

Official Receiver's Office

The Government of the Hong Kong Special Administrative Region

**TENDER FOR TAKING UP OF APPOINTMENT
AS PROVISIONAL LIQUIDATORS UNDER
SECTION 194(1A) OF THE COMPANIES (WINDING UP AND
MISCELLANEOUS PROVISIONS) ORDINANCE (CAP. 32)**

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**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

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MISCELLANEOUS PROVISIONS) ORDINANCE (CAP. 32)**

TENDER FORM

Tender Ref. :OR/T/2023.....

LODGING OF TENDER

The Tender Documents under the above reference shall include:

- (a) this Tender Form including the Offer to be Bound form below;
- (b) Interpretation;
- (c) Terms of Tender including Annexes I to VII;
- (d) Conditions of Contract; and
- (e) Work Specifications

(collectively called “Tender Documents”), copies of which can be obtained at the Official Receiver’s Office, 10/F, High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

Dated this 8 September 2023.

(Mr. Ernest Lam)

.....
for Official Receiver

OFFER TO BE BOUND

1. Having read the Tender Documents defined above and in consideration of the Official Receiver considering my/our tender submitted herewith, I/We, the Tenderer, agree to be bound by the terms and conditions as stipulated in the Tender Documents. All capitalized terms herein shall have the same meaning as ascribed to them in the Interpretation of the Tender Documents save as otherwise specified.

2. I/We, the Tenderer, do hereby agree to provide the Services at the fees proposed in the Quotation Sheet at Annex II to the Terms of Tender free of all other charges, subject to and in accordance with the Tender Documents.

Name of the Tenderer*:

Signature(s):

Name of the duly
authorized signatory(ies):

Post/title/authorization of
the signatory(ies)**:

Date:

Note to Tenderers:

* A Tenderer must ensure that the name of the Tenderer shown herein is the same as the one stated in the “Declaration on Details of the Tenderer” at **Annex III** to the Terms of Tender.

** A Tenderer may be required to produce documentary proof of due authorization of the signatory(ies) to sign this Offer to be Bound for and on behalf of the Tenderer.

INTERPRETATION

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

“Allocation Period”	means the period commencing on the date when the Contract is formed and ending on and inclusive of 31 March 2026 (both dates inclusive), subject to any extension pursuant to Clause 15 of the Conditions of Contract.
“Annexes”	means the Annexes attached to the Terms of Tender.
“Appointment Taker”	means the proprietor, partner, director or employee of the Firm who will take up the appointment as joint and several provisional liquidator and liquidator (unless the Court orders otherwise) in a Qualified Case in accordance with this Invitation to Tender.
“connected companies”	two companies are connected: (i) if one of the companies is a subsidiary or holding company of another company; or (ii) if the companies are subsidiaries (direct or indirect) of the same holding company; or (iii) if any of the directors of one of the companies immediately before the winding up of that company is or has been the director(s) of the other company. For the purpose of “connected companies”, a “subsidiary” has the meaning defined in section 15 of the Companies Ordinance (Cap. 622) while a

	“holding company” has the meaning defined in section 13 of the Companies Ordinance (Cap. 622).
“Contract”	means a contract to be entered between the Government, as represented by the Official Receiver, and the Firm for the provision of the Services on the terms and conditions as set out in the Tender Documents, subject to such variation as may be agreed by the Official Receiver.
“Contract Period”	means the period commencing on the date when the Contract is formed and ending on the date when the Firm has discharged all its obligations in relation to the Services.
“Firm”	means a Tenderer whose Tender is accepted and to whom the Contract is awarded, and includes its permitted assigns, successors-in-title, or any persons deriving title under it.
“Force Majeure”	means (a) any supervening outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government, civil war, riot, civil disturbances, pandemic, Severe Acute Respiratory Syndrome affecting Hong Kong, fire, civil commotion or acts of God; or

	<p>(b) any event which is not caused or contributed to by, and is beyond the control of, the Firm or any employee or agent or ex-employee or ex-agent thereof and none of them can prevent the consequences of such event from happening,</p> <p>and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of the Firm and/or the Government hereunder; and for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure event.</p>
“full-time employee”	in relation to a Tenderer, means an employee of the Tenderer who works 35 or more hours in a week (excluding daily lunch break) for the Tenderer.
“Government”	means the Government of Hong Kong.
“HKICPA”	means the Hong Kong Institute of Certified Public Accountants, a statutory body incorporated pursuant to the Professional Accountants Ordinance (Cap. 50).
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on and subject to the terms set out in the Tender Documents.

“Official Receiver”	means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6).
“Panel A Scheme”	means the administrative scheme operated by the Official Receiver for the appointment of qualified persons as liquidators, provisional liquidators or special managers in non-summary compulsory winding-up cases.
“person”	means any individual, corporation, partnership, firm and unincorporated body.
“Qualified Case”	means the liquidation of a company under compulsory winding up by the court and where section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies.
“Required Subsidy”	means the amount proposed by a Tenderer in its Quotation Sheet at Annex II as the maximum amount of subsidy it will require from the Official Receiver for the performance of the Services in a Qualified Case.
“Services”	means the provision by the Firm of Appointment Takers for appointment as joint and several provisional liquidators under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and as liquidator (where appropriate) in a Qualified Case in accordance with the Tender Documents, and the

	performance and discharge of the tasks, duties and requirements as set out therein.
“Tender”	means a tender which is submitted by a Tenderer in response to this Invitation to Tender.
“Tenderer”	means a person who submits a Tender.
“Tender Closing Date”	means the date and time specified in Clause 9(b) of the Terms of Tender as the latest date and time before which Tenders must be deposited with the Government, or such date and time as may be extended in accordance with Clauses 9(e) and 9(f) of the Terms of Tender.
“Tender Documents”	has the meaning assigned to it in the Tender Form – Lodging of Tender section.
“Working Day”	means a day that is not— (a) a general holiday as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1); or (b) a Saturday; or (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or (d) a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or “extreme conditions after super typhoons” announced by the Government is in force, for any time during the normal business hours.

2. In these Tender Documents (including the Contract), unless the context otherwise requires, the following rules of interpretation shall apply:
 - 2.1 words importing one gender include all genders;
 - 2.2 words importing the singular include the plural and vice versa;
 - 2.3 references to day refers to calendar day;
 - 2.4 references to any ordinance, statute, enactment, order, regulation or other similar instrument shall be construed as references to the ordinance, statute, enactment, order, regulation or instrument as amended by any subsequent ordinance, statute, enactment, order, regulation or instrument. References to any ordinance, statute or enactment shall include all subsidiary legislation made thereunder;
 - 2.5 the heading to individual clauses and provisions of the Tender Documents is for ease of reference only and shall not affect the interpretation or construction of the Tender Documents (including the Contract);
 - 2.6 references to a clause, sub-clause, schedule, appendix or attachment by number or letter, and not in conjunction with an ordinance or regulation, shall be construed as a reference to the clause, sub-clause, schedule, appendix or attachment of that number or letter contained in the Tender Documents;
 - 2.7 references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
 - 2.8 any word or expression to which a specific meaning has been attached in any part of any of the Tender Documents shall bear such meaning whenever it may appear in the same or other parts of the Tender Documents. Unless otherwise provided, all payment shall be made in Hong Kong currency;
 - 2.9 references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislations, orders, rules and regulations having the force of law and rules of civil and common law and equity;
 - 2.10 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;

- 2.11 any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Firm shall be deemed to be the act, default, neglect or omission of the Firm;
 - 2.12 words importing the whole shall be treated as including a reference to any part of the whole;
 - 2.13 the expressions “include” and “including” shall be construed without limitation to the words following;
 - 2.14 words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
 - 2.15 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; and
 - 2.16 where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
3. All rights and powers of the Government under the Contract may be exercised by the Official Receiver acting on behalf of the Government.
 4. 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 person in the service of the Government.
 5. Where the Firm consists of two or more persons, each of such persons is jointly and severally liable for the due performance of the terms of the Tender Documents and the Contract. Any representation, warranty, declaration, agreement, undertaking and covenant made by the Firm and the obligation of the Firm under or pursuant to the Tender Documents and the Contract is deemed to be made or undertaken jointly and severally by and is binding

on such persons jointly and severally. For the avoidance of doubt, payment of the Required Subsidy and other payments to any one of such persons shall discharge the Government's payment obligations to the Firm under the Tender Documents and the Contract. A notice given to one of such persons is deemed to notice given to all the other persons constituting the Firm.

6. These Tender Documents are available in both the English language and the Chinese language. **The Chinese version is for Tenderers' reference only.** In the event of any inconsistency between the English version and the Chinese version of these Tender Documents, the English version shall prevail.

TERMS OF TENDER

1. Invitation to Tender

- (a) Tenders are invited for the provision of the Services in Qualified Cases subject to and in accordance with the terms and conditions in these Tender Documents.
- (b) The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

2. Tender

- (a) The Tender Documents relate to the appointment of the Firm's Appointment Takers as the joint and several provisional liquidators in place of the Official Receiver in accordance with section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period and the provision of the Services by the Firm in Qualified Cases.
- (b) The Annexes attached to these Terms of Tender must not be altered by the Tenderer, and the Tenderer must not put in additional terms and conditions or make its Tender subject to any term or condition not being a term or condition in these Terms of Tender and the Annexes attached hereto. If any amendment to the offer (including any figures contained therein) by a Tenderer is considered necessary, such amendments shall be made by correction pen or striking out by pen and initialed by the Tenderer in ink.
- (c) Subject to Clause 5(a) of the Terms of Tender, a Tender may not be considered if complete information is not given with the Tender or if any particulars and data asked for in the Annexes are not furnished in full.
- (d) Each Tenderer shall not submit more than one tender.

3. Tenders to Remain Open

Tenders shall remain open for 120 days after the Tender Closing Date ("Tender Validity Period").

