)

Closed on the first two days of the Chinese New Year

ANNEXES

Annex A**General Information of the Hong Kong Museum of Coastal Defence**

Special functions, programmes and activities including exhibition previews, opening ceremonies and receptions will be presented in the Museum's ancillary facilities including but not limited to the Lecture Hall, Exhibition Gallery and the Historical Trail. The Contractor is obliged to conduct Business (may be outside the normal opening hours of the Museum or on the Closing Day on Thursdays) to serve the users, presenters, performers, audiences and participants of such functions, programmes and activities upon request by the Government Representative to the Contractor by giving notice to the Contractor seven (7) days in advance for such arrangement.

When tropical cyclone warning signal no. 8 or above is issued, the Museum will be closed until the signal is cancelled or lowered. The Museum will remain closed if tropical cyclone warning signal no. 8 is cancelled / lowered less than two (2) hours before the normal closing hours.

The Museum will open as usual when amber or red rainstorm warning signal is issued. If black rainstorm warning signal 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 signal is issued before the Museum's opening hours, the Museum will be closed until the signal is cancelled. The Museum will remain closed if the black rainstorm warning signal is cancelled less than two (2) hours before the normal closing hours.

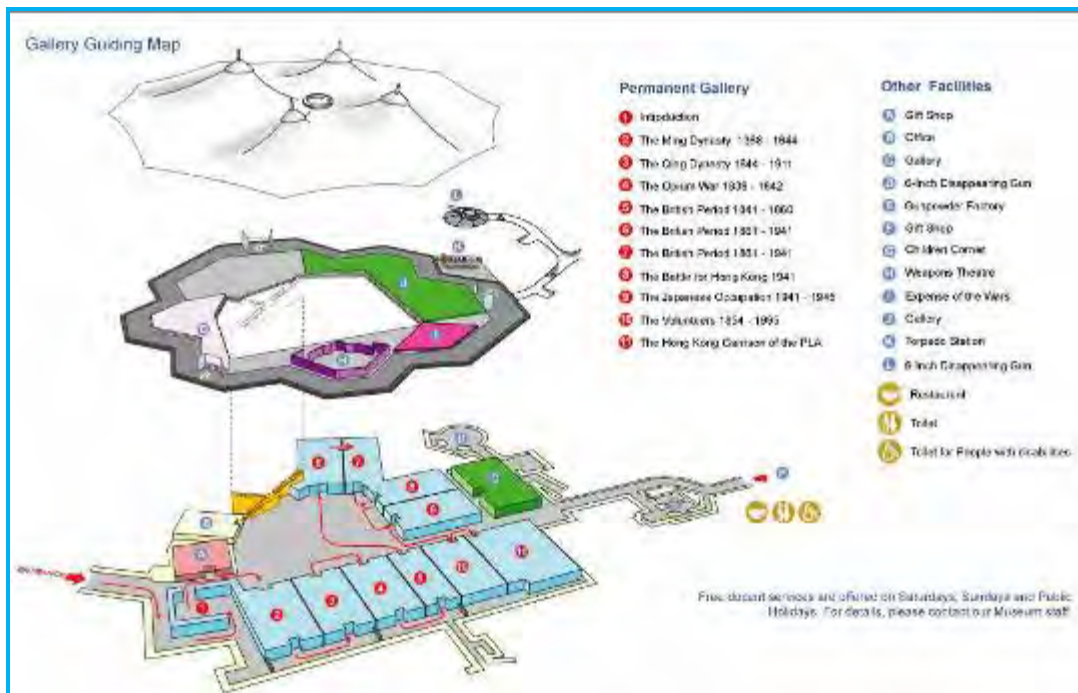
ANNEXES

Annex B

Location Map of Hong Kong Museum of Coastal Defence



Floor Plan of the Redoubt



(Note: the café is marked as Restaurant on the floor plan located at the café block outside the Redoubt)

ANNEXES**Annex C(i)****Operation Area of the Light Refreshment Cafeteria**

The area as shown shaded yellow in the following layout plan is the Operation Area

