Annex

Consultancy Brief (the Brief)

Research Study on Public Arts Education (the Consultancy)

Introduction

The Government of the Hong Kong Special Administrative Region (the Government) wishes to appoint a consultancy firm (the Consultant) to conduct a study on public arts education in Hong Kong.

Background

2. The Committee on Performing Arts (CPA) was established in November 2004 to advise the Secretary for Home Affairs on the provision of performing arts services. It is tasked to follow up on the policy recommendations relating to the performing arts set out in the Report of the Culture and Heritage Commission (CHC), a high-powered Commission set up to advise the Government on cultural policy in 2000 and dissolved in 2003. CPA published its Recommendation Report (I) in June 2006. Relevant paragraphs relating to arts education from the CPA Recommendation Report (I) are extracted at Appendix I.

3. As foreshadowed in its Recommendation Report (I), CPA set up a Working Group on Arts Education in 2007 to study and recommend strategies to nurture arts development in the community and to strengthen arts education in schools.

Objectives of Study

4. To assist CPA’s work, Home Affairs Bureau (HAB) intends to commission a consultancy firm to conduct a consultancy study to analyze the adequacy and effectiveness of the existing provision of “public arts education” (arts education seeking to nurture understanding and appreciation of the arts for all or for the general public) in Hong Kong from early childhood to adulthood within and outside schools, in the light of the vision and objectives encapsulated in the West Kowloon Cultural District (WKCD) project, notably, to develop Hong Kong into an international cultural and creative metropolis.

5. Taking into account the above vision of building up Hong Kong as an
international cultural and creative metropolis, and drawing references from the best practices of public arts education in other jurisdictions, the Consultant is required to recommend, as appropriate, strategies supported by concrete measures to nurture a greater and deeper awareness, understanding and appreciation of, as well as a keener interest to participate in, culture and the arts among the local populace, in different stages throughout their lifetime, i.e. all the way from early childhood to adulthood and beyond. The objective of the recommended strategies is to cultivate a more arts literate populace who will become a more ready and receptive audience for and participation in the arts. In the case of those talented in the field, the recommended strategies should seek to ensure that there are in place mechanisms, whether inside the school system or outside, to identify such talents and to provide them with appropriate career pathways in the arts beyond the senior secondary level.

Scope of the Consultancy Study

6. The research will cover five major areas of work:

Task 1 – Review of Existing Provision

(a) An empirical and critical review on the existing policy, institutional framework, underlying philosophy/objectives, direction, mode of delivery, quantum and impact of public arts education in Hong Kong, also differentiating between arts education activities and arts promotion/marketing activities, making particular reference to the work of the following parties:

(i) HAB and Leisure and Cultural Services Department (LCSD) including the Music Office of LCSD;

(ii) Education Bureau (EDB) (for the senior secondary stage, focusing particularly on the post-2009 scenario after implementation of the New Senior Secondary Curriculum);

(iii) Major arts groups and artists (e.g. in the performing arts sector and in the visual arts sector);

(iv) Major arts organizations such as the Hong Kong Arts Development Council (HKADC) and the
Hong Kong Arts Centre;

(v) Hong Kong Academy for Performing Arts offering the EXCEL programmes and the other tertiary institutions that offer continuing arts education/related programmes (e.g. arts administration); and

(vi) Any other key parties/institutions, such as major privately funded arts education institutions, non-government organizations (NGOs) and District Councils/District Offices, as deemed appropriate.

**Task 2 – Survey and Analysis of Feedback**

(b) A survey and analysis of feedback on the present arrangements from stakeholders of arts education, including students, teachers, school principals, parents, participants of arts education activities offered by parties set out at (a), as well as the views of arts columnists, arts editors, arts critics in the local media and members of the newly set up West Kowloon Cultural District Authority.

**Task 3 – Study of International Best Practices**

(c) A study of international best practices in public arts education focusing on 3 jurisdictions, with at least one from Asia, to be nominated by the Consultant with justifications of their relevance to the Hong Kong context.

**Task 4 - Recommendations**

(d) Recommendations on strategies and measures to strengthen effective public arts education in Hong Kong, taking into account the vision of building up Hong Kong as an international cultural and creative metropolis and having regard to the findings in (a) to (c) above, including but not limited to recommendations in respect of policies, institutional framework, direction and scope, mode of
delivery, resources requirements (including funding, manpower/human resources, venue and other non-cash incentives), as well as impact assessment and evaluation mechanism to support the vision and objectives encapsulated in the WKCD project, notably to develop Hong Kong into an international cultural and creative metropolis. The objective is to cultivate a more arts literate populace who will become a more ready and receptive audience for and participant in the arts and, in the case of those talented in the field, to ensure that there are in place mechanisms, whether inside the school system or outside, to identify such talents and to provide them with the appropriate career pathways in the arts beyond the senior secondary level.

Task 5 – Meetings, Presentations and Provision of Information

(e) To attend meetings with the Government and with the CPA Working Group on Arts Education to review the progress and other matters of the Consultancy Study at such interval, place and time as directed by the Government, and to conduct engagement meetings with stakeholders referred to at paragraph 7 below to seek their views and to review.

