

# Services in relation to Sale of Shares of Kunlun Energy Company Limited

## Brief

### 1. Purpose

1.1 The Government of the Hong Kong Special Administrative Region (the “**Government**”) acting through the Financial Services and the Treasury Bureau (“**FSTB**”) wishes to appoint a firm (the selected firm, “**Firm**”) to execute the order of the Court of First Instance (“**Court**”) made on 13 October 2025 for the sale of 51.43 million shares of Kunlun Energy Company Limited (00135.HK) (“**Kunlun**”). The services to be carried out by the Firm are referred to as the “**Services**”.

### 2. Background

2.1 In April 1995, the Financial Secretary (“**FS**”) imposed a Restriction Order (“**Restriction Order**”) prohibiting the transfer and sale of 51.43 million shares of Kunlun Energy Company Limited (00135.HK) (formerly known as Paragon Holdings Limited and thereafter CNPC (Hong Kong) Limited) under section 41 of the repealed Securities (Disclosure of Interests) Ordinance (Cap. 396) (“**SDIO**”) (“**Restricted Shares**”).

2.2 Pursuant to the Restriction Order, the Restricted Shares were held by Deutsche Securities Asia Limited (“**DSAL**”, formerly known as Morgan Grenfell Asia Securities (HK) Ltd) and maintained in a securities account held in the name of Mr. Philip Tze-chiu Young with DSAL.

2.3 The Court, on the application of the FS, granted an order for sale of the Restricted Shares under section 46(4) of the SDIO or section 371(5) of the Securities and Futures Ordinance (Cap. 571) (“**SFO**”) and inherent jurisdiction of the Court on 13 October 2025 (“**Order**”) as set out in **Annex 1**. According to the Order, the proceeds of sale, less the costs of the sale and necessary costs and expenses incurred by the FS and DSAL, shall be paid into the Court.

2.4 DSAL, its Associate(s) and Associated Person(s) (defined in paragraph 14.7 below), and the personal representative(s) (whether in his/her own name or on behalf of the estate of Mr. Philip Tze-chiu Young (“**Estate**”)) and any beneficiary of the Estate, must not submit any bid in response to this invitation. The Estate must not enter into any sale agreement with the Firm for the purchase of the Restricted Shares.

### 3. Objectives and Scope of the Services

3.1 Against the foregoing background, subject to any other instructions from the Government, the Government intends to engage a Firm, in the capacity of an independent administrator, to execute the Order, including but not limited to:

- (a) advising the Government on the time, price, terms and manner in which the Restricted Shares are to be sold to protect the interest of other shareholders of Kunlun;
- (b) holding the Restricted Shares pending their sale;
- (c) holding the dividends to be generated from the Restricted Shares after the Transfer (defined in paragraph 3.2(a) below) (“**Dividends**”) or any part thereof, if any;
- (d) paying or causing to be paid into the Court the Dividends or any part thereof, if any, as soon as practicable, after the deduction of any relevant costs and expenses in relation thereof (as advised by the Government Representative (defined in paragraph 4.1 below)), if any;
- (e) conducting the sale of the Restricted Shares in accordance with the Plan (defined in paragraph 3.2(c) below) approved by the Government;
- (f) holding the proceeds from the sale of the Restricted Shares pending payment of the relevant amount as stipulated in paragraph 3.1(g) below into the Court;
- (g) paying the proceeds of sale of the Restricted Shares, if any, into the Court after deducting all costs and expenses in connection with the sale of the Restricted Shares as advised by the Government Representative, **including but not limited to** fee for the Services and necessary costs and expenses incurred by the Government and DSAL in relation to the Restricted Shares; and
- (h) rendering such other services and activities as required for the execution of the Order.

3.2 Specifically, the Firm shall perform the following tasks with a view to meeting the objectives in paragraph 3.1 above:

- (a) within one (1) week after the commencement date of the Agreement (defined in paragraph 17.1 below) (“**Commencement Date**”) or another

- date as advised by the Government Representative, the Firm shall, upon liaison with DSAL (or any nominee(s) to be appointed by the Government), effect and complete the transfer of the Restricted Shares from DSAL to a segregated stock account held/to be held by the Firm (“**Stock Account**”) as trustee (“**Transfer**”) on the terms as set out in the Order for the purpose of the Transfer;
- (b) once the Transfer is completed, the Firm shall notify the Government Representative (defined in paragraph 4.1 below) and enter into any necessary agreement with the Government concerning the Restricted Shares and the Dividends;
  - (c) within four (4) weeks from the completion of the Transfer, the Firm shall submit a written proposal to the Government with the inclusion of the following (“**Investment Proposal**”):
    - (i) at least three different plans as to how the Restricted Shares are to be sold covering the time of sale, a range of permissible sale price per share, and the terms and manner of the sale (e.g. whether through private placement to pre-selected investors, or other off-market method, or on-market through the Stock Exchange of Hong Kong Limited (“**SEHK**”) with clearing participants of the Central Clearing and Settlement System) (the “**Plans**”, each the “**Plan**”);
    - (ii) the potential impact of each Plan on the market;
    - (iii) an analysis of the pros and cons of each Plan;
    - (iv) a recommendation on the best Plan to be adopted for selling the Restricted Shares; and
    - (v) advice on any other issues that the Firm considers relevant to the sale of the Restricted Shares and how those issues are to be dealt with;
  - (d) within two (2) weeks upon request by the Government, the Firm shall revise the Investment Proposal to the satisfaction of the Government and/or provide additional Plan(s) if required. The Government has the absolute discretion to decide on the time, price, terms and manner in which the Restricted Shares are to be sold;
  - (e) the sale of Restricted Shares shall be conducted in accordance with the Plan approved by the Government. The Firm shall pay the proceeds of

sale of the Restricted Shares and any Dividends into a non-interest-bearing account of the Firm opened / to be opened with a bank licensed under the Banking Ordinance (Cap. 155) under the Firm's name for the sole purpose of keeping and processing the proceeds of sale of the Restricted Shares and the Dividends ("**Proceeds Account**"); and

- (f) after the sale of Restricted Shares and within fourteen (14) Working Days upon the acceptance to the satisfaction of the Government in writing of the **Interim Reports** or the **Final Report** (defined in paragraph 5.2 below) or any other timeframe as specified by the Government, the Firm shall pay the net proceeds of sale into the Court after deduction of the Service Fee (defined in paragraph 12.1 below) and any costs and expenses incurred by the Government for the preparation for and/or effecting of any sale of the Restricted Shares and the relevant costs and expenses incurred by DSAL in connection with its performance of duties and exercise of powers and discretion as trustee of the Restricted Shares and the dividends accrued therefrom, to the extent that they are not recoverable by DSAL from the dividends generated from the Restricted Shares before the Transfer (if applicable). The Government Representative will advise the Firm the amount of costs and expenses to be deducted. Supporting documents (e.g. cheque deposit slip) should be provided to the Government to prove the payment made by the Firm into the Court within two (2) Working Days after the payment is made.