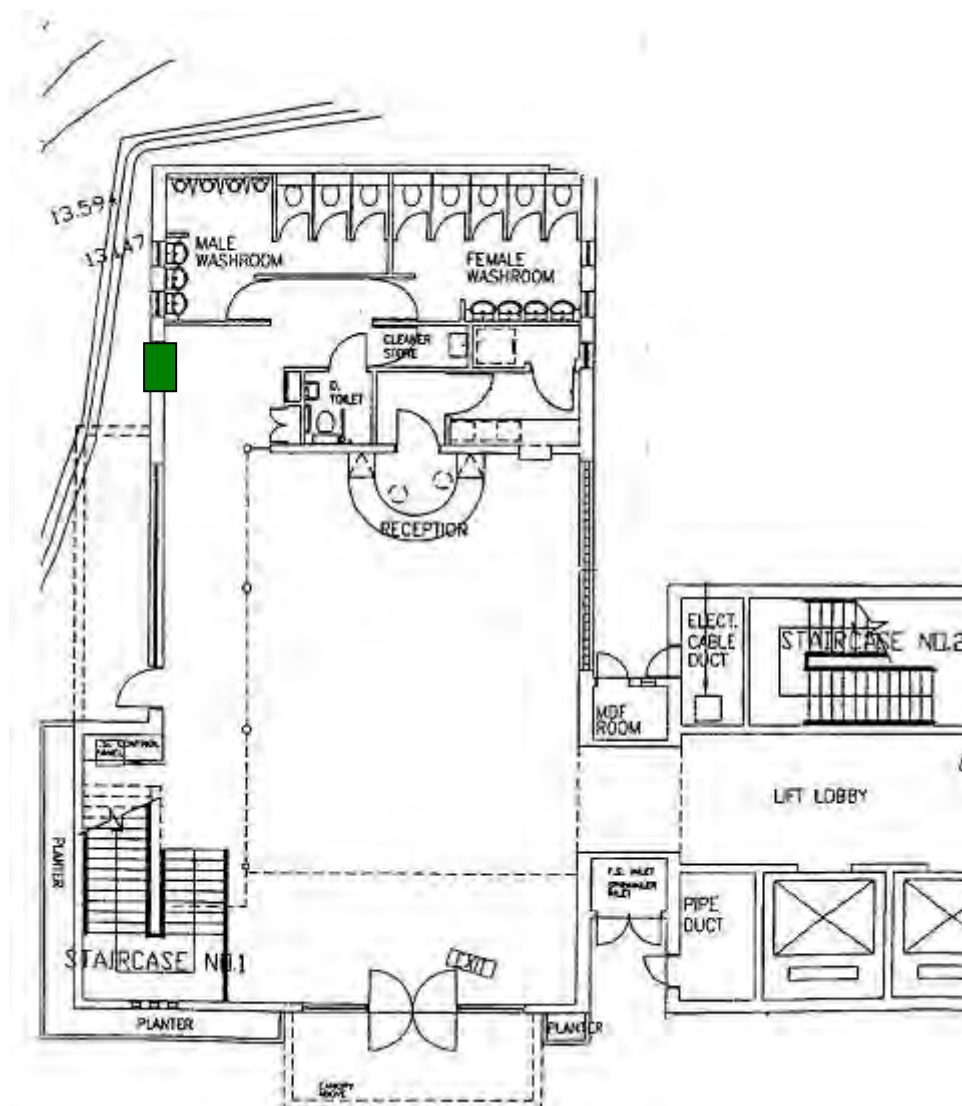
Hong Kong Museum of Coastal Defence – Café Block

**The approximate total floor area of the Light Refreshment Cafeteria
is 83 square metres.**

(Not to Scale)

ANNEXES**Annex C (ii)****Operation Area - Vending Machine**

The area as shown shaded in green in the following layout plan is the location designated for the vending machine for drinks at the Foyer on the Ground Floor of the Reception Building of the Hong Kong Museum of Coastal Defence.

Hong Kong Museum of Coastal Defence – Foyer, Reception Building

**The approximate total floor area for displaying
the vending machine for drinks is 1 square metre.**

(Not to Scale)

ANNEXES**Annex D(i)****Specified Snack List**

Service Providers are allowed to choose **five items** from the following “Specified Snack List” for sale. However, these pre-prepared snacks must be obtained from sources approved or licensed by the Director of Food and Environmental Hygiene and are ready to eat after warming or reheating by electricity (**excluding deep-frying and stir-frying**) in the Licence Area.