(f) To make presentations and provide explanations on its findings/recommendations, whether in draft form or in final form, to the Government and/or other parties/public forum as the Government deems necessary, including but not limited to the CPA Working Group on Arts Education and the CPA itself, and/or panel meetings of the Legislative Council at such interval, place and time as directed by the Government.

7. In the course of the Consultancy Study, the Consultant shall seek the views and comments from stakeholders, including but not limited to the CPA Working Group on Arts Education, HAB, EDB, LCSD, HKADC as well as all other major stakeholders related to public arts education as set out in paragraph 6 above. The Consultant is expected to work closely with the CPA Working Group on Arts Education, HAB, EDB, LCSD, HKADC, as well as all other major stakeholders related to public arts education.
8. The Government may provide, if available and appropriate for use in this study, data, policy documents and relevant background materials, to facilitate the Consultant’s research. The provision of such information is at the sole discretion of the Government, and, for the avoidance of doubt, the failure or delay by the Government in providing the information shall not affect the obligations of the Consultant under the Consultancy Agreement.

9. The Consultant shall conduct relevant studies, focus group discussions and questionnaires, make presentations and produce written reports. All advice and recommendations shall be supported by detailed and evidence-based analyses and references to current local and international practices.

**Duration and Completion**

10. The Consultancy Study is expected to commence in January 2009 and be completed by September 2009. The Consultant is expected to start work on the Consultancy Study immediately after appointment and should adhere to the schedule as provided in the Consultancy Agreement. Time is of the essence. Completion of the Consultancy Study means completion and delivery by the Consultant of all the tasks and deliverables required under the Consultancy Agreement (including without limitation to those set out in paragraphs 6 to 16 of this document) to the satisfaction of the Government. The consultancy fee for the Consultancy Study is a lump sum fixed fee which will not be increased if the actual time spent by the Consultant to complete the tasks and deliverables is more than the time indicated in the Consultancy Agreement.

**Deliverables and Timing**

11. The Consultant shall provide:

(a) a Draft Research Plan (in English) within 2 weeks from the commencement of the Consultancy Agreement to cover an articulation of the objectives of the Consultancy study, the principal aspects and methodology for undertaking each task, the work programme, reporting schedule, as well as the study
management and staffing structure. A bibliography should be included to ensure that due consideration is given to related researches undertaken previously in and outside Hong Kong.

(b) an **Interim Report** within 6 months from the commencement of the Consultancy Agreement (see paragraph 12 below), and

(c) a **Final Report** (see paragraph 13 below), together with an **Executive Summary of the Consultancy Study** (see paragraph 14 below) within 9 months from the commencement of the Consultancy Agreement.

12. The **Interim Report**, in English, shall cover -

(a) A full range and review on the existing policies, institutional framework, underlying philosophies/objectives, direction, mode of delivery, quantum and impact of public arts education in Hong Kong as set out in paragraph 6(a) above, under a structured framework categorizing such existing work, measures and activities by reference to respective objectives, with a view to identifying strengths and weaknesses, and room for focusing (or refocusing), rationalization, streamlining and further development; and

(b) A report on the findings of the survey and analysis of feedback from stakeholders of arts education, as set out in paragraph 6(b) above; and

(c) Findings of the study of international best practices in public arts education focusing on the 3 jurisdictions nominated by the Consultant and their reference value for Hong Kong, as set out in paragraph 6(c) above.

13. The **Final Report**, in English, shall cover -

(a) The findings covered by paragraph 12 (a) to (c) above;

(b) A strategic plan setting out recommendations on strategies and measures to strengthen public arts education in Hong
Kong in accordance with the requirements set out in paragraph 6(d) above, and on the basis of interim findings covered by paragraphs 12 (a) to (c) above, including but not limited to recommendations in respect of policies, institutional framework, direction and scope, mode of delivery, resources requirements, timeline for implementation, impact evaluation as well as any innovative approaches to be adopted.

14. The Executive Summary, in both Chinese and English and to be contained within 15 pages, shall be an articulation of the objectives, a summary of the major findings, conclusions and recommendations of the Consultancy Study. The Consultant shall provide Chinese translation of the Executive Summary at the Consultant’s own costs.

15. Unless otherwise specified, the Consultant shall provide 35 paper copies and one soft copy of each of the reports in paragraphs 11 to 14 and in accordance with the schedule in paragraph 11 above.

16. Any proposal which is inconsistent with any of the requirements set out in paragraphs 11 to 15 may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion.

The Consultancy Team

17. The Consultant should nominate a sufficient number of individuals to form a Consultancy Team (CTeam) to the satisfaction of the Government. Not less than one-third of the members in the CTeam should be individuals who are full-time employees of the Consultant and/or its sub-contractor(s). Any proposal which is inconsistent with this requirement may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion. There shall be at least one full-time member at the director or comparable level from the Consultant or its sub-contractors taking up the role of the team leader. Any proposal which is inconsistent with this requirement will not be considered. The Consultant should ensure that a senior member of the CTeam who acts as a main liaison officer with the Government (who may or may not be the team leader of the CTeam) should live in Hong Kong throughout the consultancy period. Any proposal which is inconsistent with this requirement may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion. The
individuals nominated to the CTeam should have a high degree of expertise with relevant local and/or overseas experience in the subject matter of the Consultancy Study. For details on the required expertise, please refer to paragraph 27(f), (g) and (h) below.