#### **4. Control of the Services**

4.1 The Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)<sup>1</sup> of FSTB or any person designated by such person in writing ("**Government Representative**") will act as the liaison officer between the Firm and the Government in relation to the Services.

4.2 The Firm and members of the Team (defined in paragraph 6.1 below) shall take instructions only from the Government Representative.

4.3 The Government Representative and the Firm shall hold meetings as and when the Government Representative considers necessary to discuss any matters in relation to the Services. All members of the Team must be readily contactable throughout the term of the Agreement by ordinary means of communication including telephone, meeting in person and via email. The Team may also be required to consult and attend meetings in Hong Kong with the Government Representative and other government departments and organizations, agencies, committees and parties as may be directed by the Government.

4.4 The Firm shall provide professional advice and responses to any questions or requests made by the Government Representative in connection with the Services within seven (7) Working Days of such request or such other period as may be allowed by the Government Representative.

4.5 The Firm shall comply with all reasonable instructions as the Government Representative may give in relation to the Services. The Firm shall maintain an office in Hong Kong and be licensed for Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the SFO for the duration of the Agreement.

## **5. Deliverables and Timeframe**

5.1 The Services are expected to commence in around May 2026. Until and unless all the Services, including but not limited to the sale of the Restricted Shares, the paying and causing to be paid into the Court the net proceeds of sale and all tasks and deliverables in relation to the Services have been completed and delivered, the Services will not be regarded as completed. It is anticipated that the Services could be completed by the Firm within three (3) years from the Commencement Date.

5.2 The Firm shall, as required by the Government, complete the tasks and submit deliverables (in English for written deliverables) (“**Deliverables**”) (as the case may be) as set out below to the satisfaction of the Government:

- (a) completion of the **Transfer** (defined in paragraph 3.2(a) above) within one (1) week after the Commencement Date or another date as advised by the Government Representative;
- (b) submission of the **Investment Proposal** (defined in paragraph 3.2(c) above) within four (4) weeks from the Transfer;
- (c) completion of the sale of the **Restricted Shares** in the manner as approved by the Government and payment of net proceeds of sale into the Court (as described in paragraphs 3.2(e) and (f) above);
- (d) submission of the **Monthly Statement of Account** on a monthly basis, providing account details of the Stock Account and the Proceeds Account including the cash and the Restricted Shares’ balance and holdings and all transactions in relation to the Restricted Shares and activities in the said accounts during the month, etc. within three (3) Working Days from the last day of previous month;

- (e) submission of the **Interim Reports**, providing the date, number of the Restricted Shares on hand, selling quantity and price, fees as set out in paragraph 12.4 below, proceeds of sale, the Brokerage Commission (defined in paragraph 7.6(b) below) in each transaction of the sale of the Restricted Shares and any other information as requested by the Government Representative in writing within five (5) Working Days after 25%, 50% and 75% of the Restricted Shares have been sold respectively; and
- (f) submission of the **Final Report**, providing the same information as mentioned in paragraph 5.2(e) above, together with an Executive Summary of the tasks performed in relation to the sale of all Restricted Shares and any other information as requested by the Government Representative in writing within fourteen (14) Working Days after all Restricted Shares have been sold.

5.3 Notwithstanding paragraphs 5.2(e) and (f) above, if more than one threshold (i.e. 25%, 50%, 75% or 100%) of the Restricted Shares sold will be met within a short period of time, subject to the written instruction from the Government Representative, the Firm may submit one Interim Report or the Final Report (as the case may be) covering the relevant information required in paragraphs 5.2(e) and (f) above.

5.4 None of the tasks performed (as listed in paragraph 3.2 above) and Deliverables shall be deemed to have been completed until and unless the Government Representative has confirmed acceptance of the same in writing.

## **6. Requirements for the Firm and the Team**

6.1 The Firm shall deploy personnel with relevant expertise and professional qualifications (“**Team**”) to perform the Services. The Team shall be headed by a person (“**Team Leader**”) who shall assume the role of liaison officer for communicating with the Government and must be stationed in Hong Kong for provision of the Services. Members of the Team must be acceptable to the Government. The Government reserves the right to require replacement of the members of the Team. The Firm shall obtain the Government Representative’s prior written approval for any proposed addition or change of members of the Team. The Firm shall ensure a substitute or replacement of any member of the Team is no less qualified in terms of relevant experience and qualifications than the outgoing individual and is available at the relevant time to act as a replacement or substitute.

## Essential Requirements

6.2 Proposals must meet all of the essential requirements set out in paragraphs 6.3 to 6.5 below (“**Essential Requirements**”). Proposals which fail to meet any of such Essential Requirements shall be disqualified and not considered further.

### 6.3 Firm

The firm must:

- (a) be licensed for Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the SFO as at the Closing Date (defined in paragraph 7.2 below); and
- (b) have an aggregate of at least five (5) years of experience in conducting Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the SFO (must involve trading shares on the stock market operated by SEHK (“**Stock Market**”)) in the seven (7) years immediately preceding the Closing Date (defined in paragraph 7.2 below).

### 6.4 Proposed Team

The proposed Team Leader must have an aggregate of at least ten (10) years of experience (including an aggregate of at least five (5) years managerial experience) in the twelve (12) years immediately preceding the Closing Date in conducting Type 1 (dealing in securities) and Type 4 (advising on securities) regulated activities under the SFO (must involve trading shares on the Stock Market).

6.5 Each of the firm, the proposed Team Leader and all proposed members of the Team must have no disciplinary record with the Securities and Futures Commission (“**SFC**”) and SEHK in the five (5) years immediately preceding the Closing Date.

## Other Requirements (i.e. non-essential)

6.6 It is preferred (i.e. not essential) for Proposals to meet the non-essential requirements set out in paragraphs 6.7 to 6.10 below, which would be considered favourably in the assessment.

6.7 It is preferred if the proposed Team comprises of members each with an aggregate of at least two (2) years of experience in conducting Type 1 (dealing in securities) and/or Type 4 (advising on securities) regulated activities under the SFO (must involve trading shares on the Stock Market) in the five (5) years immediately preceding the Closing Date.