(Chinese Snack)

Item No.	Name of Snack Item	Item No.	Name of Snack Item	Item No.	Name of Snack Item
1	Lo shui duck gizzard	24	Deep fried savoury triangle	47	Red bean glutinous rice ball
2	Lo shui chicken gizzard	25	Shrimp dumpling	48	Sesame paste bun
3	Lo shui sliced beef	26	Steamed beef ball	49	Red bean bun
4	Lo shui chicken wing	27	Chicken with Chinese ham and maw	50	Leaf lard bun
5	Boiled egg in tea	28	Chicken claw	51	Egg-yolk and cream bun
6	Spring roll	29	Siu mai	52	Soya bean curd flake
7	Steamed meat bun	30	Steamed sparerib	53	Twisted doughnut
8	Steamed bread	31	Pickled chicken claw	54	Ox tongue crisp
9	Sesame seed cake	32	Chicken claws in black bean sauce	55	Sesame cookie
10	Green onion coil	33	Pan-fried chicken wing	56	Spicy doughnut
11	Vegetarian lo mei	34	Fish ball	57	Shrimp ricesheet roll
12	Snow ball	35	Beef ball	58	Vegetarian ricesheet roll
13	Red bean pudding	36	Pork ball with minced mushroom	59	Barbecued meat ricesheet roll
14	Split peas pudding	37	Cuttlefish ball	60	Beef ricesheet roll
15	Coconut milk pudding	38	Glutinous rice with salted pork	61	Shiu Kau
16	Multi layers cake	39	Rice dumpling with lye	62	Steamed dumpling in Chiu Chow Style
17	Turnip pudding	40	Barbecued meat bun	63	Fish dumpling
18	Taro pudding	41	Vegetable meat bun	64	Soup
19	Jelly fish	42	Beef bun	65	Dumpling
20	Deep fried taro pastry	43	Steamed bread roll	66	Chive dumpling
21	Steamed rice dumpling	44	Stuffed dumpling in green wrapping	67	Fresh soyabean sheet roll
22	Mini steamed rice dumpling	45	Sweetened dough	68	Dried soyabean sheet roll
23	Glutinous rice roll	46	Sesame paste glutinous rice ball	69	Seasame roll
				70	Pre-cooked rice dumpling

ANNEXES***(Non-Chinese Snack)***

Item No.	Name of Snack Item	Item No.	Name of Snack Item	Item No.	Name of Snack Item
1	Sweet coconut bread	19	Brochette of chicken	37	Vegetable salad
2	Pineapple bun	20	Barbecued mackerel pike	38	Curry Kok (Samosa)
3	Dinner bun	21	Pineapple and sausage	39	French fries
4	Mango pudding	22	Raisin muffin	40	Smoked salmon
5	Sago pudding	23	Corn beef croissant	41	Frozen (cooked) shrimp meat
6	Fruit pudding	24	Ham and cheese croissant	42	Frozen (cooked) crab meat
7	Butter puff	25	Egg and tomato sandwich	43	Chicken nuggets
8	Cheese cake	26	Beef sandwich	44	Mixed Vegetable in Beef Roll
9	French bread	27	Ham sandwich	45	Stir Fried Mixed Mushroom in Olive Oil
10	Baked potato (single filling)	28	Ham and cheese sandwich	46	Juicy Beef Salad
11	Boiled egg	29	Pizza (single-flavoured topping)	47	Cold Noodles with Sesame Dressing
12	Waffle with butter and syrup	30	Jelly	48	Crab Roe and Mango Salad
13	Goose liver roll	31	Chicken pie	49	Frozen Omelet
14	Duck meat roll	32	Pancake		
15	Sausage roll	33	Waffle		
16	Brochette of pork	34	Toast		
17	Hot dog	35	Egg tart		
18	Brochette of beef	36	Toasted bread with cheese and cream		

ANNEXES

Annex D(ii)**List of Drinks for Sale by Means of Vending Machine**

The vending machine for drinks to be installed by the Contractor at the designated area as prescribed in Annex C(ii) will include some or all but not only be restricted to the drinks items listed below for sale. The provision of drinks other than those as listed below shall be approved by the Government Representative in the future.

- * cola
- * cream soda
- * orange juice drink
- * apple juice drink
- * mango juice drink
- * guava juice drink
- * grape juice drink
- * lemon tea
- * green tea
- * chrysanthemum tea
- * milk tea
- * coffee
- * soya bean milk
- * distilled water
- * mineral water

ANNEXES

ANNEX E

**ENROLMENT FORM FOR THE QUOTATION BRIEFING SESSION ON
19 May 2016 (Thursday) at 11:00 a.m.**

To: Assistant Curator I, Hong Kong Museum of Coastal Defence
(Fax No.: 2569 1637)

**Quotation for Grant of Licence to Operate the Light Refreshment Cafeteria
at the Hong Kong Museum of Coastal Defence**

(please return this form by fax on or before 3:00 p.m. on 18 May 2016)

In accordance with **Clause 40** of the **Terms of Quotation**, I / we* would like to attend the following quotation briefing session:

Name of Company: _____ (Chinese)
_____ (English)

Name & title of Representatives attending the Briefing Session (maximum of 2)

- 1. _____
- 2. _____

Details of the Organization/Company:

Contact Person : _____
Post : _____
Address : _____

Telephone : _____
Fax : _____
E-mail : _____

The Bidder is advised to bring along the quotation document to the Quotation Briefing Session.

* Delete whichever is inappropriate

ANNEXES

Annex F

FORM OF BANK GUARANTEE

THIS GUARANTEE is made on the day of 2016
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 business at the light refreshment Cafeteria in Hong Kong Museum of
Coastal Defence 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:

ANNEXES

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

ANNEXES

- Government Representative, in whole or in part, in respect of the Contractor's obligations under the Contract;
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract for any reason;
 - (d) any forbearance or waiver of any right of action or remedy that the Government or the Government Representative may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government or the Government Representative in enforcing any right, power, privilege to or remedy available to the Government or the Government Representative in relation to the obligations of the Contractor set out in the Contract;
 - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
 - (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligations by the Government or the Government Representative.
- (6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling 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

ANNEXES

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 Government or the Government Representative may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government or the Government Representative without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government or the Government Representative specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Government, to the Leisure and Cultural Services Department marked for the attention of Assistant Curator I, Hong Kong Museum of Coastal Defence, 175 Tung Hei Road, Shau Kei Wan, Hong Kong, facsimile number (+852)2569 1637;
 - (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

ANNEXES

duly served by one party if sent by letter or facsimile addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

IN WITNESS whereof the Guarantor has caused its [Common Seal/ Seal*] to be hereunto affixed the day and year first above written.

The [Common Seal/Seal*] of the said)
Guarantor was hereunto affixed)
and signed)
by)
.....)

[Name and Title])
duly authorised by its board of directors:) _____

In the presence of:
Signature of witness:

Name of witness: _____
Title of witness: _____

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

[Name and Title]) _____

In the presence of:
Signature of witness:

Name of witness: _____
Title of witness: _____

ANNEXES

* *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.

Quotation Label 1
Price Submission

THE GOVERNMENT OF THE HONG KONG

SPECIAL ADMINISTRATIVE REGION

LEISURE AND CULTURAL SERVICES DEPARTMENT

**Quotation for the Grant of Licence
to Operate the Light Refreshment Cafeteria
at the Hong Kong Museum of Coastal Defence**

Quotation Reference : LRT/HKMCD/01/2016

Quotation Issue Date : 12 May 2016

Quotation Closing Date : 2 June 2016 (before 12:00 noon)

Quotation Label 2
Technical Submission

THE GOVERNMENT OF THE HONG KONG

SPECIAL ADMINISTRATIVE REGION

LEISURE AND CULTURAL SERVICES DEPARTMENT

**Quotation for the Grant of Licence
to Operate the Light Refreshment Cafeteria
at the Hong Kong Museum of Coastal Defence**

Quotation Reference : LRT/HKMCD/01/2016

Quotation Issue Date : 12 May 2016

Quotation Closing Date : 2 June 2016 (before 12:00 noon)

Quotation Label 3
Completed Quotation

The Chairman of Quotation Opening Committee,
Leisure and Cultural Services Department Quotation Box
Third floor, Hong Kong Museum of History,
100 Chatham Road South, Tsim Sha Tsui, Kowloon

**Quotation for the Grant of Licence
to Operate the Light Refreshment Cafeteria
at the Hong Kong Museum of Coastal Defence**

Quotation Ref.: LRT/HKMCD/01/2016

Quotation Closing Date: 2 June 2016 (before 12:00 noon)

Note: The Completed Quotation Documents must be enclosed in sealed and separate envelopes inserted into an envelope with this label outside.