18. The individuals in the CTeam may be from any country or territory but at least one member of the CTeam should have proven knowledge and understanding of public arts education in Hong Kong and at least one member of the CTeam should have proven knowledge of overseas practices in public arts education. For details of the requirement on the CTeam, please refer to paragraph 27(f), (g) and (h). During the consultancy period, the main liaison officer must be easily contactable locally. In the event of temporary absence from Hong Kong, a substitute must be nominated beforehand and be acceptable to the Government.

19. The Consultant or its subcontractors should have a place of business in Hong Kong and have at its disposal sufficient back-up resources in Hong Kong to undertake the Consultancy Study. The Consultant shall provide office accommodation and other necessary equipment and support to the CTeam. No supporting staff for administrative, secretarial or clerical work from the Government will be provided to the Consultant or its CTeam. All such supporting staff shall be provided by the Consultant.

20. The individuals nominated to the CTeam must be acceptable to the Government. The Government reserves the right to require any replacement of any or all individual members of the CTeam. Any proposed addition or change of members of the CTeam initiated by the Consultant must obtain the Government’s prior approval in writing.

Sub-contractors

21. The Consultant shall not, without the prior written consent of the Government, sub-contract, assign or otherwise dispose of the whole or any part or parts of the consultancy services to any person whatsoever, or purport to do so. The consultancy fee shall include any fees, costs and disbursements incurred by the Consultant in appointing or engaging any permitted sub-contractors, advisers or other parties to perform any part or parts of the consultancy services in accordance with the Consultancy Agreement, or to advise or assist in relation thereto. If any part of the consultancy services is sub-contracted to any person, the Consultant shall remain fully responsible for the performance of that part of the consultancy services and liable for any act or omission of such person as if such act or omission were its own.
Expertise and Capability Required

22. The Consultant should possess or, through engaging sub-contractors, should have access to information on public arts education in other jurisdictions through its international/sector network. The Consultant, its sub-contractor(s), if any, and the CTeam should have a level of expertise appropriate for and relevant to the subject matter of the present Consultancy Study, including without limitation to the public arts education policies in Hong Kong and overseas, and the local arts scene. For the specific requirements on the Consultant and the CTeam, please refer to paragraphs 27 to 28 below.

Consultant Firms Bidding in Different Capacities for the Same Consultancy

23. The Government has no objection to –

(a) a consultancy firm or its affiliates lodging one proposal and also acting as sub-contractor to another consultancy firm in this exercise; or

(b) different and unconnected consultancy firms proposing to engage the same sub-contractor or its affiliates in this exercise;

PROVIDED that –

(i) all the relevant circumstances are disclosed in the proposal; and

(ii) the consultancy firm confirms in the proposal that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the proposal, where the consultancy firm or any of its affiliates is acting as sub-contractor in this exercise.

Management of the Consultancy

24. A representative from HAB will be appointed to act as the Government Representative (GR) to liaise with the Consultant. During the course of the Consultancy Study, the Consultant should report directly to the GR or any other Government official as designated by the GR, and take
instructions from him/her on matters appropriate to fulfill the requirements of the Consultancy Study. The GR may designate other Government officials to liaise with the Consultant and issue instructions on his/her behalf from time to time.

25. The Consultant shall be accountable to the Government and the GR for the performance of the Consultancy Study and any other advice that the Government may request from time to time. The Consultant is required to make regular progress reports to the GR, give briefings and presentations to relevant parties, including but not limited to HAB, the CPA and the CPA Working Group on Arts Education, provide prompt responses to comments and requests made in writing or otherwise as specified by the GR, and provide secretarial services during discussions or meetings if required by the GR.

Submission of Proposals

26. The consultancy firms invited to submit proposals shall submit seven (7) sets of a Technical Proposal and a Fee Proposal in separate sealed envelopes marked “Research Study on Public Arts Education – Technical Proposal” and “Research Study on Public Arts Education – Fee Proposal” respectively to Culture Division 1, Home Affairs Bureau (Attn: Assistant Secretary (Culture)), to be deposited in the tender box situated at the reception counter of the Home Affairs Bureau at 41/F Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong before 12:00 noon on 12 November 2008. Any proposal which does not comply with any of the above requirements in this paragraph may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion. Electronic submissions will not be accepted and late submissions will not be considered. The Fee Proposals will only be opened after completion of assessment of the Technical Proposals. By submitting proposals, the consultancy firms agree that the Government is permitted to keep their proposals for record, irrespective of whether they will be awarded the Consultancy Study.