4. Required Subsidy

- (a) Subject to the satisfactory performance of the Services by the Firm and the Appointment Takers, the Firm shall be paid the Required Subsidy by the Government in accordance with the Contract.
- (b) A Tenderer shall propose in the Quotation Sheet at Annex II the Required Subsidy at a fixed fee in Hong Kong Dollars with a breakdown of the hourly rate as required therein for performing the Services for each Qualified Case allocated to the Firm.
- (c) Tenderers must ensure that the Required Subsidy is correct and final before submitting their Tenders. Under no circumstances will the Government accept any request for correction or adjustment whether on grounds that a mistake has been made in assessing the Required Subsidy or other grounds.

5. Tender Submission

- (a) A Tenderer must submit with its Tender:
 - (i) a duly completed and signed Offer to be Bound;
 - (ii) a Quotation Sheet as set out in Annex II with the proposed Required Subsidy per Qualified Case;
 - (iii) a duly completed and signed Annex III (Declarations on Details of the Tenderer) (in Form A and Form B);
 - (iv) copies of documents as specified in Annex V (List of documents to be submitted);
 - (v) (a) duly completed and signed Annex(es) VI; and
 - (vi) a duly completed and signed Annex VII (Non-collusive Tendering Certificate).
- (b) **Failure to submit the documents mentioned in Clause 5(a)(i) and (ii) above with the Tender by the Tender Closing Date will invalidate the Tender and the Tender will not be considered.**

- (c) Subject to Clause 5(b) above, a Tender may not be considered if any of the documents referred to in Clause 5(a)(iii) to (vi) above are not submitted.

6. Qualification Requirements

A Tenderer must meet all of the requirements in Annex I in order to qualify for tender assessment. Save as otherwise provided, the Tender Closing Date shall be the cut-off date in assessing whether the Tenderer meets the requirements. **A Tender that fails to meet any of the requirements in Annex I will not be considered.**

7. Request for Information

- (a) In the event that the Government considers that:
 - (i) clarification in relation to any Tender is necessary; or
 - (ii) a document or a piece of information (other than the documents set out in Clause 5(a)(i) and (ii)), is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. Each Tenderer shall within 5 Working Days of the request or such other period as specified in the request submit such clarification, information or document in the form required by the Government. Without prejudice to Clause 5(c), a Tender will not be considered further if complete information or document is not provided as required within 5 Working Days of the request or such other period 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 at its absolute discretion decide to proceed to evaluate the Tender on an “as is” basis or not to consider the Tender further.

- (b) Tenderers should also note that if the Government considers that any clarification or information submitted by a Tenderer after the Tender Closing Date would alter the Tender in substance or give the Tenderer an advantage over the other Tenderers, the Government will not consider such clarification or information, irrespective of

whether the clarification or information is submitted at the request of the Government.

8. Personal and Other Data Provided

- (a) Personal data provided in the Tender will be used for tender evaluation and contract award purposes. If insufficient or inaccurate information is provided, the Tender may not be considered.
- (b) Personal data provided in the Tender may be disclosed to the parties responsible for tender evaluation in other government departments and non-government organisations.
- (c) Tenderers have the right of access and correction with respect to their own personal data as provided for in sections 18 and 22 of and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the Tenderer's own personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of the Tender, including the making of requests for access and corrections, should be addressed to Personal Data Privacy Officer of the Official Receiver's Office, 10th Floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

9. Completion of Tender

- (a) A Tenderer is required to complete the Tender (including all accompanying documents) in ink or typescript, which shall be signed and submitted in **triplicate** (that is, one original and two copies), enclosed in **a sealed plain envelope** marked "Tender for Taking up of Appointment as Provisional Liquidators under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)" and addressed to the Chairman, Government Logistics Department Tender Opening Committee.
- (b) The Tender must be deposited in the Government Logistics Department Tender Box situated at Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong, no later than **12:00 noon on 10 October 2023** (Hong Kong Time). **Late Tenders or Tenders not deposited in the Government Logistics Department Tender Box will not be considered.**

- (c) Every Tender is a formal offer by the Tenderer to perform the Services (including the appointment of the Tenderer's Appointment Takers as joint and several provisional liquidators) in Qualified Cases allocated to the selected Tenderer on the terms and conditions set out in the Contract.
- (d) Submission of Tenders in any manner otherwise than in accordance with Clause 9(b) (for example, submission by e-mail or facsimile) will not be considered.
- (e) In case a black rainstorm warning or typhoon signal No. 8 or above is valid, or "extreme conditions after super typhoons" announced by the Government is in force, for any duration between 9:00 a.m. and 12:00 noon on the date in Clause 9(b) above, the Tender Closing Date will be extended to 12:00 noon on the next Working Day.
- (f) In case of blockage of the public access to the location of the Government Logistics Department Tender Box referred to in Clause 9(b) at any time between 9:00 a.m. and 12:00 noon on the Tender Closing Date, the Government will announce extension of the Tender Closing Date until further notice. Following removal of the blockage, the Government will announce the extended Tender Closing Date as soon as practicable. The above announcements will be made via press releases on the website of Official Receiver's Office (<https://www.oro.gov.hk>).

10. Assessment of Tender

- (a) In the event of the failure to submit the documents mentioned in Clauses 5(a)(i) and (ii) above, or the failure to meet any of the qualification requirements in Annex I, the Tender will not be considered and will not be further processed for evaluation.
- (b) A Tender will not be further considered or processed if the Tenderer who submitted such Tender is a firm that has been awarded one or more contracts with the Official Receiver for the provision of any insolvency services or work under other tenders, and during the period between the Tender Closing Date and the date the Official Receiver issues the Letter of Conditional Acceptance (as defined in Clause 11 of the Terms of Tender):
 - (i) any one or more of such contracts was terminated by the Official Receiver;
 - or

- (ii) in relation to any one or more of such contracts, the Official Receiver has suspended the allocation of cases or work to such Tenderer for any period of 2 months or more by reason of:
 - (a) any breach by such Tenderer of any of the terms and conditions of such contract(s); or
 - (b) the Official Receiver in her absolute discretion considering the quality of any of the work or services provided under such contract(s) unsatisfactory.
- (c) Subject to sub-clauses (a) and (b) above, Tenders will be assessed on the basis of the Required Subsidy per case and any other matters which the Official Receiver considers relevant and in such manner as the Official Receiver may in her absolute discretion think fit, including (but not limited to) the following matters:
 - (i) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any committal proceedings or proceedings for removal from the office of provisional liquidator, liquidator, special manager, provisional trustee or trustee in bankruptcy or any finding of contempt of court or any removal order; or
 - (ii) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any disqualification proceedings or disqualification order made against him under Part IVA of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) or any order under any legislation of Hong Kong or any other jurisdiction having the effect of disqualifying or prohibiting him from any one or more of the following:
 - (I) being a director of a company;
 - (II) being a liquidator of a company;
 - (III) being a receiver of a company's property;
 - (IV) being a trustee in bankruptcy or the equivalent or similar office holder in that jurisdiction; or
 - (V) taking part in the management of companies; or

- (iii) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any proceedings for commission of an offence, or conviction of any offence; or
- (iv) whether the Tenderer, any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any disciplinary proceedings, action or investigation or any disciplinary ruling, finding or sanction by a professional body of any of the professions as mentioned in Clause 1 of Annex I; or
- (v) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any finding or ruling of the court or result of investigation that he is guilty of any misconduct, misfeasance, breach of duty, breach of trust or breach of any code of ethics or that he is not a fit and proper person to be appointed or act as a provisional liquidator, liquidator, special manager in a winding-up case or a provisional trustee or trustee in bankruptcy in a bankruptcy case; or
- (vi) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is or has been subject to any restructuring, scheme of arrangement or voluntary arrangement, or becomes bankrupt or is or has been subject to a bankruptcy petition or bankruptcy order or is being wound up or is or has been subject to a winding up petition or winding up order, under the laws of Hong Kong or any other jurisdiction; or
- (vii) whether the Tenderer or any proprietor, partner, director or Appointment Taker of the Tenderer is, in the opinion of the Official Receiver, fit and proper to take up the Contract or to provide the Services.

11. Acceptance

- (a) A letter of conditional acceptance of offer (“**Letter of Conditional Acceptance**”) will be issued by the Official Receiver to the Tenderer whose Tender is selected.
- (b) Subject to sub-clause (c) below, the Contract will be formed upon the due compliance of the following conditions:
 - (i) the Official Receiver has received from the Tenderer within 7 days from the date of the Letter of Conditional Acceptance (or such other period as may be

specified by the Official Receiver in that letter) undertaking(s) in the form at Annex IV signed by the Appointment Takers named in item VIII of Form A at Annex III, with each of the Appointment Takers signing a separate undertaking; and

- (ii) any other conditions as may be stipulated by the Official Receiver in the Letter of Conditional Acceptance.
- (c) The issue of the Letter of Conditional Acceptance shall not constitute the formation of the Contract unless the Official Receiver forms the view that Clauses 6 and 7 of Annex I have been duly complied with and there has not been any material change to the factors referred to in Clause 10(c) which has been made known to the Official Receiver.
- (d) The Letter of Conditional Acceptance will lapse and be of no effect should the Tenderer fail to fulfill any of the conditions in sub-clause (b) above and the Official Receiver shall be at liberty to award the Contract to any other Tenderer, to conduct a fresh tender exercise or to take such appropriate action as the Official Receiver deems fit.
- (e) Tenderers who do not receive any notification within the Tender Validity Period stated in Clause 3 shall assume that their Tenders have not been accepted.
- (f) The Official Receiver is not bound to accept the Tender with the lowest Required Subsidy or any Tender.
- (g) The Official Receiver reserves the right to negotiate with any Tenderer about the terms of the Tender and conditions of the Contract.
- (h) Counter-proposals by a Tenderer may, at the absolute discretion of the Government, render its Tender to be disqualified and not to be considered.