6.8 It is preferred if the firm has experience in providing investment strategies and trading shares of similar scale (in the opinion of the Government) on the Stock Market in the seven (7) years immediately preceding the Closing Date.

6.9 It is preferred if the proposed Team Leader has experience in providing investment strategies and trading shares of similar scale (in the opinion of the Government) on the Stock Market as well as managerial experience (in excess of the requirement stated in paragraph 6.4 above) in the twelve (12) years immediately preceding the Closing Date.

6.10 It is preferred if the proposed Team members have experience in providing investment strategies and trading shares of similar scale (in the opinion of the Government) on the Stock Market in the five (5) years immediately preceding the Closing Date.

## **7. Proposals**

7.1 Submissions by a firm in response to this Brief (“**Proposal**”) shall be prepared in English and shall include:

- (a) five hard copies of a technical proposal (“**Technical Proposal**”) (see paragraph 7.5 below and **Annex 2**);
- (b) two hard copies of a fee proposal in the form set out in **Annex 3** (“**Fee Proposal**”) (see paragraph 7.6 below);
- (c) a completed “Consent to Disclosure” form (see paragraph 9.2 below and **Annex 4**);
- (d) a declaration as required under “Conflict of Interest” (see paragraph 14.1 below);
- (e) a statement as to the firm’s business structure as required under paragraph 10.1 below;
- (f) a copy of SFC licences demonstrating its compliance with paragraph 6.3(a) above; and
- (g) a completed Non-collusion Certificate (see paragraph 26.2 below and **Annex 6**).

The Technical Proposal and Fee Proposal shall be submitted in separate sealed envelopes with the words “Technical Proposal” and “Fee Proposal” clearly marked on the outside of the envelopes. These two sealed envelopes shall then be placed together in a sealed plain envelope marked “**Reference No.: FSB 1/2026 – Services in relation to Sale of Shares**”.

7.2 The Proposals shall be submitted by hand **on or before 3:00 p.m. on 4 March 2026 Hong Kong time (“Closing Date”)** to the Tender Box of the Financial Services and the Treasury Bureau (Financial Services Branch), 2/F Entrance, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong. Electronic submissions will not be considered. Proposals shall remain open for acceptance for not less than 90 calendar days after the Closing Date. Proposals that fail to comply with this requirement may not be considered further.

7.3 If Tropical Cyclone Warning Signal No. 8 or above is hoisted or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 9:00 a.m. and 3:00 p.m. on 4 March 2026, the deadline for submission will be extended to the same time on the following Working Day. In case of blockage of the public access to the above location at any time between 9:00 a.m. and 3:00 p.m. on 4 March 2026, FSTB will announce, by posting updates on the website of its Financial Services Branch (<https://www.fstb.gov.hk/fsb/en/tender/index.html>), the extension of the closing time until further notice. Following removal of the blockage, FSTB will announce the extended closing time on the aforesaid website as soon as practicable. “**Working Day**” means any day other than a Saturday, public holiday, gale-warning day or black rainstorm warning day. **Late submissions will not be considered.**

7.4 By submitting a Proposal in response to this invitation, the firm gives consent to the Government to obtain from:

- (a) any person whose particulars are required in the Brief to be set out by the firm in its Proposal; and
- (b) any issuing body of any of the reports/certificates or documentary evidence required in the Brief,

all information which the Government considers appropriate and relevant to the evaluation of the Proposal including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the firm. If any consent from any other person is required for the Government to obtain any of the aforesaid information or

document, the firm undertakes that it can obtain such consent when required by the Government. Further, upon request by the Government, the firm shall provide a written authorisation to the Government if such written authorisation is needed for the Government to obtain information and/or document(s) from the person or issuing body referred to in Sub-paragraphs (a) and (b) above. The Government has the sole discretion to disqualify the firm if the firm fails to provide such written authorisation upon request by the Government.

### Technical Proposal

7.5 The Technical Proposal shall include the following information:

- (a) an executive summary of the technical proposal;
- (b) a description of the firm's organisation and business portfolio, and details of experience and expertise in providing investment strategies and trading shares of similar scale (in the opinion of the Government) in the Stock Market by completing Part A of Annex 2 in respect of the firm's experience;
- (c) a description showing the firm's understanding of the objectives and requirements of the Services with appreciation of issues and problems involved in the Services; and suggested ways to address the issues and problems so identified;
- (d) an outline of the proposed strategies and work approach to be adopted in conducting the Services to be supported by a clear, systematic and realistic work programme with respect to submission of the Deliverables in paragraph 5.2 above, including the proposed manner of selling the Restricted Shares, whether through private placement to pre-selected investors with the Firm acting as placing agent or through other off-market method, or through SEHK with clearing participants, or otherwise any other viable manner; where practicable, the proposed manner of sale should be supported by some prior precedent cases, preferably where the sale is pursuant to a court order;
- (e) completed Parts B to D of Annex 2 to set out the details of the composition of the proposed Team, including the personal particulars, relevant qualifications, experience in providing investment strategies, trading shares of similar scale and/or managerial experience of the Team Leader and each individual Team member, and their respective responsibilities in connection with the Services;

- (f) the firm’s self-declaration on its regulatory and compliance controls and the record(s) of disciplinary action(s) taken by SFC and/or SEHK against the firm, the proposed Team Leader and all proposed members of the Team as referred to in paragraph 6.5 above;
- (g) whether there is any litigation, proceeding, inquiry, claim or allegation whatsoever, actual or threatened, against or involving the firm and/or the proposed Team; the existence of any breach or default, or alleged breach or default, of any agreement, order or award binding upon the firm and/or the proposed Team; and any other matters which may materially affect the firm’s ability to perform the Services or its role as the Firm or which may lead to justifiable criticism or embarrassment of the Government for selecting the firm;
- (h) the name, post title, telephone number and email address of the contact person; and
- (i) any other information that may assist the Government in the evaluation of the proposal.

### Fee Proposal

7.6 For the purpose of submission of the Fee Proposal, each firm shall complete and submit to the Government a Fee Proposal in the form set out in **Annex 3** as part of its Proposal. The Fee Proposal shall include the following information:

- (a) the Fixed Fee in Hong Kong dollars (defined in paragraph 12.3 below), with a breakdown into professional fees, administration fee and other fees and charges such as custody fee, collection of cash/scrip dividend fee, fee for rights exercise, etc. in relation to the execution of the Services. For the avoidance of doubt, no adjustment to the Fixed Fee to reflect any changing cost or price level will be allowed; and
- (b) the brokerage commission (“**Brokerage Commission**”) in Hong Kong dollars in the form as a **percentage** of the principal amount of the proceeds of sale of the Restricted Shares (i.e. before deduction of any fees set out in paragraph 12.4 below) (“**Principal Amount**”).