Technical Proposal

27. The Technical Proposal should be prepared in English and should not exceed 30 A4 pages (or paper size measuring 210mm by 297mm), with a minimum font size of 12, inclusive of an executive summary (up to 5 pages) and any appendices or attachments. The contents of any pages exceeding the first 30 pages will not be considered. Seven (7) copies of the Technical Proposal shall be submitted. The contents of the Technical Proposal should
include -

(a) the consultancy firm’s understanding of the background of the Consultancy Study;

(b) the consultancy firm’s approach and methodology in conducting the Consultancy Study;

(c) the resources to be allocated for the execution of the key areas of the Consultancy Study as referred to in paragraph 6 above;

(d) the proposed work programme including without limitation to the nomination of 3 jurisdictions, with at least one from Asia, with justifications of their relevance to the Hong Kong context as requested in paragraph 6(c) above, with key dates of submission of deliverables clearly indicated;

(e) the organizational structure, experience and back-up support of the consultancy firm, including an indication on the structure as referred to in paragraph 46.4 below;

(f) the composition of the CTeam demonstrating the strength of the team required as referred to in paragraphs 17 to 18 above and the expertise required of the team as referred to in paragraph 22 above;

(g) the academic and professional qualifications of the CTeam members;

(h) the CTeam’s overall experience, knowledge, expertise and capability in delivering services of similar nature and scale, including but not limited to –

(i) possession of, or having access to, an international network of experts in public arts education in other jurisdictions;

(ii) possession of knowledge, experience and expertise in the arts scene in Hong Kong;
(iii) possession of knowledge, experience and expertise in public arts education policies in Hong Kong and overseas; and

(iv) possession of relevant experience and expertise in providing advice and analysis for projects of similar nature and scale.

(i) any other information that may assist in the evaluation.

28. A consultancy firm bidding for the Consultancy Study shall specify in its Technical Proposal any litigation, proceeding, inquiry, claim or allegation whatsoever, actual or threatened, against or involving the consultancy firm or its proposed sub-contractor(s); the existence of any breach or default, or alleged breach or default, of any agreement, order or award binding upon the consultancy firm or its proposed sub-contractor(s); and any other matters which may materially affect the consultancy firm’s ability to conduct the Consultancy Study or perform its role as the Consultant, or which may lead to justifiable criticism or embarrassment of the Government for selecting the consultancy firm. In particular, the consultancy firm should disclose in the Technical Proposal (and forthwith in writing to the Government as and when it arises after the submission of the proposals) all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the consultancy firm or its associates or associated persons, or any of its sub-contractors or any member of the CTeam or their associates or associated persons, conflict or compete, or may conflict or compete, with the consultancy firm’s duties to the Government under the consultancy. Any proposal which is inconsistent with any of the requirements set out in this paragraph may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion.

Fee Proposal

29. The Fee Proposal shall contain a lump sum fixed fee in Hong Kong Dollars (on an all inclusive basis) for all services set out in the Brief broken down into professional fees and other expenses, covering all items including without limitation air fares and hotel accommodation within and outside Hong Kong for any members of the CTeam engaged from overseas which are not reimbursable by the Government. The Fee Proposal shall also contain a breakdown of staff costs and all other costs and expenses in the form of a manning schedule with unit rates shown against each member of
the Consultant, its sub-contractor(s) and the CT Team.

30. The Fee Proposal shall take into account any deflation/inflation factor. No other costs and expenses for the provision of consultancy services rendered locally or overseas will be payable by the Government on top of the lump sum fixed fee. Any proposal which is inconsistent with any of the requirements set out in paragraphs 27, 28, 29 and 30 may be regarded as non-compliant and therefore be rejected by the Government in its absolute discretion.

31. Payment of the consultancy fee to the Consultant will be by instalments in accordance with the following payment schedule -

<table>
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<tr>
<th>Deliverables</th>
<th>Percentage of consultancy fee payable</th>
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<tbody>
<tr>
<td>(a) Acceptance to the satisfaction of the Government of the Draft Research Plan (in English) submitted by the Consultant</td>
<td>20%</td>
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<tr>
<td>(b) Acceptance to the satisfaction of the Government of the Interim Report (in English) submitted by the Consultant and completion of the services referred to at paragraph 6(a) to (c)</td>
<td>30%</td>
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<tr>
<td>(c) Acceptance to the satisfaction of the Government of the Executive Summary of the Consultancy Study (in English and in Chinese) and the Final Report (in English)</td>
<td>30%</td>
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<td>(d) Either (i) completion of all the tasks, services and deliverables under the Consultancy Agreement, or (ii) upon the expiry of six (6) months after acceptance to the satisfaction of the Government of the Executive Summary of the Consultancy Study and the Final Report referred to in paragraph 31(c) above, whichever is later.</td>
<td>20%</td>
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Each instalment payment will be made within twenty one (21) working days after examination and acceptance by the Government of the specified deliverables and completion by the Consultant of all the services required for
that instalment under paragraphs 31(a), (b), (c) and (d). Should there be a defect(s) in a deliverable or amendment(s) required to be made in a deliverable submitted by the Consultant, the Government may by notice in writing to the Consultant require the Consultant to amend and re-submit the deliverable at no extra cost or expense to the Government within seven (7) working days of the notice given until the Government finally accepts the deliverable.