12. Allocation of Qualified Cases

- (a) The Official Receiver estimates that 10 Firms may be appointed to perform the Services. The Official Receiver may adjust the actual number of Firms to be appointed as the Official Receiver considers appropriate and for this purpose may take into consideration other factors such as offers from Firms stating the same

amount of Required Subsidy. The Firms will be allocated Qualified Cases on a rotation basis or on such other basis as the Official Receiver considers appropriate.

- (b) For information, the number of cases allocated under the previous tender exercises in the past years is given below.

<u>Financial Year</u>	<u>Number of Cases</u>
2003-2004	1116
2004-2005	1009
2005-2006	727
2006-2007	477
2007-2008	421
2008-2009	425
2009-2010	528
2010-2011	364
2011-2012	276
2012-2013	297
2013-2014	227
2014-2015	243
2015-2016	248
2016-2017	271
2017-2018	242
2018-2019	197
2019-2020	164
2020-2021	222
2021-2022	211
2022-2023	258
2023-2024 (from April 2023 to June 2023)	86

- (c) There is no guarantee on the total number of cases to be allocated to each Firm. The estimated number of cases to be allocated for each of the financial years 2024-2025 and 2025-2026 is in the region of 290. The estimates are provided by the Official Receiver in good faith for the Tenderers' reference only and the Official

Receiver does not intend to be bound by any of these estimates and is not obliged to make the allocation of cases on the basis of such estimates.

13. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers including personal data may be destroyed three months after the date the Contract has been awarded.

14. Complaints About Tendering Process or Contract Awards

The tendering process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Official Receiver's Office which will examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. The Tenderer shall lodge the complaint before disposal of documents of unsuccessful Tenderers.

15. Cancellation of Tender Exercise

Without prejudice to the Government's absolute right to cancel this Invitation to Tender, where there are changes of requirement after Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming Tender and reserves the right to cancel the tender exercise.

16. Warranty against Collusion

(a) Each Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of Annex VII - Non-collusive Tendering Certificate referred to in sub-clause (b) below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

(b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex VII) as part of its Tender.

- (c) In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (i) reject the Tenderer's Tender;
 - (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (iii) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- (d) By submitting a Tender, each Tenderer 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 sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above.
- (e) A breach by a Tenderer of any of the representations, warranties and/or undertakings in sub-clause (a) above or in the Non-collusive Tendering Certificate submitted by it under sub-clause (b) above may prejudice its future standing as a Government contractor or service provider.
- (f) The rights of the Government under sub-clauses (c) to (e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

17. Warning against Bribery

- (a) The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Tenderer or any of its officers (including directors) or employees will render its Tender null and void.
- (b) The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are involved in the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201), is not permitted. The successful Tenderer shall

also caution its officers (including directors) and employees against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

18. Tender Addenda

The Government may issue addendum to the terms and conditions set out in the Tender Documents before the Tender Closing Date. All supplementary information or tender addenda to this Invitation to Tender will be provided in writing by the Government and forwarded to all prospective Tenderers who have registered with the Government when obtaining a copy of the Tender Documents.

19. Tenderer's Commitment

- (a) All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is a representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate.
- (b) The Government reserves the right not to consider a Tender that directly or indirectly attempts to preclude or limit the effect of the requirement stated in Clause 19(a) above.

20. New Information

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

21. Cost of Tender

A Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender.

22. Consent to Disclosure

The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, particulars of the Services to be provided by the successful Tenderer, the date of the award of Contract, the name and address of the successful Tenderer, and the Required Subsidy per Qualified Case.

23. Tenderer's Enquiries

- (a) Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to:

Official Receiver (Attention: Treasury Accountant (Investigations))

Official Receiver's Office

10th Floor, High Block, Queensway Government Offices,

66 Queensway, Hong Kong

Facsimile: (852) 3580 0642

Email: tchchiu@oro.gov.hk

- (b) After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- (c) Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or prospective Tenderer to rely on such statement. No such statement shall form part of the Invitation to Tender or alter, negate or constitute a waiver of any provision of the Tender Documents.

24. Government Discretion

Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer 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.

Annex I – Qualification Requirements

1. The Tenderer must be a sole proprietor, a partnership or a limited company, and must provide at least two Appointment Takers to take up the appointment of joint and several provisional liquidators or liquidators in a Qualified Case in accordance with the Conditions of Contract and the Work Specifications. Each of the Appointment Takers must be -
 - (a) a certified public accountant within the meaning of section 2(1) of the Professional Accountants Ordinance (Cap. 50); or
 - (b) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or
 - (c) a current member of The Hong Kong Chartered Governance Institute.

2. Each of the Appointment Takers of the Tenderer must satisfy all of the following requirements -
 - (a) each must have at least 3 years of post-qualification experience in the relevant profession; and
 - (b) each must have a minimum of 300 chargeable hours of experience acquired after obtaining the relevant professional qualifications (“the Qualifying Chargeable Hours”) during the last 3 years immediately preceding the Tender Closing Date -
 - (i) of which, **at least** 150 hours of experience must be experience in managing corporate insolvency cases either as (I) a liquidator and/or provisional liquidator; (II) a receiver; and/or (III) as a senior associate assisting (I) and/or (II) in the performance of their role related to insolvency work on companies or receiverships of companies. The chargeable hours of experience must have been obtained in at least 4 separate compulsory winding-up of companies which were not connected companies. Within the minimum 150 chargeable hours of experience in (b)(i), no more than 75 hours of experience on receivership will be counted as chargeable hours of experience. A pass in the Hong Kong Institute of Certified Public Accountants Professional Diploma in Insolvency Programme is regarded as equivalent to 50 hours of insolvency work experience for (b)(i); and

- (ii) the remaining hours of experience may be on solvent liquidations. However, for the purpose of calculating Qualifying Chargeable Hours, two chargeable hours of solvent liquidations work are deemed to be one chargeable hour only.
- 3. Of these Appointment Takers provided by the Tenderer, at least one must be the proprietor, or a partner or director of the Tenderer. Other Appointment Taker, if not being a partner or director of the Tenderer, must be a full-time employee of the Tenderer.
- 4. The Tenderer must have been providing insolvency, accounting, legal or company secretary services in Hong Kong for at least 3 years immediately preceding the Tender Closing Date.
- 5. The Tenderer must have at least 10 employees, 5 of them must be full-time employees of the Tenderer. For the purpose of counting these 10 employees, the sole proprietor (in case of the Tenderer being a sole proprietorship), the partners (in case of the Tenderer being a partnership), the directors (in case of the Tenderer being an incorporated company), and the Appointment Takers of the Tenderers are not included.
- 6. The Tenderer and its Appointment Takers must not have been (a) disqualified or suspended by the Official Receiver from participating in any tender/quotation exercises conducted by the Official Receiver's Office; or (b) disqualified or suspended by other insolvency agencies or bodies outside Hong Kong from participating in any tender/quotation exercises conducted by them.
- 7. Where the Tenderer has made one or more contracts with the Official Receiver for the provision of any insolvency services or work, during the period between 11 October 2019 and 10 October 2023:
 - (a) none of such contracts has been terminated by the Official Receiver; and
 - (b) the Official Receiver has not suspended the allocation of cases or work to such Tenderer under any such contracts for any period of 2 months or more, by reason of:
 - (i) any breach by the Tenderer of any of the terms and conditions of such contract(s); or

- (ii) the Official Receiver in her absolute discretion considering the quality of any of the work or services provided under such contract(s) unsatisfactory.

Annex II - Quotation Sheet

Name of Tenderer _____ (in English)

_____ (in Chinese)

Required Subsidy per
Qualified Case HKD _____

Hourly rate
per grade of employees,
sole proprietors, partners,
company directors and
Appointment Takers

	<u>Grade</u>	<u>Hourly Rate</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____

Note: If there is insufficient space, please give details
on a separate sheet to be attached to Annex II.

Name and Signature of
proprietor/ partner/director
or other signatory
authorised to sign the Offer
to be Bound in the Tender
Form

NAME (In Block Letters)

Date _____

Annex III - Declaration on Details of the Tenderer (Form A)

To: Official Receiver

I. Full Name of Tenderer _____

II. Address (in English) _____

Address (in Chinese) _____

III. Telephone /Fax _____(Tel)/ _____(Fax)

IV. Length of period of relevant practice of firm/company, i.e. the Tenderer, (in years and months)

V. Shareholding details in the case of a limited company

Number of issued shares _____

Shareholders' information

	<u>Name</u>	<u>Position in the Company</u>	<u>Number of shares held</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

VI. Details of the proprietor in the case of the Tenderer being a sole proprietorship, partners in case of a partnership and the directors in case of a limited company (as the case may be)

	<u>Name</u>	<u>Position in the Firm/Company</u>	<u>Profession</u> <u>(Certified Public Accountant,</u> <u>Solicitor or Chartered Secretary)</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

VII. Number of employees of the Tenderer to perform the Services (excluding those mentioned in VI above and VIII below)

VIII. Details of Appointment Takers (at least two must be provided) of the Tenderer who perform insolvency work.

<u>Name</u> (Spelling identical to the one registered in the professional bodies)	<u>Professional bodies & membership No.s</u>	<u>Position in the Firm/Company</u>	<u>Length of service with the Firm/Company</u>	<u>Number of Years of post-qualification experience</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

IX. Each of the persons named under VIII above are also expected to complete an “Individual Experience Return” (i.e. Form B). These returns are expected to be included in the Tender submission.

In order to verify the membership status and number of post qualification experience of the Appointment Takers, the Official Receiver may consult the relevant professional bodies. **Each** Appointment Taker is expected to provide a duly signed written consent to the provision of his personal data by the relevant professional bodies to the Official Receiver as attached in Annex VI. **The Tenderer must procure the persons to provide further consent as and when the Official Receiver requests for the purpose of checking its membership status and post qualification experience with the relevant professional bodies. Failure to do so may render the Tender invalid.**

X. Full name, position and employment nature (full-time / non-full-time) of employees (**excluding** proprietor, partners, director(s) and Appointment Takers) employed by the Tenderer to perform the Services.