7.7 The method of assessment of the Fee Proposal is set out in paragraph 11.7 below.

## **8. Disclosure of Information for Firms Bidding in Different Capacities for the Same Services**

8.1 The Government has no objection:

- (a) to any firm or its Associate or Associated Person lodging one Proposal to act as the Firm and also proposing to act as a sub-contractor to another firm in this exercise; or
- (b) to different and unconnected firms proposing to engage the same sub-contractors or their Associates or Associated Persons in this exercise,

PROVIDED that:

- (i) all the relevant circumstances are disclosed in the Proposal; and
- (ii) where any firm or its Associate or Associated Person lodges one Proposal to act as a Firm and proposes to act as a sub-contractor to another firm in the Proposal of that other firm, the first-mentioned firm or its Associate or Associated Person shall confirm in its Proposal that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the Proposals; and
- (iii) where any firm proposes to act as a sub-contractor to different and unconnected firms in their Proposals, it shall confirm in the Proposals of those firms that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the Proposals.

## **9. Disclosure of Fees Payable to the Firm and Other Matters**

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

- (a) the Service Fee and any other fees, costs and expenses payable to the Firm;
- (b) the Fee Proposal submitted by the Firm; and
- (c) the engagement by the Government of the Firm under the Agreement; the names of the Firm and its sub-contractors appointed or engaged by the

Firm to perform any part or parts of the Services in accordance with the Agreement, or to advise or assist in relation thereto; and description of the Services.

9.2 For the purposes of paragraph 9.1 above, each firm shall complete, execute and deliver to the Government a “Consent To Disclosure” in the form set out in **Annex 4** in its Proposal.

## **10. Business Structure of the Firm**

10.1 The Firm shall be one contractual party who shall be held responsible for the due and faithful performance of the Services, in which case the party may, subject to the prior written approval of the Government, nominate, as the main contractor, one or more sub-contractors to perform part of the Services.

## **11. Method of Assessment**

11.1 All Proposals which are not submitted late will be checked against the Essential Requirements set out in paragraphs 6.3 to 6.5 above. Proposals that fail to meet any of the Essential Requirements will not be further processed for assessment. Only Proposals which are not submitted late and meet all the Essential Requirements will be further assessed in accordance with the marking scheme “Marking Scheme for Assessment of the Proposals” set out in **Annex 5**.

11.2 The marking scheme consists of four Stages: Stage I (Compliance Check against the Essential Requirements and any other requirement which non-compliance will result in automatic disqualification), Stage II (Technical Assessment), Stage III (Fee Assessment) and Stage IV (Overall Assessment).

11.3 The firms will be assessed on their Technical Proposals and Fee Proposals according to the marking scheme at **Annex 5** on a weighting of **70%** and **30%** respectively. The Technical Proposals of the firms will be assessed in accordance with the assessment criteria set out in Stage II of the marking scheme at **Appendix to Annex 5**.

11.4 Under Stage I, the Proposals will be checked against requirements failure of which would result in disqualification.

11.5 Under Stage II, the Technical Proposals will be assessed in accordance with certain assessment criteria. There are a total of four passing marks for assessment of the Technical Proposals. A passing mark is set respectively for (a) the total score of assessment criteria (A) and (B); (b) the total score of assessment

criteria (C) and (D); and (c) assessment criterion (E) alone. In addition, there is an overall passing mark for the technical score. Any Proposal not attaining any of the passing marks will not be considered further.

11.6 A firm's Fee Proposal will only be opened for assessment under Stage III if it has completed and passed Stage II Technical Assessment. The Fee Proposal will be assessed on the basis of the proposed Service Fee (defined in paragraph 12.1 below), which comprises the Fixed Fee and the Brokerage Commission.

11.7 The Fee Proposal will be assessed on the basis of a Pro Forma Service Fee in **Annex 3** completed and submitted by each firm. A Pro Forma Service Fee equals to the sum of the Fixed Fee and the Brokerage Commission as illustrated below:

$$\begin{aligned} \text{Pro Forma Service Fee} = & \text{the proposed Fixed Fee} \\ & + \\ & \text{the proposed Brokerage Commission (i.e.} \\ & \text{percentage provided by the firm (as} \\ & \text{mentioned in paragraph 7.6(b) above) x} \\ & \text{51.43 million Restricted Shares x HK\$8.11} \\ & \text{(i.e. closing price per share of the Restricted} \\ & \text{Shares as at 10 February 2026))} \end{aligned}$$

11.8 Under Stage IV, the total score taking into account the scores from the technical assessment and fee assessment will be calculated.

11.9 Firms may be required, at their own costs and expenses, to make a presentation of their proposals to the assessment panel within seven (7) Working Days upon notice. The Team Leader shall be the main presenter at the presentation. Firms which fail to make a presentation as required under this paragraph may not be further considered.

11.10 The Government will not be bound to select any firm on the basis of the lowest fee quoted. The firm which scores the highest total combined technical and fee score will normally be considered for the appointment.

## **12. Service Fee and Payment**

12.1 The Firm shall be paid a service fee (“**Service Fee**”) in Hong Kong dollars, which comprises the Fixed Fee (defined in paragraph 12.3 below) and the Brokerage Commission (defined in paragraph 7.6(b) above), from the proceeds of sale of the Restricted Shares in consideration of and subject to the Firm performing the Services to the satisfaction of the Government.

12.2 Subject to paragraph 5.3 above regarding any other written instruction by the Government Representative on the submission of Interim Report(s) and Final Report, as well as paragraph 12.5 below, the Firm shall be paid the Fixed Fee and the Brokerage Commission by instalments in accordance with the following payment schedule:

Instalment	Deliverables Required	Percentage of the Fixed Fee	Brokerage Commission
1	First Interim Report as required in paragraph 5.2(e) above to the satisfaction of the Government	25%	Amount equivalent to the agreed percentage of the aggregate Principal Amount (before deduction of any fees set out in paragraph 12.4 below) of the Restricted Shares sold during the period from the Commencement Date to the date of the First Interim Report
2	Second Interim Report as required in paragraph 5.2(e) above to the satisfaction of the Government	25%	Amount equivalent to the agreed percentage of the aggregate Principal Amount (before deduction of any fees set out in paragraph 12.4 below) of the Restricted Share(s) sold during the period from the date immediately after the date of the First Interim Report to the date of the Second Interim Report