Assessment

32. An Assessment Panel comprising representatives of Government Bureaux and Departments concerned will assess the Technical and Fee Proposals. The Technical Proposal will be assessed according to the information submitted as required under paragraph 27 above. The main criteria for assessment include, amongst others, organizational structure, experience and back-up support of the consultancy firm; composition, qualifications, experience, knowledge, expertise and capability of the CTeam; the programme, approach and methodology proposed for the Consultancy Study and the resources to be allocated to the Consultancy Study. The Fee Proposal will be assessed on the basis of the proposed lump sum fixed fee. The Government will not be bound to select any consultancy firm on the basis of the lowest fee quoted.

33. HAB will conduct a briefing for consultancy firms to clarify matters in the Brief at 4:00 p.m. on 31 October 2008 at Conference Room 1 of HAB on 41st Floor, Revenue Tower, 5 Gloucester Road, Wanchai before the closing date for the submission of proposals. Consultancy firms may be invited to make a presentation, at their own costs and expenses, to the Assessment Panel and to clarify any points in their proposals after the closing date for submission of proposals.

Consultancy Agreement

34. The Government will enter into a formal written Consultancy Agreement with the Consultant on terms prepared and approved by the Department of Justice. The agreement will contain the complete terms and conditions of the Consultancy Study, including the matters referred to in the Brief, expanded and modified as necessary, and other matters such as fees payable to the selected consultancy firm, details of the CTeam, conflict of interest, sub-contracting, termination of services, copyright and other intellectual property rights, confidentiality, set-off, force majeure, withholding tax if the selected consultant is not resident in Hong Kong. The Brief will form part of the Consultancy Agreement.
Nature of Agreement

35. The Consultant will be engaged by the Government as an independent contractor on a principal-to-principal basis. The Consultant shall not represent itself as an employee, servant, agent or partner of the Government or as a trustee for others.

Conflict of Interest

36.1 The Consultant shall during the term of the Consultancy Agreement and for six (6) months thereafter:

(a) ensure that it (including its associates and associated persons, each member of the CTeam and each sub-contractor and their associates and associated persons) shall not undertake any service, task or job or do anything whatsoever for or on behalf of any third party (other than in the performance of the Consultancy Agreement) which conflicts, or which may be seen to conflict, with the Consultant’s duties to the Government under the Consultancy Agreement; and

(b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Consultant or its associates or associated persons, or any member of the CTeam or any one of the Consultant’s sub-contractors, or their associates and associated persons, conflict or compete, or may conflict or compete, with the Consultant’s duties to the Government under the Consultancy Agreement.

36.2 The Consultant shall provide the consultancy services to the Government on an impartial basis without giving favour to any particular product, service or equipment in which the Consultant, any of its permitted sub-contractors, members of the CTeam or their associates or associated persons has or may have any financial or other interests. The Consultant shall notify the Government in writing immediately upon knowing of any
actual or potential, direct or indirect, financial, professional, commercial, personal or other interests which such persons have or may have in, or of any association or connection which such persons have or may have with, any product, service or equipment proposed or recommended by the Consultant under the Consultancy Agreement.

36.3 The Consultant shall procure its sub-contractors, each member of the CTeam and its professional advisers, directors, officers, employees and agents who are involved in the provision of the consultancy services to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing to observe paragraphs 36.1 and 36.2 and the Consultant shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

36.4 The Consultant shall ensure that its associates and associated persons, each of its sub-contractors and each member of the CTeam and their associates and associated persons shall inform the Consultant and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Consultant’s duties to the Government under the Consultancy Agreement.

36.5 Notwithstanding the expiry or earlier termination of the consultancy, the Consultant shall ensure that it (including its associates and associated persons, each member of the CTeam and each of its sub-contractors and their associates and associated persons who are involved in the performance of the Consultant’s obligations pursuant to the Consultancy Agreement) shall not (whether on its own or in joint venture with others), submit any bid in any competitive bidding process or accept any appointment as consultant for, or otherwise be interested in or involved in any manner in any subsequent exercise for the procurement of any goods and/or services arising out of the consultancy.
Intellectual Property Rights

37.1 All the Materials and all the Intellectual Property Rights in all the Materials shall be and shall remain the exclusive property of the Government and shall vest in the Government absolutely at the time when they are created.

37.2 In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Government pursuant to paragraph 37.1, then, upon request by the Government, the Consultant shall forthwith, free of charge to the Government, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Government free of any encumbrance or compensation to the Consultant.

37.3 The provisions of paragraph 37.1 shall not apply to the following type of property (“Licensed Property”) namely that of a kind which is available publicly or generally within the business of a kind similar to that to be provided by the Consultant under the Consultancy Agreement or which is or was specifically produced or created solely and exclusively in relation to services, other than services provided or to be provided to the Government under the Consultancy Agreement, and which is incorporated or used in the Materials or otherwise used by the Consultant in the performance of the Consultancy Agreement. The Consultant shall keep the Government informed in writing of any of the Materials that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof.