	<u>Full Name</u>	<u>Position</u>	<u>Full-time / Non-full-time</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____
11.	_____	_____	_____
12.	_____	_____	_____
13.	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____
16.	_____	_____	_____
17.	_____	_____	_____
18.	_____	_____	_____
19.	_____	_____	_____
20.	_____	_____	_____

Note: If there is insufficient space, please give details on a separate sheet to be attached to Annex III.

XI. Other information:

(i) Whether the Tenderer or any of its Appointment Takers has been convicted of any offence, please indicate:

Yes, details: _____

No

(ii) Whether the Tenderer or any of its Appointment Takers is subject to any ongoing disciplinary action or investigation by a professional body of any of the professions as mentioned in Clause 1 of Annex I, please indicate:

Yes, details: _____

No

The Tenderer declares and confirms that the information provided above is true and correct. Also, the Tenderer declares that it and its Appointment Takers have satisfied the requirements in Clauses 6 and 7 of Annex I to the Terms of Tender. The person who signs this Annex is duly authorized by the Tenderer to execute this Annex on behalf of the Tenderer.

Signed By _____

Proprietor/Partner/Director or other authorized signatory to sign on behalf of the Tenderer

NAME (In Block Letters)

Full Name of Tenderer in Block Letters

Date: _____

Annex III - Declaration on Details of the Tenderer (Form B)

**Individual Experience Return
for Appointment Taker**

(to be submitted pursuant to the requirement at IX of Annex III – Form A)

Name of Appointment Taker _____

Certified public accountant
within the meaning of
section 2(1) of the Professional
Accountants Ordinance
(Cap. 50)
(Yes or No) _____

Solicitor within the meaning
of section 2(1) of the Legal
Practitioners Ordinance
(Cap. 159)
(Yes or No) _____

Date of Admission to the
Roll of Solicitors
(If Yes)
(MM/YYYY) _____

Current member of The
Hong Kong Chartered
Governance Institute
(Yes or No) _____

Professional Bodies

Membership Numbers

Date of Admission to
Membership (MM/YYYY)

Position in the Firm/Company

Working for the Tenderer as its
full-time employee (Yes/No) _____

I. Details of work and hours involved

	Hours involved (Year to 10 October)		
	<u>2021</u>	<u>2022</u>	<u>2023</u>
(a) <u>Insolvency Work on companies</u>			
Insolvent Voluntary Liquidations	_____	_____	_____
Compulsory Liquidations	_____	_____	_____
Appointment of Special Managers	_____	_____	_____
Others (please specify)	_____	_____	_____
Total of (a)	=====	=====	=====
(b) <u>Receiverships of companies</u>			
Court Appointed Receivers	_____	_____	_____
Receivers and Managers Under Debentures	_____	_____	_____
Others (please specify)	_____	_____	_____
Total of (b)	=====	=====	=====
(c) <u>Solvent Liquidations</u>			
Solvent Voluntary Liquidations	_____	_____	_____
Others (please specify)	_____	_____	_____
Total of (c)	=====	=====	=====

II. Holder of the HKICPA
Professional Diploma in Insolvency
Programme (Yes or No)

III. (a) Case numbers and names of compulsory winding up cases of companies which were not connected companies conducted over the last 3 years immediately preceding the Tender Closing Date and number of hours involved in each compulsory winding up case. **The number of hours set out in this III(a) shall not be more than the total number of hours set out in I(a) and I(b) above.**

(b) Details of the nature of the work performed and the role of each Appointment Taker on each of the cases mentioned in III(a) above.

I declare and confirm that the above information provided is true and correct. Also, I declare that I have not been (a) disqualified or suspended by the Official Receiver from participating in any tender/quotation exercises conducted by the Official Receiver’s Office; or (b) disqualified or suspended by other insolvency agencies or bodies outside Hong Kong from participating in any tender/quotation exercises conducted by them.

Signed By _____
Name of Appointment Taker

Name in Block Letters

Date: _____

Annex IV - Undertaking

To:

The Government of the Hong Kong Special Administrative Region
as represented by the Official Receiver (“**Government**”)
Official Receiver’s Office
10th Floor, High Block, Queensway Government Offices,
66 Queensway, Hong Kong;

Attn: Official Receiver

Re: Appointment as Provisional Liquidators under Section 194(1A) of the Companies
(Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (**the “Ordinance”**)

1. I have read a copy of the Tender Documents of OR/T/2023.
2. Unless otherwise specified, terms and expressions defined in the Tender Documents have the same meaning when used in this Undertaking and all references to clauses are clauses of this Undertaking.
3. I hereby undertake, acknowledge and covenant to the Government that I shall observe and comply with all applicable obligations under the Tender Documents and I agree to be bound by the terms and conditions as stipulated in the Tender Documents as if I were a contracting party to the Contract.
4. Without limiting the generality of my Undertaking herein, I confirm that I have satisfied all the requirements in respect of Appointment Taker as set out in Clauses 1, 2 and 3 in Annex I to the Terms of Tender as evidenced by the Declaration as to my experience as set out in Form B in Annex III to the Terms of Tender and copies of documents specified in Annex V submitted with the Tender.

5. I declare and confirm that I have not been
- (a) disqualified or suspended by the Official Receiver from participating in any tender/quotation exercises conducted by the Official Receiver's Office; or
 - (b) disqualified or suspended by other insolvency agencies or bodies outside Hong Kong from participating in any tender/quotation exercises conducted by them.
6. In relation to any contracts which the Tenderer had made with the Official Receiver for the provision of any insolvency services or work, I further declare and confirm that at any time between 11 October 2019 and 10 October 2023:
- (a) none of such contracts was terminated by the Official Receiver; and
 - (b) the Official Receiver has not suspended the allocation of cases or work to the Tenderer under any such contracts for any period of 2 months or more, by reason of:
 - (i) any breach by the Tenderer of any of the terms and conditions of such contract; or
 - (ii) the Official Receiver in her absolute discretion considering the quality of any of the work or services provided under such contract unsatisfactory.

I undertake to inform the Official Receiver forthwith in the event of the making of any such disqualification, suspension, termination against the Tenderer or me.

7. I undertake to inform the Official Receiver within 14 days of becoming aware of the fact that our firm, or any sole proprietor, partner, director or Appointment Taker of our firm is or has been-
- (a) subject to any committal proceedings or proceedings for removal from the office of provisional liquidator, liquidator, special manager, provisional trustee or trustee in bankruptcy or any finding of contempt of court or any removal order; or
 - (b) subject to any disqualification proceedings or disqualification order made against him under Part IVA of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) or any order under any legislation of Hong Kong or any other jurisdiction having the effect of disqualifying or prohibiting him from any one or more of the following:

- (I) being a director of a company;
 - (II) being a liquidator of a company;
 - (III) being a receiver of a company's property;
 - (IV) being a trustee in bankruptcy or the equivalent or similar office holder in that jurisdiction; or
 - (V) taking part in the management of companies; or
- (c) subject to any proceedings for commission of an offence, or conviction of any offence; or
 - (d) subject to any disciplinary proceedings, action or investigation or any disciplinary ruling, finding or sanction by a professional body of any of the professions as mentioned in Clause 1 of Annex I; or
 - (e) subject to any finding or ruling of the court or result of investigation that he is guilty of any misconduct, misfeasance, breach of duty, breach of trust or breach of any code of ethics or that he is not a fit and proper person to be appointed or act as a provisional liquidator, liquidator, special manager in a winding-up case or a provisional trustee or trustee in bankruptcy in a bankruptcy case; or
 - (f) subject to any restructuring, scheme of arrangement or voluntary arrangement, or becomes bankrupt or is or has been subject to a bankruptcy petition or bankruptcy order or is being wound up or is or has been subject to a winding up petition or winding up order, under the laws of Hong Kong or any other jurisdiction.

This Undertaking has been executed as a Deed on the date below.

Signed, Sealed and Delivered By _____
 Name of Appointment Taker

Name in Block Letters

Date _____

Annex V - List of documents to be submitted

No.	Copies of Documents to be submitted	Submitted*	Attachment No. in this submission
1	A certified true copy of Business Registration Certificate	<input type="checkbox"/>	_____
2	Company Annual Return	<input type="checkbox"/>	_____
3	Certificate of Incorporation	<input type="checkbox"/>	_____
4	Admission Certificate of Certified Public Accountant within the meaning of section 2(1) of the Professional Accountants Ordinance (Cap. 50) under the name of the Appointment Takers	<input type="checkbox"/>	_____
5	Admission Certificate of Solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159) under the name of the Appointment Takers	<input type="checkbox"/>	_____
6	Admission Certificate of Membership of The Hong Kong Chartered Governance Institute under the name of the Appointment Takers	<input type="checkbox"/>	_____
7	HKICPA Professional Diploma in Insolvency Programme of the Appointment Takers	<input type="checkbox"/>	_____
8	Documents to substantiate the employment status of those employees set out in Annex III (Form A) item X (e.g. Employment Contracts; or record showing the working hours (which term is defined to exclude daily lunch break) and daily lunch break duration of the employees covering the period for at least 1 month prior to the Tender Closing Date certified by the Appointment Takers; or certification of the identities, post titles, full-time/non-full-time position status, total working hours (which term is defined to exclude daily lunch break) per week and daily lunch break duration of the full-time/non-full-time employees certified by the Appointment Takers) <i>For submission of employment contracts, if the documents do not expressly indicate the daily lunch break duration, please submit a certification of the daily lunch break duration of the employees certified by the Appointment Takers.</i>	<input type="checkbox"/>	_____
9	Consent signed by each Appointment Taker on provision of their personal data by the professional bodies to the Official Receiver	<input type="checkbox"/>	_____
10	Non-collusive Tendering Certificate	<input type="checkbox"/>	_____

* Please tick as appropriate

Annex VI - Statement of Consent for Qualification Verification

**Re: Tender for Taking up of Appointment As
Provisional Liquidators under section 194(1A) of the
Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)
(Tender Ref: OR/T/2023)**

(To be signed by EACH Appointment Taker)

I hereby consent to the professional body indicated below to provide information about:

- (i) my current professional membership status; and
- (ii) the admission date regarding my professional membership,

to the Official Receiver:

- the Hong Kong Institute of Certified Public Accountants. *
- The Law Society of Hong Kong. *
- The Hong Kong Chartered Governance Institute. *

I understand that the above information would be processed by the Official Receiver solely for the assessment of a tender submitted to the Official Receiver on the captioned matter. I agree to provide further consent as and when required by the Official Receiver solely for the assessment of the Tender.