Instalment	Deliverables Required	Percentage of the Fixed Fee	Brokerage Commission
3	Third Interim Report as required in paragraph 5.2(e) above to the satisfaction of the Government	25%	Amount equivalent to the agreed percentage of the aggregate Principal Amount (before deduction of any fees set out in paragraph 12.4 below) of the Restricted Share(s) sold during the period from the date immediately after the date of the Second Interim Report to the date of the Third Interim Report
4	Final Report with an Executive Summary as required in paragraph 5.2(f) above to the satisfaction of the Government	25%	Amount equivalent to the agreed percentage of the aggregate Principal Amount (before deduction of any fees set out in paragraph 12.4 below) of the Restricted Share(s) sold during the period from the date immediately after the date of the Third Interim Report to the date on which all Restricted Shares have been sold
<b>Total:</b>		<b>100%</b>	

12.3 For the avoidance of doubt, except the expenses set out in paragraph 12.4 below, the Fixed Fee shall be inclusive of all fees, costs, charges and disbursements incurred by the Firm in the performance of the Services, including but without limitation, the costs and expenses incidental to the attendance of meetings, the giving of presentations and briefings, the licence fees and/or royalties payable by the Firm in connection with the permitted use of any third party intellectual property rights in the performance of the Services and preparation of the Deliverables, other out-of-pocket expenses such as travelling expenses, air passages, local subsistence allowances for expatriates and others, postage, international telephone calls, facsimile and internet connection expenses, office

and hotel accommodation, secretarial support, copying and printing charges and computer facilities that may be incurred by the Firm in the carrying out of the Services. The Fixed Fee shall also include any fees, costs and disbursements that may be incurred by the Firm in appointing or engaging any sub-contractors, advisers, experts or others to provide any part or parts of the Services or to advise or assist in relation thereto. For the avoidance of doubt, no fee, cost, charge or disbursement whatsoever in addition to the Fixed Fee shall be charged by the Firm or payable by the Government in respect of the Services (whether in respect of sub-contracting or otherwise) without the prior written agreement of the Government.

12.4 The Firm shall pay the following fees from the proceeds of sale (but only if payable by the seller's side) for each transaction of the sale of the Restricted Shares:

- (a) stamp duties payable to the Government as stipulated under the Stamp Duty Ordinance (Cap. 117);
- (b) levy payable to the SFC as stipulated under the SFO;
- (c) levy payable to the Investor Compensation Fund as stipulated under the SFO (where applicable);
- (d) levy payable to the Accounting and Financial Reporting Council as stipulated under the Accounting and Financial Reporting Council Ordinance (Cap. 588); and
- (e) trading fee payable to SEHK as stipulated under the Rules of the Exchange.

12.5 Upon written acceptance by the Government of the Deliverables, the Firm shall submit an application to the Government for each instalment payment of the Fixed Fee and the Brokerage Commission. Only after obtaining the Government's approval on the amount of the Fixed Fee and the Brokerage Commission in writing, the Firm shall deduct the amount as approved by the Government from the proceeds of sale of the Restricted Shares.

### **13. Sub-contracting**

13.1 The Firm shall not, without the prior written consent of the Government, subcontract, assign or otherwise dispose of the whole or any part or parts of the Services to any person whatsoever, or purport to do so. If any part of the Services is sub-contracted to any person, the Firm shall remain liable for any act or omission of such person as if such act or omission were its own.

## **14. Conflict of Interest**

14.1 Each firm shall submit as part of its Proposal a declaration of any interest (whether financial, commercial, personal or otherwise) that the firm, its sub-contractors and members of the proposed Team may have which conflicts or competes, or may conflict or compete, directly or indirectly, with any interest of the Government and/or with any of the duties of the Firm under the Agreement (or a declaration that it has no such interest). Any involvement or interest declared would be carefully considered but would not necessarily debar the firm from being further considered in the selection process.

14.2 The Firm shall during the term of the Agreement and for six (6) months thereafter:

- (a) ensure that it (including its Associates and Associated Persons, each member of the Team and each of its sub-contractors and their Associates and Associated Persons) shall not undertake any service, task or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Agreement) which conflicts or competes, or which may be seen to conflict or compete, with the Firm's duties to the Government under the Agreement; and
- (b) forth with notify in writing the Government of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Firm or its Associates or Associated Persons, or any of its permitted sub-contractors or any member of the Team or their Associates or Associated Persons, conflict or compete, or may conflict or compete, with the Firm's duties to the Government under the Agreement.

14.3 The Firm shall provide the Services to the Government on an impartial basis without giving favour to any particular product, service or equipment in which the Firm, any of its sub-contractors, members of the Team or their respective Associates or Associated Persons has or may have any financial, professional, commercial, personal or other interests. The Firm shall notify the Government in writing immediately upon knowing of any actual or potential, direct or indirect, financial, professional, commercial, personal or other interests, which such persons have or may have with, any of the products, services or equipment proposed or recommended by the Firm under the Agreement.

14.4 The Firm shall procure its sub-contractors, each member of the Team and its professional advisers, directors, officers, employees and agents who are involved

in the provision of the Services to execute a legally binding written undertaking in favour of the Firm and the Government jointly and severally in a form prescribed by the Government agreeing to observe paragraphs 14.2 and 14.3 above and the Firm shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Firm further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

14.5 The Firm shall ensure that its Associates and Associated Persons, each of its sub-contractors and each member of the Team and their Associates and Associated Persons shall keep themselves informed and shall inform the Firm and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Firm's duties to the Government under the Agreement.

14.6 From the commencement of the Agreement, notwithstanding the expiry or earlier termination of the Agreement, the Firm (including its Associates and Associated Persons, each member of the Team and each of its sub-contractors and their Associates and Associated Persons who are involved in the performance of the Firm's obligations pursuant to the Agreement) shall not (whether on its own or in joint venture with others) submit any bid in any competitive bidding process or accept any appointment as contractor for, or otherwise be interested in or involved in any manner in any subsequent exercise for procurement arising out of or which was the very subject of the exercise.

14.7 In this Brief:

(a) "Associate" in relation to any person means:

- (i) a relative or partner of that person; or
- (ii) a company one or more of whose directors is in common with one or more of the directors of that person.

(b) "Associated Person" in relation to another person means:

- (i) any person who has control, directly or indirectly over the other; or
- (ii) any person who is controlled, directly or indirectly, by the other; or
- (iii) any person who is controlled by, or has control over, a person at (a) or

- (b) above.
- (c) “control” in relation to another person means holding office as a director or the power of a person to secure
- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
  - (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person,
- (d) “**director**” means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director.
- (e) “**relative**” means the spouse, parent, child, brother or sister of the relevant person, 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.