37.4 The Consultant undertakes to acquire all the requisite consents and licenses for the benefit of the Government for the use and reproduction of the Licensed Property incorporated in the Materials for any purposes for which the Government may in its absolute discretion use the Materials.

37.5 Upon request by the Government, and in the event of the expiration or termination of the Consultancy Agreement, the Consultant shall at its expense promptly deliver to the Government all copies of the Materials then in the Consultant’s custody, control or possession.

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

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

37.8 At the request of the Government, the Consultant shall, free of charge to the Government, do all such things and sign all such documents and instruments as may be reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Materials.

37.9 In this Brief -

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

“Materials” includes but is not limited to all the deliverables, reports, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analyses, work programmes, technical notes, information papers, opinions, comments, specifications, formulae, data, information, documents and materials collected, compiled, developed, produced or created by
the Consultant, the CTeam or the employees, directors, officers, agents or sub-contractors at all tiers of the Consultant, agents or sub-contractors (whether individually or jointly with the Government) in relation to and/or in the course of the performance of the consultancy services or for the purpose of the Consultancy Agreement including but without limitation, the pre-contractual and contractual documents thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.

Confidentiality

38.1 All materials and data furnished by or on behalf of the Government in connection with the Consultancy Agreement, materials created or produced during the consultancy, and the terms and conditions of the Consultancy Agreement shall be treated as confidential information. The Consultant shall not, during the continuance of the Consultancy Agreement or at any time thereafter, disclose to any person (including without limitation any associates or associated persons, directors, officers, employees or agents of the Consultant who are not members of the CTeam, except to the senior management, legal and compliance personnel and auditors of the Consultant and then only on a need-to-know basis) any confidential information, provided that the restrictions on disclosure contained in this paragraph shall not apply:

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

(b) to the disclosure of any information already known to the recipient other than as a result of disclosure by a breach of the confidentiality obligation of the Consultant, its associates or associated persons, directors, officers, employees, agents or any member of the CTeam or its sub-contractors including without limitation professional advisers;

(c) to the disclosure of any information which is or becomes
public knowledge other than as a result of disclosure by a breach of the confidentiality obligation of the Consultant, its associates or associated persons, directors, officers, employees, agents or any member of the CTeam or its sub-contractors including without limitation professional advisers;

(d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction;

(e) to the disclosure of any information to the Consultant’s sub-contractors, professional advisers, directors, officers, employees or agents where such disclosure is necessary for the performance of the Consultant’s duties and obligations under the Consultancy Agreement; or

(f) to the disclosure of any information with the prior written consent of the Government.

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

38.2 Any disclosure permitted under paragraph 38 shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in paragraph 38.1 and the Consultant shall ensure the confidentiality of any such disclosure by taking all appropriate action to restrain or restrict any further disclosure.

38.3 The Consultant shall not make use of or reproduce any information,
report, chart, document, plan, software, data or other particulars or information whatsoever relating to the Consultancy Agreement furnished by or on behalf of the Government other than in the performance of its obligations under the Consultancy Agreement and shall not make use of the deliverables or any Materials or computer models produced or created in relation to the performance of its obligations under the Consultancy Agreement other than in the performance of its obligations under the Consultancy Agreement or with the prior written consent of the Government.

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

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

38.6 The Consultant shall procure its sub-contractors, each member of the CTeam and its professional advisers, directors, officers, employees and agents referred to in paragraph 38.1(e) above to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing not to disclose any such confidential information and the Consultant shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

39. The terms “associate”, “associated person”, “director”, “relative”, “control”, “person” used in paragraphs 28, 36, 37, 38 and in this paragraph shall have the following meanings-
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td><strong>“associate”</strong></td>
<td>in relation to any person means</td>
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<td>(a) a relative or partner of that person; or</td>
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<td>(b) a company one or more of whose directors is in common with one or more of the directors of that person.</td>
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<td><strong>“associated person”</strong></td>
<td>in relation to another person means</td>
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<td></td>
<td>(a) any person who has control, directly or indirectly, over the other; or</td>
</tr>
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<td></td>
<td>(b) any person who is controlled, directly or indirectly, by the other, or</td>
</tr>
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<td></td>
<td>(c) any person who is controlled by, or has control over, a person at (a) or (b) above.</td>
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<tr>
<td><strong>“control”</strong></td>
<td>in relation to another person means the power of a person to secure</td>
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<td>(a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or</td>
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<td>(b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or</td>
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<td></td>
<td>(c) by virtue of being or holding office as a director in that or any other person;</td>
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<td></td>
<td>that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.</td>
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<tr>
<td><strong>“director”</strong></td>
<td>means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director.</td>
</tr>
<tr>
<td><strong>“person”</strong></td>
<td>means any individual, corporation, firm or any body of persons, corporate or incorporate and includes any public body.</td>
</tr>
<tr>
<td><strong>“relative”</strong></td>
<td>means the spouse, parent, child, brother or sister of</td>
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the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parent and the step parent.