** (please tick as appropriate)*

Signed By _____
Appointment Taker

NAME (In Block Letters)

Membership number

Date: _____

Annex VII - Non-collusive Tendering Certificate

To:
The Government of the Hong Kong Special Administrative Region
as represented by the Official Receiver (“Government”)
Official Receiver’s Office
10th Floor, High Block, Queensway Government Offices,
66 Queensway, Hong Kong

Dear Sir/ Madam,

Non-collusive Tendering Certificate

1. I/We, (name of the Tenderer) _____ of
(address(es) of the Tenderer(s)) _____

refer to the Government’s Invitation to Tender for the Contract and my/our Tender in response to the Invitation to Tender.

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Tender:
- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
 - (a) the Government;
 - (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
 - (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
 - (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
 - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
 - (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
 - (g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of sub-contracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 16(a) of the Terms of Tender, the Government may exercise any of the rights under Clauses 16(c) to 16(e) of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Cap. 619), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Signed by the Tenderer / Signed by an authorised signatory for and on behalf of the Tenderer :

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

CONDITIONS OF CONTRACT

1. Contracts (Rights of Third Parties) Ordinance

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

2. Total Services

The Firm and the Appointment Takers shall perform the Services in accordance with the Contract and the Work Specifications to the satisfaction of the Government.

3. No Assignment and Sub-Contracting

The Firm and the Appointment Takers shall not, without the prior written consent of the Government, assign, transfer or otherwise dispose of any of their interests, rights, benefits or obligations under the Contract or any part thereof. The performance of the Contract by the Firm and the Appointment Takers shall be personal to them. The Firm and the Appointment Takers shall not enter into any sub-contract with any person for the performance of all or any part of the Contract.

4. Qualified Cases to be Allocated to the Firm

During the Allocation Period, the Official Receiver will normally allocate Qualified Cases to the Firm and other Firms which have also been awarded the Contract under the current tender exercise on a rotation basis or such other basis as the Official Receiver considers appropriate in her absolute discretion. The Official Receiver is not bound to allocate an equal number of Qualified Cases to each of the Firms, and there is no guarantee on the total number of Qualified Cases to be allocated to each of the Firms.

5. Security and Undertaking

(a) The Firm must take out and maintain throughout the Contract Period a professional indemnity insurance to the satisfaction of the Official Receiver. Where there is any renewal of the professional indemnity insurance, the Firm shall, within 2 months upon the expiry of the prevailing professional indemnity insurance, provide a copy of the new professional indemnity insurance to the Official Receiver.

- (b) The requirements under Clause 5(a) are requirements independent of and in addition to the requirement on the giving and furnishing of security under section 195 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and rule 47 of the Companies (Winding-up) Rules (Cap. 32H). For the avoidance of doubt, the Firm may, in respect of any of the Qualified Cases allocated to it, be required to give the security pursuant to section 195 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and rule 47 of the Companies (Winding-up) Rules (Cap. 32H) to the satisfaction of the Official Receiver notwithstanding the compliance with Clause 5(a).
- (c) The Firm shall ensure that each of the Appointment Takers of the Firm duly observes and complies with all applicable obligations under the Contract as if he were a party to the Contract. In the event of any changes or addition of Appointment Takers, the Firm shall, in respect of each incoming Appointment Taker, provide the Official Receiver with an undertaking in her favour (in the form set out in Annex IV to the Terms of Tender and duly executed by each such incoming Appointment Taker) and information about the Appointment Taker as set out in Annex III to the Terms of Tender within 7 days of such change or addition of Appointment Takers for the approval by the Official Receiver. Each incoming Appointment Taker and the Firm must ensure that:
- (i) the requirements as set out in Clauses 1 to 7 of Annex I to the Terms of Tender are satisfied; and
 - (ii) the incoming Appointment Takers have not been (I) disqualified or suspended by the Official Receiver from participating in any tender/quotation exercises conducted by the Official Receiver's Office; or (II) disqualified or suspended by other insolvency agencies or bodies outside Hong Kong from participating in any tender/quotation exercises conducted by them.

6. Conflict of Interest

The Firm as well as each of its Appointment Takers appointed as joint and several provisional liquidators or liquidators in a Qualified Case shall avoid any conflict of interest in performing the Services in any Qualified Case allocated to the Firm. The Firm and its Appointment Takers must inform the Official Receiver forthwith if there is any conflict of

interest or a real risk of conflict of interest in the event that the Firm is to handle any Qualified Case allocated or to be allocated to the Firm or that any of the Appointment Takers of the Firm is to be appointed as the provisional liquidator or liquidator in any Qualified Case allocated or to be allocated to the Firm. The decision of the Official Receiver as to whether there is a conflict of interest or real risk of conflict of interest shall be final and conclusive.

7. No Acceptance of Advantages

The Firm as well as each of its Appointment Takers appointed as joint and several provisional liquidators or liquidators in a Qualified Case shall not solicit business and/or accept any advantages or benefit (as defined in the Prevention of Bribery Ordinance (Cap. 201)) from the company, any of the shareholders or directors of the company, or any creditors or any person in relation to any Qualified Case allocated to the Firm.

8. Fees and Remuneration

- (a) In respect of a Qualified Case allocated to the Firm where the Firm's Appointment Takers are appointed and acted as the provisional liquidators under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and subject to the Official Receiver's right to scrutinize the bills and, if necessary, taxation by the Court, the Firm and its Appointment Takers shall, in consideration of the provision of the Services in such Qualified Case, be entitled to be remunerated on a time-cost basis, and to charge such reasonable remuneration out of the assets of the company in accordance with the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). The actual hourly rate per grade of employees, sole proprietors, partners, directors and Appointment Takers shall in no circumstances be in excess of the rates as stipulated in the Quotation Sheet at Annex II.
- (b) Where the Firm's Appointment Takers are appointed as liquidators pursuant to a summary procedure order under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) following their appointment as joint and several provisional liquidators in a Qualified Case, subject to the Official Receiver's right to scrutinize the bills and, if necessary, taxation by the Court, the Firm and its Appointment Takers shall, in consideration of the provision of the

Services as such liquidators in such Qualified Case, be entitled to be remunerated on a time-cost basis, and to charge such reasonable remuneration out of the assets of the company in accordance with the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). The actual hourly rate per grade of employees, sole proprietors, partners, directors and Appointment Takers shall in no circumstances be in excess of the rates as stipulated in the Quotation Sheet at Annex II.

- (c) If the assets of the company being wound up are insufficient to meet the remuneration as provided in Clause 8(a) or (b) above, subject to Clause 11(b) below, the shortfall will be met from the Required Subsidy.
- (d) The Required Subsidy shall be calculated and payable strictly on a case-by-case basis. Under no circumstances will such the Required Subsidy or any balance thereof be transferred between cases.
- (e) The Required Subsidy will not be payable in respect of any Qualified Case allocated to the Firm unless a summary procedure order under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is made in respect of the Qualified Case. In a Qualified Case where no summary procedure order is made under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the fees and remuneration of the Firm and its Appointment Takers whether acting as joint and several provisional liquidators or liquidators shall be paid out of the assets of the company in accordance with the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (f) Where a summary procedure order has been obtained under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in respect of a Qualified Case pursuant to the terms of the Contract, the subsequent rescission of the summary procedure order shall not affect any payment of the Required Subsidy already effected, unless the summary procedure order was obtained by material non-disclosure or misrepresentation to the Court.
- (g) Other than those set out in Clauses 8(a) to (f), the Firm and its Appointment Takers shall not be entitled to any other fees or remuneration for the provision of the Services in any Qualified Case. If the assets of the company being wound up and

the Required Subsidy, if payable, are insufficient to meet the remuneration as provided in Clause 8(a) or (b) above, it shall be up to the Firm to consider whether and how to recover the shortfall. In such event, neither the Government nor the Official Receiver shall be liable to pay the shortfall to the Firm or the Appointment Takers.

- (h) Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Required Subsidy if:
 - (i) the Firm fails to observe or perform any provision of the Contract;
 - (ii) the Government disputes on any reasonable ground its obligation to pay the amount in question;
 - (iii) the Government has reasonable grounds to believe that the Firm is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government;
 - (iv) withholding of payment is required by any applicable laws; or
 - (v) the Firm fails to perform the Services to the satisfaction of the Government.

9. Performance of the Firm

- (a) The performance of the Firm and the Appointment Taker will be monitored by the Official Receiver in terms of the time taken to complete the Qualified Case and the quality of work.
- (b) In respect of a Qualified Case allocated to the Firm by the Official Receiver and for which the Firm's Appointment Takers act as provisional liquidators or liquidators, those Appointment Takers shall act in a fiduciary capacity and shall deal with the property under their control in good faith, with proper care, skill and competence and in a reasonable manner. The Appointment Takers shall complete the Qualified Case by administering the company's estate in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in an expeditious and professional manner. The Firm shall ensure that the Appointment Takers discharge and comply with the aforesaid duties and requirements.
- (c) The Firm and the Appointment Takers shall provide, perform and carry out the Services in all respects with professionally acceptable standards (including ethical

standards of the relevant professions) and in compliance with all relevant statutory requirements, the terms and conditions of the Contract and the standard and requirements of the court. For this purpose, the Official Receiver's decision as to what constitutes professionally acceptable standards or whether any of the Services provided, performed or carried out in any Qualified Case meets the professionally acceptable standards or complies with the relevant statutory requirements, the terms and conditions of the Contract or the standard or requirements of the court shall be final and conclusive. The Firm shall comply with any instructions given by the Official Receiver in relation to the provision of the Services from time to time.

- (d) For the avoidance of doubt, in relation to the provision, performance or carrying out of the Services, the act, omission, negligence, breach, default or failure of or by any of the proprietors, partners, directors, Appointment Takers, employees, agents or contractors of the Firm shall be deemed to be the act, omission, negligence, breach, default or failure of the Firm.
- (e) The Firm or its Appointment Takers, in respect of a Qualified Case allocated to the Firm by the Official Receiver, shall complete the Qualified Case by obtaining a release order from the Court under section 205 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in an expeditious and professional manner. If it is expected that a Qualified Case cannot be completed within one year of the appointment of the Appointment Takers as provisional liquidators in that Qualified Case pursuant to section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Firm shall submit a report to the Official Receiver before the expiration of the first year of the appointment of the Appointment Takers giving explanations as to why the Qualified Case cannot be so completed.
- (f) The Firm or its Appointment Takers, as joint and several provisional liquidators or liquidators in a Qualified Case, shall submit accounts, not less than twice in each year during their tenure of office, to the Official Receiver pursuant to section 203 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and shall submit together with the first accounts under section 203 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and, if so required by the Official Receiver, with the subsequent accounts, a progress report giving details on what has been done and what needs to be done in relation to the

administration of the company's estate, and also an indication with reasons as to whether or not the Qualified Case can be completed within one year of the appointment of the Appointment Takers as provisional liquidators in that Qualified Case pursuant to section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32).

- (g) If the Firm or its Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case fails to comply with Clause 7(a) or 7(b) of the Work Specifications, the Firm shall compensate the Official Receiver for the additional costs that the Official Receiver has incurred and/or will incur in monitoring the late application for summary procedure order or the delay in holding the first meetings of creditors and contributories in respect of the Qualified Case. If the application for a summary procedure order is made or the first meetings of creditors and contributories are held more than 6 months after the date of the winding-up order, the Government shall be entitled to deduct \$1,000 plus \$500 for every full month of delay after the expiry of 6 months from the date of the winding-up order from the Required Subsidy payable for the Qualified Case, and no interim payment of the Required Subsidy will be made. Where necessary, such deduction may also be deducted from the Required Subsidy payable for other Qualified Cases.
- (h) If the Firm or its Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case makes an application for a summary procedure order or convenes the first meetings of creditors and contributories more than 8 months after the date of the winding-up order and such delay has occurred in respect of 5 or more Qualified Cases allocated to the Firm, in addition to the right of deduction under Clause 9(g), the Official Receiver shall be entitled to suspend the allocation of Qualified Cases to the Firm for such period as the Official Receiver may determine in her absolute discretion.
- (i) If the Firm or its Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case makes an application for a summary procedure order or convenes the first meetings of creditors and contributories more than 10 months after the date of the winding-up order and such delay has occurred in respect of 5 or more Qualified Cases allocated to the Firm, in addition to the right of deduction under Clause 9(g), the Official Receiver:

- (i) shall be entitled to suspend the allocation of Qualified Cases to the Firm for such period as the Official Receiver may determine in her absolute discretion; and
 - (ii) may disqualify or suspend the Firm from participating in the next tender/ quotation exercise under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) conducted by the Official Receiver or disqualify or suspend the Firm from participating in any tender/ quotation exercises under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) conducted by the Official Receiver for such period as the Official Receiver thinks fit in his absolute discretion.
- (j) Without prejudice to any of the provisions in Clause 11(a) below and to the right of termination or any other rights and remedies which the Official Receiver may have, the Official Receiver may issue a warning letter to the Firm, if any of the following conditions of the Contract or requirements is breached or has not been complied with:-
- (i) provision of an updated copy of the professional indemnity insurance specified in Clause 5(a) above to the Official Receiver;
 - (ii) giving the security under Clause 5(b) above;
 - (iii) submission of the liquidator's account to the Official Receiver pursuant to section 203 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) specified in Clause 9(f) above;
 - (iv) provision of necessary assistance and completion of a questionnaire as may be required by the Official Receiver when quality audit is conducted in accordance with Clause 14 below;
 - (v) performance of the tasks and duties as are necessary or may be required of a provisional liquidator/liquidator pursuant to the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and comply with Clauses 5, 8 and 9 of the Work Specifications;
 - (vi) provision of all relevant statistics and information and production of any documents in connection with the Qualified Cases as and when required by the Official Receiver under Clause 6 of the Work Specifications;

- (vii) application to the court for summary procedure order within 3 months of the date of the winding-up order or convening of the meeting of creditors as specified under Clause 7 of the Work Specifications;
 - (viii) report of the conduct of the directors of the wound up company to the Official Receiver in accordance with section 168I (3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) by submitting Form D1 or D2 as appropriate as provided in section 2 and section 3 of the Companies (Reports on Conduct of Directors) Regulation (Cap. 32J).
- (k) If the Firm fails to comply with or make good the breach or non-compliance in relation to which a warning letter is issued under Clause 9(j) above within such time as may be stipulated in the warning letter in respect of the Qualified Cases allocated to the Firm under the Contract without good cause, the Official Receiver may suspend the allocation of Qualified Cases to the Firm for such period as the Official Receiver may determine in her absolute discretion.

10. Payment Procedures

- (a) The fees and remuneration to the Firm and its Appointment Takers as provisional liquidators or liquidators in any Qualified Case shall be paid in accordance with Clauses 8 and 9 from the net realised assets of the company being wound up according to the order of payments under rule 179 of the Companies (Winding-up) Rules (Cap. 32H).
- (b) Subject to Clauses 8 and 9, the Appointment Takers of the Firm shall as soon as possible and in any event not later than 12 weeks after their appointment as the provisional liquidators under section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) advise the Official Receiver whether it is unlikely that the net realised assets available would be sufficient to pay their fees and remuneration calculated in accordance with Clauses 8 and 9. In the event that the Appointment Takers so advised and after the appointment of the Appointment Takers of the Firm as liquidator under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Government may effect an interim payment of a sum not exceeding 60 percent of the Required Subsidy to the

Firm. Further payment, not exceeding the balance of the Required Subsidy and after deduction of any Required Subsidy in accordance with Clause 9(g), if claimed, will be paid upon the completion of the Qualified Case and the Appointment Takers having obtained a release order from the court under section 205 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). The Firm shall apply to the Government in writing for the interim or further payment by way of submitting a bill which shall be in such form and contain such particulars as required by the Government. The bill shall also contain a narrative history of the work undertaken so far together with details of the billable hours and the names and grade of staff employed on the liquidation. All claims for payment under this Clause shall be made in such form as the Government may prescribe. Any overpayment of the Required Subsidy shall be reimbursed to the Government.

- (c) Any payment by the Government shall be without prejudice to any right or cause of action which has or may have accrued, or any remedy which may be available to the Government in respect of any breach or non-compliance of the Contract by the Firm and the Appointment Takers.

11. Termination of Contract and Suspension

(a) If –

- (i) the Firm or any of the Appointment Takers fails to carry out all or any of the Services to the satisfaction of the Government, including but not limited to any of the Appointment Takers declining to act as provisional liquidator or liquidators in any Qualified Case; or
- (ii) any of the Firm's Appointment Takers continues to act as a provisional liquidator or liquidator in a Qualified Case despite that he has been removed from office as the provisional liquidator or liquidator in the Qualified Case; or
- (iii) the quality of the Services in any Qualified Case allocated to the Firm is unsatisfactory in the sole opinion of the Official Receiver which shall be final and conclusive; or

- (iv) the Firm or any of the Appointment Takers fails to observe or perform any terms or conditions of the Contract (the decision of the Official Receiver as to whether there is a failure to observe or perform shall be final and conclusive) or any representation made or information submitted in its Tender is false or misleading; or
- (v) at any time during the Contract Period, the Firm or any proprietor, partner, director or Appointment Taker of the Firm is or has been:
 - (aa) subject to any committal proceedings or proceedings for removal from the office of provisional liquidator, liquidator, special manager, provisional trustee or trustee in bankruptcy or any finding of contempt of court or any removal order; or
 - (bb) subject to any disqualification proceedings or disqualification order made against him under Part IVA of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or any order under any legislation of Hong Kong or any other jurisdiction having the effect of disqualifying or prohibiting him from any one or more of the following:
 - (I) being a director of a company;
 - (II) being a liquidator of a company;
 - (III) being a receiver of a company's property;
 - (IV) being a trustee in bankruptcy or the equivalent or similar office holder in that jurisdiction; or
 - (V) taking part in the management of companies; or
 - (cc) subject to any proceedings for commission of an offence, or conviction of any offence; or
 - (dd) subject to any disciplinary proceedings, action or investigation or any disciplinary ruling, finding or sanction by a professional body of any of the professions as mentioned in Clause 1 of Annex I; or
 - (ee) subject to any finding or ruling of the court or result of investigation that he is guilty of any misconduct, misfeasance, breach of duty, breach of trust or breach of any code of ethics or that he is not a fit and proper person to be appointed or act as a provisional liquidator,

liquidator, special manager in a winding-up case or a provisional trustee or trustee in bankruptcy in a bankruptcy case; or

- (vi) the Firm or any proprietor, partner, director or Appointment Taker of the Firm is or has been subject to restructuring, scheme of arrangement or voluntary arrangement, or becomes bankrupt or is or has been subject to a bankruptcy petition or bankruptcy order or is being wound up or is or has been subject to a winding up petition or winding up order, under the laws of Hong Kong or any other jurisdiction; or
- (vii) the Government is given the right to terminate the Contract under any other provision of the Contract, including Clause 16(c)(iii) of the Terms of Tender, Clauses 11(e) and 21(c) below, but excluding Clauses 11(d) and 25(c) below;

without prejudice to any other rights and remedies which the Government and/or the Official Receiver may have, whether under the Contract or otherwise, the Official Receiver may by written notice to the Firm terminate the Contract immediately or with effect from such later date as may be specified by the Official Receiver in the notice.