## **15. Confidentiality**

15.1 All materials and data furnished by or on behalf of the Government in connection with the Agreement, Materials (defined in paragraph 22.10 below), and the terms and conditions of the Agreement shall be treated as confidential information. The Firm shall not, during the continuance of the Agreement or at any time thereafter, disclose to any person (including without limitation any Associates or Associated Persons, directors, officers, employees or agents of the Firm who are not members of the Team, except to the senior management, legal and compliance personnel and auditors of the Firm and then only on a need-to-know basis) any confidential information, provided that the restrictions on disclosure contained in this paragraph shall not apply:

- (a) to the disclosure of any information to any members of the Team in circumstances where such disclosure is necessary for the performance of the Firm’s duties and obligations under the Agreement;

- (b) to the disclosure of any information already known to the recipient other than as a result of disclosure by a breach of the confidentiality obligation of the Firm, its Associates or Associated Persons, directors, officers, employees, agents or any member of the Team or its sub-contractors including without limitation professional advisers;
- (c) to the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by a breach of the confidentiality obligation of the Firm, its Associates or Associated Persons, directors, officers, employees, agents or any member of the Team or its sub-contractors including without limitation professional advisers;
- (d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction;
- (e) to the disclosure of any information to the Firm's sub-contractors, professional advisers, directors, officers, employees or agents where such disclosure is necessary for the performance of the Firm's duties and obligations under the Agreement; or
- (f) to the disclosure of any information with the prior written consent of the Government.

The Government shall have the right to determine in good faith at any time whether any information is within that described in (b), (c) or (e) above and the Firm shall comply with that determination. For the purpose of (e), if at the time the Government discloses the information to the Firm, the Government does not expressly state that the information cannot be distributed to the persons named in (e), the Government shall be deemed to have consented to the disclosure of that information to those persons but such disclosure shall be strictly limited to the performance of the Firm's duties and obligations under the Agreement.

15.2 Any disclosure permitted under paragraph 15.1 above shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in paragraph 15.1 above and the Firm shall ensure the confidentiality of any such disclosure by taking all appropriate action to restrain or restrict any further disclosure.

15.3 The Firm shall not make use of or reproduce any information, report, chart, document, plan, software, data or other particulars or information whatsoever

relating to the Agreement furnished by or on behalf of the Government other than in the performance of its obligations under the Agreement and shall not make use of the Deliverables or any Materials or computer models produced or created in relation to the performance of its obligations under the Agreement other than in the performance of its obligations under the Agreement or with the prior written consent of the Government.

15.4 The Firm shall not without the prior written consent of the Government publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video or other medium, any confidential information relating to the Services (including without limitation the advice provided by it or the duties undertaken by it under the Agreement).

15.5 The Firm shall inform every person to whom any information, report, chart, document, plan, software, data or other particulars or information relating to the Agreement is disclosed pursuant to this paragraph of the restrictions on reproduction and disclosure attaching to such information and the Firm shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure.

15.6 The Firm shall procure its sub-contractors, each member of the Team and its professional advisers, directors, officers, employees and agents referred to in paragraph 15.1(e) above to execute a legally binding written undertaking in favour of the Firm and the Government jointly and severally in a form prescribed by the Government agreeing not to disclose any such confidential information and the Firm shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Firm further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

15.7 Paragraphs 15.1 to 15.6 above shall survive the expiry or termination of the Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

## **16. Nature of Agreement**

16.1 The Firm will be engaged by the Government as an independent contractor on a principal-to-principal basis and not as a partner, employee or agent of the Government or as a trustee for others.

## **17. Agreement**

17.1 The selected firm will enter into a written agreement (the “**Agreement**”) with the Government on terms prepared and approved by the Department of Justice. The Agreement will contain the complete terms and conditions of the Services, including without limitation the matters referred to in this Brief, expanded and modified as the Government deems necessary, and other matters such as fees, details of the Team, set-off and force majeure.

17.2 Nothing in the Agreement will confer or purport to confer on any third party any benefit or any right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

17.3 This Brief will form part of the Agreement. The governing laws of the Agreement shall be the laws of Hong Kong.

## **18. Indemnity**

18.1 The Firm shall indemnify and keep indemnified the Government against:

- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, liabilities, demands, proceedings or judgments, joint or several, threatened, brought or established against the Government (“**Claims**”); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other awards, payments, costs, charges and expenses) which the Government may pay or incur as a result of or in relation to any Claims,

which in any case in substance or form arise out of or in relation to or result from or are based on:

- (i) the representations, warranties or undertakings given by the Firm in the Agreement being untrue, inaccurate or misleading or otherwise breached; or
- (ii) any breach by the Firm of its obligations under the Agreement (including without limitation the failure by the Firm to perform the Services in accordance with the terms of the Agreement),

and which, in any case, do not arise from the fraud or wilful default of the

Government or any breach of any obligation of the Government under the Agreement. The Firm shall reimburse the Government for any legal or other expenses properly incurred by the Government in connection with investigating or defending any such Claim as such expenses are incurred or as soon thereafter as reasonably practicable.

18.2 If any action or claim shall be brought or threatened to be brought against the Government in respect of which any indemnity in the Agreement may be sought from the Firm, the Government shall not make any admission of liability, settlement or compromise without the Firm's prior written consent.

18.3 Promptly after receipt by the Government of notice of the commencement of any action or claim in respect of which any indemnity in the Agreement may be sought from the Firm, the Government shall notify the Firm in writing of the commencement thereof; but the omission so to notify the Firm:

- (a) shall not relieve the Firm from any liability which it may have to the Government unless and to the extent the Firm did not otherwise learn of such action or claim and such failure results in the Firm being materially and adversely prejudiced; and
- (b) will not, in any event relieve the Firm from any obligations to the Government other than the indemnification obligations provided in paragraph 18.1 above.

18.4 In case any action or claim referred to in paragraph 18.1 above shall be brought against the Government, it shall notify the Firm of the commencement thereof, and the Firm shall be entitled to participate therein and, to the extent that it shall wish to assume the defence thereof, with counsel satisfactory to the Government (following consultation with the Government on the choice of such counsel), and, after notice from the Firm to the Government of its election so to assume the defence thereof, the Firm shall not be liable to the Government under paragraph 18.1 above for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by the Government in connection with the defence thereof other than reasonable costs of investigation.

18.5 If, pursuant to paragraph 18.4 above, the Firm assumes the defence of any such action or claim, the Firm shall not effect any settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the Government is an actual or potential party to such action or claim) unless such settlement, compromise or judgment:

(a) includes an unconditional release of the Government from all liabilities arising out of such action or claim; and/or

(b) in the case of any settlement, compromise or judgment which includes a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of the Government, the Firm shall have obtained the prior written consent of the Government, such consent not to be unreasonably withheld or delayed.

18.6 Without prejudice to the other rights or remedies of the Firm, the Government undertakes to the Firm that if the Firm or any of its affiliates, directors, officers, employees or agents (together with the Firm, each a “**Relevant Party**”) incurs any liability, damages, cost, loss or expense (including, without limitation, legal fees, costs and expenses incurred in connection with investigating, disputing or defending any action, claim or demand) (a “**Loss**”) arising out of, in connection with, or based on any actual or alleged breach of the representations, warranties and undertakings or agreement contained in, or made or deemed to be made by the Government under, the Agreement, the Government shall pay to the Firm on demand an amount equal to such Loss. The Firm shall not have any duty or obligation, whether as fiduciary or trustee for any Relevant Party or otherwise, to recover any such payment or to account to any other person for any amounts paid to it under this paragraph 18.6.

18.7 In case any action shall be brought against any Relevant Party in respect of which recovery may be sought from the Government under paragraph 18.6 above, the Firm shall promptly notify the Government in writing but failure to do so will not relieve the Government from any liability under the Agreement.

18.8 The Government shall not, without the prior written consent of the Firm, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or action in respect of which recovery may be sought hereunder (whether or not any Relevant Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Relevant Party from all liability arising out of such claim or action and does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of a Relevant Party.

## **19. Restrictions, Limitations and Counter-Proposals Proposed by the Firms**

19.1 The obligations and liabilities imposed on the Firm in paragraphs 14, 15 and 22 (conflict of interest, confidentiality and intellectual property rights) in

this Brief are not subject to negotiation or counter-proposals. Any counter-proposal in contravention of this paragraph may be disregarded.

19.2 Subject to paragraph 19.1 above, restrictions or limitations proposed by a firm which seek to limit or avoid the responsibility of the Firm or the Team in contract, tort or otherwise for failing to exercise the skill and care required by the Agreement or reasonably expected of the Firm and the Team in these circumstances may render any proposal non-compliant in the absolute discretion of the Government. Counter-proposal to other provisions of this Brief not specified in paragraph 19.1 above, whilst not strictly disallowed, is not encouraged. If the firm wishes to submit one or more counter-proposals to any provision in this Brief that is not of the types specified in paragraph 19.1 above (“**Counter-Proposals**”), the Counter-Proposals shall be submitted in the following manner –

- (a) the Counter-Proposals shall be attached to each copy of the Technical Proposal;
- (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
- (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding paragraph number of the original provisions unless it is an addition;
- (d) if it is an addition, the additional provisions shall be underlined;
- (e) words to be deleted shall be crossed out by a single line only; and
- (f) an explanation shall be given below the alteration or deletion and put in square brackets “[ ]”.

19.3 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with paragraph 19.2 above may not be considered by the Government and may not be regarded as forming part of the Proposal submitted by a firm. In such event, the firm shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the firm’s Proposal on this basis.

19.4 Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the firm any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a firm concerning a Counter-Proposal, and if after such negotiation, the firm is unwilling to withdraw

such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Proposal may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the firm's Proposal and forms part of the Agreement and shall be binding on the firm if the Agreement is eventually awarded to it.

## **20. Changes in the Scope of the Services**

20.1 The Government may at any time by giving fourteen (14) days' written notice to the Firm, make changes as are reasonable in all the circumstances to the scope of the Services. The costs (if any) of such changes and the impact of such changes on the timetable, charging and payment provisions of the Agreement shall be mutually agreed in writing by the Government and the Firm with reference to and on the basis of the breakdown costs and fees quoted in the Firm's Fee Proposal.

20.2 If the Government and the Firm are unable to agree on the costs of the changes, the revised work schedule, charge or payment schedule for the Deliverables, the Government may nevertheless direct the Firm in writing to proceed with the changes with reference to and on the basis of the breakdown costs and fees quoted in the Firm's Fee Proposal and the Firm shall act accordingly.

## **21. Termination of the Agreement**

21.1 The Government may, by written notice, immediately terminate the Agreement if the Firm shall be in breach of any of the terms and conditions of the Agreement which is not capable of being remedied or, in the case of a breach capable of being remedied, such breach shall not have been remedied by the Firm within fourteen (14) days of the date of the receipt of a notice to remedy from the Government.

21.2 The Government may immediately terminate the Agreement if the Firm has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; or the continued engagement of the Firm or the continued performance of the Agreement is contrary to the interest of national security; or the Government reasonably believes that any of the events mentioned in this paragraph 21.2 is about to occur.

21.3 Notwithstanding anything to the contrary in this Brief, the Government may at any time and from time to time during the term of the Agreement, at its discretion and without cause, suspend or terminate the Agreement or any part thereof

by giving the Firm thirty (30) days' prior written notice of such suspension or termination.

21.4 In the event of termination prior to the completion of the Services, the Government may itself complete the Services or (at the option of the Government) may engage, use or employ any other firm to complete the said services and the Government or such other firm may use the Materials (whether or not title has passed to the Government in respect thereof) and the Licensed Property or any part thereof for such completion. The suspension or termination of the Agreement shall not prejudice or affect any rights of action or other remedies which may have accrued to the Government or the Firm.

21.5 The Firm will be paid for Services properly performed up to the date of suspension or termination. The Firm shall not be entitled to compensation for remaining Services which have not been performed.

## **22. Intellectual Property Rights**

22.1 Subject to paragraph 22.3 below, all the Materials and all the Intellectual Property Rights in all the Materials shall be and shall remain the exclusive property of the Government and shall vest in the Government absolutely at the time when they are created.

22.2 In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Government pursuant to paragraph 22.1 above, then, upon request by the Government, the Firm shall forthwith, free of charge to the Government, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Government free of any encumbrance or compensation to the Firm.

22.3 The provisions of paragraph 22.1 above shall not apply to the following type of property ("**Licensed Property**") namely that of a kind which is available publicly or generally within the business of a kind similar to that to be provided by the Firm under the Agreement or which is or was specifically produced or created solely and exclusively in relation to services, other than services provided or to be provided to the Government under the Agreement, and which is incorporated or used in the Materials or otherwise used by the Firm in the performance of the Agreement. The Firm shall keep the Government informed in writing of any of the Materials that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof.

22.4 The Firm undertakes to acquire all the requisite consents and licenses

for the benefit of the Government for the use and reproduction of the Licensed Property incorporated in the Materials for any purposes for which the Government may in its absolute discretion use the Materials.

22.5 Upon request by the Government at any time, and in the event of the expiration or termination of the Agreement, the Firm shall at its expense promptly deliver to the Government all the Materials and all copies of the Materials (save for Deliverables already submitted), then in the custody, control or possession of the Firm, any members of the Team, the Firm's sub-contractors or their respective officers, employees and agents.

22.6 The Firm hereby waives and will procure all the authors concerned to waive all moral rights (as referred to in the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) in the Materials and the Licensed Property), such waiver to operate in favour of the Government, its licensees, assigns and successors in title and to have effect upon the vesting of Intellectual Property Rights or the grant of the licence (as the case may be).

22.7 The Firm shall ensure that no Intellectual Property Rights of any third parties have been or will be infringed as a result of the Services and shall indemnify the Government against any loss or damage which the Government may sustain or incur as a result of any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the Services or the use or possession at any time of the Materials by the Government whether before or after the execution of the Agreement.

22.8 At the request of the Government, the Firm shall, free of charge to the Government, do all such things and execute all such documents and instruments as may be reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Materials and its rights in respect of the Licensed Property.

22.9 Paragraphs 22.1 to 22.8 above shall survive the expiration or early termination of the Agreement.

22.10 For the purpose of this Brief:

**“Intellectual Property Rights”** means patents, copyrights, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature wherever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the grant of any such rights.

“**Materials**” includes all the deliverables (including the Deliverables), reports, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analyses, work programmes, technical notes, information papers, opinions, comments, specifications, formulae, data, information, documents and materials collected, compiled, developed, produced or created by the Firm, the Team or the employees, directors, officers, agents or sub-contractors at all tiers of the Firm, agents or sub-contractors (whether individually or jointly with the Government) in relation to and/or in the course of the performance of the Services or for the purpose of the Agreement including but without limitation, the pre-contractual and contractual documents thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.

### **23. Withholding Tax**

23.1 Where the Firm is or becomes a non-Hong Kong resident, the Government shall withhold a percentage (equivalent to the prevailing Hong Kong profits tax rate prescribed by the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong) for unincorporated or incorporated business or profession, as the case may be) of any fees payable to the Firm (excluding any amount that is reimbursement of expenses pursuant to an express term of the Agreement) in respect of the Services provided in Hong Kong by the non-Hong Kong resident Firm for the settlement of profits tax chargeable on the fees. Without prejudice to the Government’s right as to set off, the Government shall return to the Firm any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Firm’s profit tax liability chargeable on the fees for that year without interest within a reasonable time upon final determination and settlement of the Firm’s profits tax liabilities.

### **24. Performance Monitoring of the Firm**

24.1 Should a firm be awarded the Agreement, its subsequent performance shall be monitored and may be taken into account when its future bids for other Government consultancy works are evaluated. A firm may be suspended from bidding for any new Government consultancy works if its performance is unsatisfactory.

## **25. Warranty**

25.1 The Firm will be required to warrant and undertake to the Government that:

- (a) the Services shall be performed and completed in an impartial, timely and diligent manner and that the Firm, each member of the Team, each of the Firm's sub-contractors and every person employed, used or engaged by the Firm in the performance of the Services shall use all the experience, skills, care and diligence in the performance of the Services and the discharge of all its duties and obligations under the Agreement as may be expected from a person who is an expert in providing services of a kind similar to the Services; and
- (b) it, the Team and the Firm's sub-contractors have the necessary skills and experience to provide the Services and it shall provide independent and unbiased professional advice to the Government in relation to the Agreement in accordance with applicable professional standards in the Hong Kong and international markets.

## **26. Warranty of No Collusion**

26.1 The firm must ensure that the Proposal is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusion Certificate referred to in paragraph 26.2 below), regarding, amongst other things, price, selection process or any terms of the Proposal. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Firms which engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance (Cap. 619).

26.2 The firm shall complete and submit to the Government a non-collusion certificate in the form set out in **Annex 6** ("**Non-collusion Certificate**") as part of its Proposal.

26.3 In the event that the firm is in breach of any of the representations, warranties and/or undertakings in paragraph 26.1 above or in the Non-collusion Certificate submitted by it under paragraph 26.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (a) reject the Proposal;

- (b) if the Government has accepted the Proposal, withdraw its acceptance of the Proposal; and
- (c) if the Government has entered into the Agreement with the Firm, forthwith terminate the Agreement.

26.4 By submitting a Proposal, a firm is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in paragraph 26.1 above or in the Non-collusion Certificate submitted by it under paragraph 26.2 above.

26.5 Any breach of any of the representations, warranties and/or undertakings in paragraph 26.1 above or in the Non-collusion Certificate submitted by it under paragraph 26.2 above by the firm may prejudice its future standing as a Government contractor.

26.6 The rights of the Government under paragraphs 26.3 to 26.5 above are in addition to and without prejudice to any other rights or remedies available to it against the firm.

## **27 Settlement of Disputes**

27.1 The parties shall first refer any dispute or difference arising out of or in connection with the Agreement to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

27.2 If the said dispute or difference is not settled by mediation according to paragraph 27.1 above, a party may institute litigation in respect of the said dispute or difference. The parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

## **28. Other Conditions**

28.1 The Government reserves the right, in its absolute discretion, not to accept the lowest Fee Proposal or any proposal, or appoint any of the firms which have submitted proposals in response to this invitation for the whole or any part of the Services. Submission of a Proposal shall be made on the understanding that the Government will not be liable to pay any costs arising out of or incidental to the preparation, submission or clarification of any Proposal. The Government is also

under no obligation to discuss the assessment or assessment result of any proposal with any person.

28.2 After submission of the Proposals, the firms shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Proposal or this invitation to submit Proposals. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of firms thereto shall be in writing or formally documented in writing.

28.3 Notwithstanding anything to the contrary in this Brief, the Government reserves the right to disqualify a firm on the grounds that the firm has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

## **29. Enquiries**

29.1 Enquiries on this Brief should be submitted in writing to the following officer:

Name:	Ms Hilda Lee, Executive Officer (Support)(1)1
Tel. No.:	3655 5042
Fax No.:	2294 0460
Email address:	<a href="mailto:hildalee@fstb.gov.hk">hildalee@fstb.gov.hk</a>

**Financial Services Branch  
Financial Services and the Treasury Bureau  
The Government of the Hong Kong Special Administrative Region  
February 2026**