Disclosure of Name of the Selected Consultant and Fees

40.1 The Government is entitled to disclose to any person, whenever it considers appropriate or upon request by any third party (written or otherwise), and without further reference to the Consultant and in such form and manner as it deems fit, the following information -

(a) the name and address of and the fees, costs, and expenses payable by the Government to the Consultant; and

(b) the Fee Proposals submitted by the Consultant.

40.2 For the purpose of paragraph 40.1 above, each consultancy firm shall complete, execute and deliver to the Government a ‘Consent To Disclosure’ in the form enclosed (Appendix II) together with its proposal in respect of the Consultancy Study.

Indemnity

41.1 The Consultant shall indemnify and keep indemnified the Government against all claims, damages, costs, losses or expenses in respect of personal injury, death, losses or damages arising out of or in relation to or resulting from the performance or attempted performance of the Consultancy Agreement to the extent that the same are or have been caused by any act, omission, neglect, recklessness, wilful misconduct, defamation, breach of statutory duty or breach of the Consultancy Agreement by the Consultant, its employees, agents or sub-contractors.

41.2 The Government will NOT provide any indemnity to the Consultant in any respect. Any proposal which is inconsistent with this requirement will not be considered.

Suspension and Termination of Contract

42.1 If the Consultant has breached any terms of the Consultancy Agreement and has failed to remedy the same within 14 days of receipt of a
written notice from the Government that the same be remedied, the Government may after the expiry of such notice, terminate the agreement by giving 14 days’ written notice to the Consultant.

42.2 The Government may at any time or times prior to the completion of the Consultancy Study at its option suspend or terminate the agreement by giving the Consultant 30 days’ written notice of such suspension or termination.

Warranty

43. The Consultant will be required to warrant and undertake to the Government that –

(i) the services to be provided by it under the Consultancy Study (the “Services”) shall be performed and completed in an impartial, timely and diligent manner and that the Consultant and each member of the CTeam, each of the Consultant’s permitted sub-contractors and every person employed, used or engaged by the Consultant in the performance of the Services shall use all the experience, skills, care and diligence in the performance of the Services and the discharge of all its duties and obligations under the Consultancy Study as may be expected from a person who is an expert in providing services of a kind similar to the Services; and

(ii) it, the CTeam and the Consultant’s permitted sub-contractors, have the necessary skills and experience to provide the Services and it shall provide independent and unbiased professional advice to the Government in relation to the Consultancy Study in accordance with applicable professional standards in Hong Kong.

Other Conditions

44. The Consultant will be required to prohibit its employees, agents and sub-contractors and the CTeam members who are involved in the provision of the Consultancy services from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Consultancy. Subject to the restrictions on conflict of interest and duty of confidentiality as set out in the Brief and the Consultancy Agreement, participation in the Consultancy Study will be without prejudice to the firm’s ability to bid for other
consultancies that the Government may call for from time to time.

45. Only one firm of the same corporate group shall submit a Proposal. The Assessment Panel reserves the right in its absolute discretion not to consider the detailed proposal in case of non-compliance. “Corporate group” means, in relation to a firm, that firm, the holding company/companies of the firm and any subsidiary (direct or indirect) of that holding company/companies. “Holding company” and “subsidiary” have the respective meanings given to them in section 2 of the Companies Ordinance (Cap. 32). Subject to paragraph 23, sub-contractors are allowed to join more than one main consultant.

46.1 In the event that a proposal is submitted by a consultancy firm which is a joint venture company or corporation (whether incorporated under the Companies Ordinance (Cap. 32) or otherwise)(the “JV”), and that the JV is selected by the Government to act as the Consultant, the JV shall, if required, provide to the Government a guarantee to be issued by the shareholders of the JV or any other persons as specified by the Government, in the form prescribed by the Government, to guarantee the due and faithful performance of the JV’s obligations under the Consultancy Agreement. Compliance with all the conditions in this paragraph shall be a condition precedent to the appointment of the JV as the Consultant.

46.2 In the event that a proposal is submitted by two or more consultancy firms jointly to act as the Consultant in this exercise and that these consultancy firms are selected by the Government to act as the Consultant, the Consultancy Agreement will provide that all the representations, warranties, declarations, agreements, undertakings and covenants by and the obligations of the Consultant under the Consultancy Agreement will be binding on the selected consultancy firms jointly and severally.

46.3 In the event that a proposal is submitted by a consultancy firm which wishes to appoint or engage any sub-contractors to perform any part or parts of the consultancy services under the Consultancy Agreement, the consultancy firm (if selected by the Government to act as the Consultant) must comply with the relevant provisions in the Consultancy Agreement regarding the appointment of sub-contractors.

46.4 Each consultancy firm must indicate in the Technical Proposal which structure referred to in paragraphs 46.1, 46.2 and 46.3 will be adopted by it for the Consultancy Study.
47. The Government reserves the right, in its absolute discretion, not to appoint any of the consultancy firms which have submitted proposals in response to this invitation, for the whole or any part of the Consultancy Study. Submission of a proposal shall be made on the understanding that the Government will not be liable to pay any costs arising out of or incidental to the preparation, submission or clarification of the proposal. The Government is also under no obligation to discuss the assessment result with any consultancy firms.