- (b) Without prejudice to the right of termination or suspension in Clause 11(a) and (c) and to any other rights and remedies which the Official Receiver may have, whether under the Contract or otherwise, the Official Receiver may, on the occurrence of an event as stipulated in Clause 11(a)(i), (ii), (iii), (iv), (v), (vi) or (vii) take one or more of the following actions –
 - (i) disqualify the Firm and/or its Appointment Takers from participating in any future tender/quotation exercises conducted by the Official Receiver's Office for such period of time as may be determined by the Official Receiver;
 - (ii) file with the relevant professional bodies complaints of misconduct or breach of contract;
 - (iii) refuse to pay for any Services rendered;

- (iv) demand the Firm to refund, and the Firm shall upon such demand refund, all the Required Subsidy and other payments paid to the Firm or such parts thereof in all or such Qualified Cases as the Official Receiver may at her discretion determine;
 - (v) exercise any other rights and remedy as available to him, including the rights and remedies under Clause 9(g), (h) or (i);
 - (vi) apply to court for removal of the Firm and/or the Appointment Takers from acting as provisional liquidators or liquidators in any Qualified Case already allocated to the Appointment Takers;
 - (vii) suspend the Firm's and/or its Appointment Takers' right to participate in the Panel A Scheme if the Firm or its Appointment Takers are registered members of the Panel A Scheme for such period as the Official Receiver thinks fit in her absolute discretion;
 - (viii) suspend allocation of cases to the Firm and/or the Appointment Takers in other subsisting contracts with the Official Receiver for provision of any insolvency services or work for such period as the Official Receiver thinks fit in her absolute discretion;
 - (ix) disallow any payment of subsidy in respect of any Qualified Cases allocated to the Firm prior to the termination of the Contract;
 - (x) report the conduct of the Appointment Takers to the Court under section 204 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
 - (xi) engage other Firms or other service providers to take up the remaining Services.
- (c) Without prejudice to any of the provisions in Clauses 11(a) and (b) above and to any other rights and remedies which the Official Receiver may have, whether under the Contract or otherwise, the Official Receiver may, on the occurrence of any event as stipulated in Clause 11(a)(i), (ii), (iii), (iv), (v), (vi) or (vii), suspend immediately or by giving a notice in writing of such number of days as the Official Receiver thinks fit the allocation of Qualified Cases to the Firm until such time or for such period as the Official Receiver may in her absolute discretion determine, and the Official

Receiver may arrange for other Firms or any other service providers to take up the Qualified Cases which, if not because of the suspension, may be allocated to the Firm during the Allocation Period. The suspension shall be for such time/period as the Official Receiver sees fit. The suspension can be terminated at any time and in such manner as the Official Receiver considers appropriate.

- (d) The Official Receiver may at any time terminate the Contract, **without cause**, immediately or by giving a notice in writing of such number of days as the Official Receiver thinks fit. In that event, the Official Receiver may at liberty to engage other service providers to take up the remaining Services and the Government shall not be responsible for any loss or damage to the Firm in connection with, arising from and in relation to such termination.
- (e) The Government may immediately terminate the Contract upon the occurrence of any of the following events:
 - (i) 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
 - (ii) the continued engagement of the Firm or the continued performance of the Contract is contrary to the interest of national security; or
 - (iii) the Government reasonably believes that any of the events mentioned above is about to occur.

12. Notices

- (a) Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address or facsimile number, set out below (or such other postal address or facsimile number, as the addressee has by not less than 7 Working Days' prior written notice specified to the other party).

To the Firm: At the address or facsimile number as specified in Annex III submitted by the Firm.

To the Government: 10th Floor, High Block, Queensway Government Offices,
66 Queensway, Hong Kong
Facsimile number: 3105 1814

- (b) Such notices, demands, invoices, correspondence or other communications shall be addressed as provided in Clause 12(a) and, if so addressed, shall be deemed to have been duly given or made as follows:
 - (i) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
 - (ii) if sent by post, 4 Working Days after the date of posting; and
 - (iii) if sent by facsimile during normal business hours on a Working Day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.

13. Continuation of Qualification Status

- (a) The qualification requirements in Annex I are continuing requirements with which the Firm and its Appointment Takers shall continue to comply throughout the Contract Period.
- (b) Without prejudice to sub-clause (a) above, during the Contract Period, the Firm must provide insolvency, accounting, legal or company secretary services in Hong Kong and maintain at least 10 employees, 5 of them must be full-time employees of the Tenderer, and the Appointment Takers must continue to manage the insolvency cases referred to in Clause 2(b)(i) of Annex I.
- (c) Without prejudice to sub-clause (a) above, the Firm shall not change its Appointment Takers without the prior written approval of the Official Receiver.
- (d) Throughout the Contract Period, the Firm shall immediately inform the Official Receiver in writing of any change of circumstances or information which may affect its qualification requirements in Annex I, and any change in any information contained in the Quotation Sheet and Declarations on Details of the Tenderer (Forms A and B) submitted by the Firm.
- (e) The Firm shall provide information and documents regarding its qualification status or continuing compliance with the qualification requirements in Annex I to the

satisfaction of the Official Receiver from time to time during the Contract Period as and when required by the Official Receiver.

14. Quality Audit

The Official Receiver may, upon giving not less than 7 days' prior written notice to the Firm or its Appointment Taker (provided that prior notice may be dispensed with in cases with special circumstances such as upon the court's requests), conduct quality audit of any or all the Qualified Cases handled by the Firm and/or its Appointment Takers in the current or previous year. The Official Receiver will usually conduct quality audit of around 5% of the Qualified Cases and this percentage may be adjusted as the Official Receiver considers appropriate. The Official Receiver may also conduct separate quality audit of any individual Qualified Cases as the Official Receiver may determine from time to time. The Official Receiver may conduct the quality audit on the office premises of the Firm and/or its Appointment Takers and/or request the Firm and/or its Appointment Takers to deliver the files and documents to the Official Receiver's Office for quality audit purpose. To facilitate the carrying out of the quality audit, the Firm and/or its Appointment Takers shall provide such assistance to the Official Receiver and/or its authorised representatives as may be required, including (but not limited to) the giving of permission to enter the Firm's premises, the completion of any questionnaire that may be required by the Official Receiver, the giving of access to all information possessed or controlled by the Firm and/or its Appointment Takers and recorded or stored by whatever means which the Official Receiver considers relevant to the quality audit, the reproduction of the said information by whatever means and the use of best endeavours to provide answers to questions that may be raised from time to time.

15. Extension of the Allocation Period

- (a) The Official Receiver may extend the Allocation Period by giving written notice to the Firm not less than 30 days before the expiry of the current Allocation Period and the Official Receiver may extend the Allocation Period more than once.
- (b) The aggregate duration of the Allocation Period, including any extension, shall not exceed 30 months.

16. Governing Laws and Jurisdiction

The Contract shall be governed by and construed in accordance with the laws of the Hong Kong and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

17. Set-off

Where the Firm has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off the amount of such liability against any sum then due or which at any time thereafter may become due from the Government to the Firm under the Contract or any other contracts.

18. Variation

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Firm and the Government.

19. Entire Agreement

The Contract supersedes all prior agreements, arrangement and undertakings between the parties and constitutes the entire Contract between the parties relating to the subject matter hereof.

20. Severability

In the event that any provision of the Contract or any part of any such provisions shall at any time be adjudged to be invalid, unlawful, illegal, voidable or otherwise howsoever unenforceable under any applicable law of Hong Kong, such provision or such part of such provision, as the case may be, shall, to the extent required by such law, be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions hereof.

21. Probity

- (a) The Firm acknowledges that it has been reminded that:
 - (i) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under

section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200);

- (ii) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- (b) The Firm shall inform its officers and employees (whether permanent or temporary) that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Firm shall also caution its officers and employees against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- (c) The Government may terminate the Contract immediately if the Firm or any of its employees is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.
- (d) The Firm shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-contractor (if any), or any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 21(a) and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

22. Liability and Indemnity

- (a) Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:
 - (i) any loss of or damage to any of the Firm's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
 - (ii) any injury to or death of the Firm (in the case where the Firm is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.

- (b) Without prejudice to any other provision of the Contract, the Firm shall indemnify each of the Government and its employees and agents (each an “**Indemnified Person**”) against:
- (i) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person (“**Claims**”); and
 - (ii) any and all liabilities, losses, damages, costs, charges or expenses (including (aa) all legal fees and other awards, costs, payments, charges and expenses and (bb) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Firm or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,
- which in any case arise directly or indirectly in connection with, out of or in relation to:
- (aa) the performance or breach of any provisions of the Contract by the Firm, its employees, agents or sub-contractors;
 - (bb) the negligence, recklessness, tortious acts or wilful omission of the Firm, its employees, agents or sub-contractors;
 - (cc) any default, unauthorised act or wilful misconduct of the Firm, its employees, agents or sub-contractor(s);
 - (dd) any claim that the use or possession of the Materials infringes the Intellectual Property Rights of any person; or
 - (ee) the non-compliance by the Firm, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority.
- (c) The indemnity under Clause 22(b) shall not apply to any injury or death caused by the Negligence of an Indemnified Person.
- (d) For the purposes of this Clause,
“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, 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;

“Materials” means any and all works and materials of whatsoever nature (including their drafts and uncompleted versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for the Firm, in relation to the Services or for the purposes of the Contract including without limitation, any reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Firm, its employees, agents or sub-contractors in relation to the Services or for the purposes of the Contract, recorded or stored by whatever means; and

“Negligence” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

- (e) The indemnities, payment and compensation given in pursuance of the Contract by the Firm shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

23. Non-exclusive Contract

Nothing in the Contract shall preclude the Government from procuring any Services from any other service providers.

24. Relationship of the Parties

The Firm enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Firm. Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

25. Force Majeure

- (a) A party affected by an event or events of Force Majeure shall as soon as possible give notice in writing to the other party of the occurrence of the event of Force Majeure. Subject to sub-clauses (b) and (c) below, the affected party may be

excused from performance of the obligations under the Contract for so long as such event shall continue.

- (b) In the event that performance of obligations under the Contract is delayed by Force Majeure, the parties shall endeavour to achieve expeditiously the normal pursuit of the Contract and to make up for the time lost. In all other respects the obligations of the parties under the Contract shall be unaffected.
- (c) If the performance by the Firm of its obligations under the Contract is prevented or affected by the event or events of Force Majeure for a period of twenty-eight (28) consecutive days or longer, the Government shall be entitled, at the expiration of such period, to terminate the Contract by not less than seven (7) days' notice in writing to the Firm.

26. United Nations Convention on Contracts for the International Sale of Goods not applicable
For the avoidance of doubt, the Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

WORK SPECIFICATIONS

1. **Appointment as Joint and Several Liquidators**

Where the Official Receiver allocates a Qualified Case to a Firm, the Official Receiver will appoint two Appointment Takers of the Firm as the provisional liquidators of the company being wound up in that Qualified Case pursuant to section 194(1A) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32). The Firm's Appointment Takers shall take up the appointment as joint and several provisional liquidators in each Qualified Case allocated to the Firm by the Official Receiver during the Allocation Period.

2. **No Right of Refusal**

The Firm and the Appointment Takers shall perform the Services in the Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period. The Firm shall have no right to reject or to refuse to accept any such allocation.

3. **Full-time Employees**

The Firm and the Appointment Takers shall ensure that all Qualified Cases allocated to the Firm are handled in a professional and expeditious manner. In this regard, the Firm:

- (a) must keep and maintain throughout the Contract Period not less than 10 employees including at least 5 full-time employees, with the proprietor (in case of the Firm being a sole proprietorship), any of the partners (in case of the Firm being a partnership), any of the directors (in case of the Firm being a company), and any of the Appointment Takers as provided by the Firm not being counted for the said 10 employees; and
- (b) shall not cause or permit any part of the Services to be carried out by any employee who is not being under its direct employment. All full-time employees employed by the Firm to perform the Services must be stationed in Hong Kong.

4. **Data Privacy**

The Firm shall comply with the Personal Data (Privacy) Ordinance (Cap. 486) in relation to all personal data it is required to handle for performing the Services ("the Personal Data"). Without prejudice to the generality of the foregoing, the Firm shall comply with the following specific requirements:

- (a) The Firm and the Appointment Takers shall provide written guidelines and training for its employees on the secure handling of the Personal Data;
- (b) The Firm and the Appointment Takers shall not keep the Personal Data upon completion of the Services;
- (c) The Firm and the Appointment Takers shall not process, use or disclose the Personal Data other than for the purpose of performing the Services;
- (d) The Firm and the Appointment Takers shall immediately report to the Official Receiver in writing with details on any suspected case of loss, unauthorized or accidental use or disclosure of the Personal Data.

5. Tasks and Duties

- (a) In respect of a Qualified Case allocated to the Firm by the Official Receiver, the Firm's Appointment Takers acting as the provisional liquidators in that Qualified Case shall, with professionally acceptable standards, perform, discharge and comply with all such tasks, duties and requirements as may be imposed on them pursuant to the Contract and all such tasks, duties and requirements as are necessary or may be imposed on a provisional liquidator under and pursuant to the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32), including but not limited to the duty to convene the first meetings of creditors and contributories under section 194(1)(b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) unless a summary procedure order is granted by the court.
- (b) Where the Firm's Appointment Takers who acted as joint and several provisional liquidators in a Qualified Case are appointed as the joint and several liquidators of that Qualified Case pursuant to a summary procedure order granted by the court under section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), such Appointment Takers shall, with professionally acceptable standards, perform, discharge and comply with all such tasks, duties and requirements as may be imposed on them pursuant to the Contract and all such tasks, duties and requirements as may be imposed on a liquidator under and pursuant to the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), until -
 - (i) all outstanding matters and issues arising from the Qualified Case have been concluded;

- (ii) they have obtained a release order from the court under section 205 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
 - (iii) an order for the dissolution of the company has been obtained under section 227 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (c) In relation to a Qualified Case allocated to the firm in which the Firm's Appointment Takers have been appointed as liquidators in Clause 5(b) hereof, after the occurrence of the events stated in Clause 5(b)(i) to (iii) above, such Appointment Takers shall, without additional remuneration or payment, continue to perform such tasks, and provide to the Official Receiver such assistance and information, as may be required by the Official Receiver in relation to or for the purpose of the handling or administration of such Qualified Case, and continue to perform, discharge and comply with such tasks, duties or requirements under the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), including but not limited to dealing with and completing all outstanding matters and issues arising from the Qualified Case for whatever reasons after their obtaining the release order under section 205 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the order for the dissolution of the company under section 227 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and making application under section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

6. Statistics and Information

Upon request by the Official Receiver, the Firm shall provide to the Official Receiver all the relevant statistics and information and produce any documents in connection with the Qualified Cases, including but not limited to the records required to be kept by the Appointment Takers under section 201 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), in the prescribed format and within such time as specified by the Official Receiver.

7. Application for Summary Procedure Order

- (a) Subject to sub-clause (b) hereof, the Firm's Appointment Takers, when appointed as joint and several provisional liquidators in a Qualified Case, shall apply to the court

within 3 months of the date of the winding-up order of the company in that case for a summary procedure order pursuant to section 227F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

- (b) Where the Firm's Appointment Takers have reasons to believe that the value of the assets of the company will exceed HK\$200,000, they shall forthwith and in any event no later than 12 weeks from the date of the winding-up order, notify the Official Receiver of the same, and shall within 3 months of the date of the winding-up order, arrange to convene the first meetings of creditors and contributories under section 194(1)(b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and rule 106 of the Companies (Winding-Up) Rules (Cap. 32H) unless the court otherwise directs under rule 106 of the Companies (Winding-up) Rules (Cap. 32H).
- (c) In the event that an application for a summary procedure order pursuant to Clause 7(a) above was made with the court but no summary procedure order is granted by the court within 4 months, the Firm's Appointment Takers shall forthwith inform the Official Receiver and make enquiries with the court and update the Official Receiver the status of the application until the application is disposed of by the court.
- (d) In the event that the application for a summary procedure order made pursuant to Clause 7(a) above is dismissed by the court or the court otherwise refuses to grant a summary procedure order, subject to the terms of the order of the court, the Firm's Appointment Takers acting as provisional liquidators shall:
 - (i) serve on the Official Receiver forthwith and in any event no later than 7 days from the date of the relevant order for the dismissal of the application for or the refusal to grant a summary procedure order; and
 - (ii) convene the first meeting of creditors and contributories for the purpose of appointing liquidator within 12 weeks after the order dismissing the application or refusing the grant of a summary procedure order.
- (e) In the event of the Firm's Appointment Takers applying for rescission of the summary procedure order obtained in any Qualified Case allocated to the Firm, the Firm shall:
 - (i) serve on the Official Receiver within 7 days of the lodging of such application a notice in writing setting out therein the basis and justifications for such application together with a statement of the assets realized and liabilities of the wound up company and an estimate of the costs of

convening the first meeting of the creditors and contributories for the purposes of appointing a liquidator; and

- (ii) convene the first meetings of creditors and contributories for the purpose of appointing liquidator within 12 weeks after the summary procedure order is rescinded.
- (f) For the avoidance of doubt, Clauses 9(g), (h) and (i) of the Conditions of Contract do not apply to the convening of the meetings of creditors and contributories provided in sub-clauses (b), (d)(ii), and (e)(ii) above.
- (g) In the event a meeting of creditors or contributories mentioned in sub-clause (b), (d)(ii) or (e)(ii) above is convened, the Firm's Appointment Takers shall within 7 days from the date of the meeting notify the Official Receiver the result of the meeting, and submit to the Official Receiver a copy of the minutes of the meeting together with a copy of the memorandum of resolutions passed at the meeting that has been filed with the court.

8. Release

The Firm's Appointment Takers shall apply to the court for release under section 205 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in an expeditious and professional manner after all outstanding matters and issues arising from the Qualified Case have been concluded.

9. Criminal Offences

- (a) The Firm's Appointment Takers shall in respect of a Qualified Case allocated to the Firm by the Official Receiver conduct investigation and report to the Official Receiver where there is reason to believe that any offence under the Companies Ordinance (Cap. 622) and/or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) has been committed by the director. The Firm's Appointment Takers shall take such part and give such assistance, including acting as the witness if required, in relation to the prosecution and/or application for disqualification order conducted in relation to the company being wound up as the Official Receiver may direct.
- (b) The Firm's Appointment Takers shall in respect of a Qualified Case allocated to the Firm by the Official Receiver provide all information and give assistance, including acting as the witness if required, in relation to the prosecution and/or disqualification

action against any persons other than the director under the Companies Ordinance (Cap. 622) and/or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as the Official Receiver may direct.

10. Professional Standards

The Firm and the Appointment Takers of the Firm shall ensure that the performance of the Firm complies in all respects with (a) the accepted professional standards and ethical guidelines of their relevant professions; and (b) the standard and requirements of the court.

11. Submission of Information and/or Documents

All the information and/or documents in respect of the Qualified Cases to be submitted by the Firm and/or its Appointment Takers to the Official Receiver under the clauses of the Conditions of Contract and Work Specifications shall be submitted in the prescribed format and through the means (including but not limiting to electronic means through designated application system) as the Official Receiver may direct from time to time.