48. Consultancy firms are required to indicate clearly in their proposals any difficulties they foresee in performing the Consultancy Study in accordance with the Brief. Restrictions or limitations proposed by consultancy firms which seek to limit or avoid their responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Consultancy Agreement or reasonably expected of the Consultant in these circumstances may render any proposal non-compliant in the absolute discretion of the Government.

49. The consultancy firms shall not, and shall not permit any of their officers and their proposed sub-contractor(s) to, make use of the Government’s name or make any public announcement in connection with this invitation to submit proposals to act as the Government’s Consultant for the Consultancy Study, whether in the form of press release, advertising or promotion materials, public communications without the prior written approval from the Government.

**Negotiation and Variation of Scope of the Consultancy Study**

50. The Government reserves the right to negotiate with any consultancy firm over the terms of its proposal.

51. The Government may at any time during the term of the Consultancy Study, by giving 14 days’ written notice to the Consultant, make changes to the scope of the Consultancy Study. The cost of such changes, if any, and the impact of such changes on the charging, payment and other provisions of the Consultancy Agreement shall be mutually agreed by the Government and the Consultant with reasonable reference to the breakdown costs and fees quoted in the Fee Proposal.

**Withholding Tax**

52. Where the Consultant is a non-resident of Hong Kong, the Government shall withheld a percentage equivalent to the prevailing Hong
Kong profits tax applicable to unincorporated and incorporated business/profession, as may be applicable to the Consultant, of any payments payable to the Consultant by way of lump sum, instalments, or discounted payments (exclusive of any reimbursement of expenses, if any) in respect of the consultancy services provided in Hong Kong by the Consultant for the settlement of such profits tax chargeable on the payments. Any balance of the sum withheld will be returned to the Consultant without interest within a reasonable time upon final determination and settlement of such tax liabilities.

**Governing Law and Arbitration**

53. The Consultancy Agreement is governed by the laws of Hong Kong.

54. Any dispute or difference between the parties arising out of or in connection with the Consultancy Agreement which is not resolved within twenty-eight (28) days shall be referred for arbitration in Hong Kong by a single arbitrator appointed jointly by the parties. If the parties are unable to agree on the appointment of the arbitrator within twenty-one (21) days of a notice by a party or the parties requesting arbitration, the arbitrator shall be appointed by the Hong Kong International Arbitration Centre. The Arbitration Ordinance (Cap. 341) shall apply to the arbitration. The arbitrator’s decision shall be final and binding on the parties.

55. Unless the Consultancy Agreement has already been terminated or if no suspension of the consultancy services is in effect, the Consultant shall continue to provide the consultancy services during the resolution of the dispute.

**Home Affairs Bureau**
**Government of the Hong Kong Special Administrative Region**
**October 2008**
Appendix I

Extract from the Committee on Performing Arts

Arts Education

5.5 Last but not least, the Committee considers that arts education is fundamental to the development of a sustainable performing arts scene. We welcome the emphasis that the Education and Manpower Bureau (EMB) places on arts education in its new secondary school curriculum. We have proposed to set up a database of arts education expertise for reference by EMB and the schools. HKADC has already put up such a database onto its website. We have also recommended to the EMB that a requirement be imposed on all senior secondary school students to attend one performance programme at a proper performing arts venue at least once a year so as to build up their interest in the appreciation of the performing arts.

5.6 If our younger generation is to develop an interest in the performing arts, the resulting increase in audience base will help develop a vibrant performing arts market to support arts groups not only in the form of patronage and box office income but also in corporate sponsorship. This will in turn help reduce their reliance on public funding gradually.

5.7 The Committee recommends that a structured collaboration network be established between the Hong Kong Academy for Performing Arts (HKAPA) and major performing arts groups. This will help strengthen the interactive dialogue between the HKAPA as an institution, the students, the graduates and potential employers of professional performing and technical artists.

5.8 The Committee will discuss in detail the subject of performing arts education with a view to putting forward recommendations for changes in its next phase of work.
CONSENT TO DISCLOSURE

To: Government of the Hong Kong Special Administrative Region

Appointment of Consultancy Firm for
a Research Study on Public Arts Education

We, [insert the name of the consultancy firm], hereby irrevocably authorize, consent and agree that if Government of the Hong Kong Special Administrative Region (“Government”) agrees to appoint us to carry out the Research Study on Public Arts Education, Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to us, disclose to any person in such form and manner as Government deems fit:

(a) the name and address of our firm and the fees, costs, and expenses payable by Government of engaging us; and

(b) the Fee Proposal submitted by us on [insert the relevant date].

We hereby waive and forego our right, if any, to make any claims against Government for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by Government.

Dated this day of 2008

[insert the name of the consultancy firm] and
SIGNED by [insert the name(s) of the signator(ies)], the director(s) of the company in the presence of :-

Signature of Witness:

Name of Witness:

Occupation:

Address: