

TABLE OF CONTENTS

SECTION 1	INTRODUCTION	1-3
SECTION 2	PROJECT PLANNING/DEVELOPMENT	4
SECTION 3	PRE-CONTRACT PROCEDURES	5-58
	3.1 Introduction	
	3.2 Technical Feasibility Statement	
	3.3 Decision to Undertake the Project by Design and Build	
	3.4 Prequalification	
	3.5 Invitation to Tender	
	3.6 Tender Evaluation Criteria	
	3.7 Opening of Tenders.	
	3.8 Tender Assessment Panel	
	3.9 Assessment of Tenders	
	3.10 Permitted Alterations	
	3.11 Procedure after Correction of Errors and Examination of Rates and Prices	
	3.12 Handling of Tender Qualifications	
	3.13 Approval by Relevant Tender Boards	
	3.14 Pre and Post Tender Meetings with Tenderers	
	3.15 Contract Award	
	3.16 Tender Information	
	Figure 3.1 Design and Build Contracts - Pre-Contract Procedures	
	Table 3.1 Assessment Criteria Checklist	
	Table 3.2 Specimen Tender Marking Scheme For Building Works	
	Table 3.3 Specimen Tender Marking Scheme For Civil Engineering Works	
SECTION 4	POST CONTRACT AWARD PROCEDURES	59-70
	4.1 Introduction	
	4.2 Supervising Officer	
	4.3 Design Checking and Approvals	
	4.4 Construction and Site Safety Supervision	
	4.5 Variations	
	4.6 Dispute Resolution	
	4.7 Project Control Group Meetings	
	4.8 Membership of the Project Control Group	

4.9 Completion of Works

Figure 4.1 Design and Build Contracts - Post-Contract Award Procedures

Table 4.1 Specimen Guide for Supervising Officer's Construction Checking in Design and Build Contracts

APPENDICES

APPENDIX A - ADVANTAGES AND DISADVANTAGES OF DESIGN AND BUILD

APPENDIX B - SPECIMEN PREQUALIFICATION DOCUMENT

APPENDIX C - GUIDANCE NOTES OF THE PREPARATION OF THE EMPLOYER'S REQUIREMENTS

1.0 Preamble

2.0 Specimen Employer's Requirement

2.1 Introduction

2.2 General site data

2.3 Statutory compliance requirements

2.4 Design brief

2.5 Programme requirements and restrictions

2.6 Quality assurance

2.7 Safety aspects

2.8 Environmental protection aspects

2.9 Design checking procedures

2.10 Price breakdown

2.11 Employer's construction and site safety supervision

2.12 Facilities for the Supervising Officer

2.13 Assessment of tenders

2.14 Other requirements

APPENDIX D - GUIDANCE NOTES ON SPECIFYING THE DESIGN CHECKING PROCEDURES

1.0 Preamble

2.0 Design Checking Procedures

2.1 Objective

2.2 Project Design Plan

2.3 Approval in Principle

2.4 Detailed Design Approval

- 2.5 Design changes
- 2.6 Shop drawings and co-ordination drawings

Figure D1 Approval in Principle (AIP) - Design Checking Procedures

Figure D2 Detailed Design Approval (DDA) - Design Checking Procedures

Figure D3 Varied Documents - Detailed Design Approval (DDA) - Design Checking Procedures

Annex D1 Specimen Design Checking Clauses for the Employer's Requirements

Annex D2 Specimen Check Certificates for Design Approval

APPENDIX E - DUTIES OF THE SUPERVISING OFFICER (SO)

- 1.0 Introduction
- 2.0 Clauses in the D&B GCC dealing with the duties and power of the SO
- 3.0 Duties of the SO in the checking of the Contractor's design
- 4.0 Duties of the SO in the supervision of construction and site safety

APPENDIX F - FINALISING DESIGN AND BUILD GENERAL CONDITIONS OF CONTRACT

- 1.0 Introduction
- 2.0 Alternative D&B Contract Clauses
- 3.0 Performance Bonds
- 4.0 D&B Special Conditions of Contract Clauses
- 5.0 Clauses requiring specification - Employer's Requirements
- 6.0 Vetting of Tender documents

**APPENDIX G - SPECIMEN TENDER / CONTRACT PROVISIONS –
COVER PAGE**

Annex G1	Specimen Form of Tender and Appendix
Annex G2	Specimen Articles of Agreement
Annex G3	Specimen General Conditions of Tender
Annex G4	Specimen Special Conditions of Tender
Annex G5	Specimen Form of Bond
Annex G6	Specimen Form of Designer's Warranty
Annex G7	Specimen Form of Design Checker's Warranty
Annex G8	Specimen Form of Letter of Undertaking - Joint Ventures
Annex G9	Specimen Form of Joint and Several Guarantee - Joint Ventures
Annex G10	Not Used
Annex G11	Specimen Notes to Tenderers
Annex G12	Specimen Special Conditions of Contract

SECTION 1 INTRODUCTION

1.1 D&B Projects

- 1.1.1 In Government conventional contracts, contractors submit tenders to carry out works that normally have been fully designed either by the Government's in-house staff or its consultants.
- 1.1.2 In design and build (D&B) contracts the Contractor is required to carry out the design to a predetermined extent in compliance with the Employer's Requirements, and to submit a tender (Contractor's Proposals) based on his own design.
- 1.1.3 The D&B approach gives an advantage in some situations that 'buildability' (i.e. contractors' expertise in construction methods) is introduced in the early stage of design, and that designer and contractor are on the same team.
- 1.1.4 The Administration is committed to expediting the implementation of capital works projects, and consideration should be given on ways to fast track the procurement process. In comparison with the conventional contract form, D&B contracts are capable of advancing works start dates and realising the benefits of projects early. Furthermore, the contractor could better utilise his resources in the design process and therefore, a D&B procurement mode could achieve benefits to both the employer and contractor.
- 1.1.5 Essentially, there are three prerequisites if a construction project is to be carried out successfully under D&B procedures. These are:-
- (i) Care is paid to the procedures for the selection of contractors to be invited to tender.
 - (ii) The intentions and the wishes of the client departments are clearly formulated before tenders are invited and are set out in

the Employer's Requirements which the Contractor's Proposals shall fulfil.

(iii) The tender selected best meets the expectations of client departments regarding cost and quality.

1.1.6 There are four particular aspects of D&B contracts in which the procedural approach differs significantly from the approach in Government conventional contracts. These are:-

(i) Drafting the Employer's Requirements.

(ii) Assessment of tenders.

(iii) Checking and approval of designs.

(iv) Contract supervision.

1.1.7 Outline of these procedures is given in Sections 3 & 4 and more detailed guidance is provided in the Appendices.

1.1.8 The Administrative Procedures should be read in conjunction with the General Conditions of Contract for Design and Build Contracts (1999 Edition).

1.1.9 The Agreement on Government Procurement of the World Trade Organization (WTO GPA) applies to D&B projects where the value is above a prescribed Special Drawing Right (SDR) value for construction services¹. The equivalent HK\$ threshold values shall be adopted as advised from time to time by the Financial Services and the Treasury Bureau. For procurements governed by the WTO GPA, the requirements set out in WTO GPA, and the guidelines provided under the prevailing Technical Circulars (Works), hereafter denoted as TC(W), and any amendments thereto currently in force should be observed.

¹ Design services are not covered by Hong Kong, China's commitments under the WTO GPA.

- 1.1.10 Works departments may prequalify tenderers who are financially and technically capable of undertaking the D&B contracts on a project by project basis with a view to reducing tender cost and / or shortening the duration of the procurement process as appropriate. The procedures for invitations to submit prequalification applications should be governed by the prevailing Stores and Procurement Regulations (SPR) supplemented by TC(W) and any amendments thereto issued from time to time.
- 1.1.11 For procurement covered by the WTO GPA, at least 40 days from the date of tender notification should be allowed for receipt of tenders and no less than 25 days from the date of publication of the invitation for applications to be prequalified to tender. Notwithstanding, the time for receipt of D&B tenders should be sufficient for contractors to develop their tenders. Normally, a minimum period of 70 days shall be allowed. For complex buildings and buildings of outstanding aesthetic requirements, the tendering period should be set at about 112 days (i.e. 16 weeks).

SECTION 2 PROJECT PLANNING/DEVELOPMENT

2.1 Project Planning and Development

- 2.1.1 Government projects are identified and planned within strict policy guidelines determined by resources, demands and financial and political considerations. The planning process follows well established procedures of the Public Works Programme (PWP) where progress and priority within this programme is controlled by the Resources Allocation Exercise (RAE) with individual projects approved by the Public Works Subcommittee (PWSC) of the Finance Committee. The guidelines and procedures provided under the prevailing TC(W) and any amendments thereto currently in force on delivery of capital works projects should be observed.
- 2.1.2 The land requirements for a project should be identified during the planning stage since the acquisition of land may require a long time for the necessary clearance and resumption prior to award of any contract.
- 2.1.3 Statutory procedures such as disposal of contaminated materials should also commence during the planning stage and be completed to a stage where all necessary approvals and agreements have been obtained before inviting tenders.
- 2.1.4 Works departments shall refer to planning, development and public consultation procedures for new projects in the Project Administration Handbook for Civil Engineering Works, Project Administration Handbook of the Architectural Services Department or prevailing TC(W) on Delivery of Capital Works as appropriate.
- 2.1.5 With the completion of the Technical Feasibility Statement (TFS) stage and with financial authority to commit expenditure, the development of the project should proceed along the lines outlined in the pre-contract procedures which follow.

SECTION 3 PRE-CONTRACT PROCEDURES

3.1. Introduction

3.1.1 The various stages of pre-contract procedures are illustrated in **Figure 3.1**. Not all stages are necessary, and stages may also run in parallel or a manner other than that shown. The major involvement in the pre-contract stage lies with works departments, who may use consultancy services for some tasks. The procedures for the pre-contract stages are common to all types of contract and are well covered in the Project Administration Handbook for Civil Engineering Works or Project Administration Handbook of the Architectural Services Department or in TC(W) and Financial Circulars (FC).

3.1.2 In the event that there are discrepancies between these procedures and the prevailing SPR / TC(W), the SPR and TC(W) shall take precedence as appropriate.

3.2 Technical Feasibility Statement

3.2.1 Procedures for this stage are the same as a conventional contract. Works departments shall follow the requirements of the Project Administration Handbook for Civil Engineering Works or Project Administration Handbook of the Architectural Services Department as appropriate.

3.3 Decision to Undertake the Project by Design and Build

3.3.1 The decision to undertake a project by D&B shall be made by an officer not lower than D2 rank of works departments in consultation with the Vote Controller (normally the Head of that works department). The reasons for the choice of D&B are likely to be:-

- (a) Special expertise of the contractor.

- (b) Fast track (speed).
- (c) Design economy (cost).
- (d) Client requirements are well defined and stable at the project inception.

3.3.2 Although there are notable exceptions, where no special contractor's expertise is likely to be required, and/or where fast track is not needed, there is probably little merit in selecting D&B.

3.3.3 A list of the advantages and disadvantages of D&B is at **Appendix A**. Works departments shall consider these points in making their decision. Further guidance is provided in the TC(W) on the Reference Guide on Selection of Procurement Approach and Project Delivery Techniques.

3.3.4 Pre-tender Estimate

There were several occasions on which the returned tender sums of D&B contracts had far exceeded the Pre-Tender Estimate (PTE). As a trial, attempts had been made to introduce "tender cap" measure² in a few projects but the outcomes were not satisfactory. There are many potential causes for inaccuracy of PTE. While there is no hard and fast rule to produce accurate PTE, estimation based on a notional design is considered as one of the possible ways to improve the accuracy of PTE. In addition, adequate project contingencies should be allowed for market and design risks for D&B contracts.

3.4 Prequalification

3.4.1 Prequalification is not mandatory for D&B projects. The need for prequalification should be justified on a project by project

² In accordance with SPR 345(d), departments should not normally disclose the estimated contract value to the tenderers as it may become a main guiding factor in the preparation of their tender proposals, thus undermining the principles of competition and value for money. Disclosure of the tender cap should be justified on a case-by-case basis.

basis from a value for money angle. Works departments may prequalify tenderers who are financially and technically capable of undertaking the D&B contracts with a view to reducing tender cost and / or shortening the duration of the procurement process. Other relevant factors for consideration may include the complexity of the project concerned, the need to contain tender assessment efforts to a manageable level, the extent of market interests in the D&B tenders (if only a few tenderers are expected to bid for the projects, there may not be a strong case for prequalification) and the need of having substantial design input from Contractors. It should be noted that for those projects that are delivered by D&B approach primarily for the purpose of operational efficiency & effectiveness from the project delivery point of view and no substantial design input is required during the tendering stage (e.g. term D&B contracts), prequalification of tenderers should not be required. Prequalification of tenderers, if required, shall be in accordance with the guidelines provided under the SPR and the prevailing TC(W) on Prequalification of Tenderers for Public Works Contracts. For the procurement covered by the WTO GPA, the prequalification of tenderers shall also be subject to the requirements of WTO GPA and TC(W) on Tender Procedures for Procurement governed by the WTO GPA and any amendments currently in force.

3.4.2 The following are the major activities for prequalification :-

- (a) drawing up qualification requirements, including the expertise required for specialist works and determining evaluation criteria;
- (b) obtaining approval, in accordance with the requirements of the SPR, from the Permanent Secretary for Financial Services and the Treasury (PS(Tsy)) acting on the advice of the Central Tender Board (CTB) for the use of prequalified tendering and the evaluation criteria³ as appropriate for prequalifying applications;

³ Works departments should note that a Standard Prequalification Marking Scheme comprising Stage I Screening and Stage II Marking has been approved by PS(Tsy) as indicated in paragraph 3.4.8 below

- (c) developing a list of prospective tenderers;
- (d) preparing prequalification document;
- (e) inviting prospective tenderers to prequalify;
- (f) issuing prequalification documents following receipt of response to the invitation;
- (g) analysing and evaluating the prequalification submissions according to the established evaluation criteria;
- (h) making a recommendation to CTB on a list of prequalified applicants from whom tenders will be invited and
- (i) seeking PS(Tsy)'s approval of the prequalified tenderers, sending a notice of invitation to successful applicants and asking them to confirm their intention to submit a tender.

3.4.3 The maximum number of prequalified tenderers should be set at a reasonable level, whilst enabling Government to invite tender submissions from a pool of technically and financially capable tenderers without limiting competition unnecessarily. Based on different primary objectives and conditions of D&B projects, works departments should make reference to the recommended maximum number of prequalified tenderers in the table below.

and in Appendix B. The use of it in its entirety should be expressly stated in the request for approval of prequalified tendering but seeking approval of the use of it is not necessary.

D&B Contract Primary Objectives and Conditions	Recommended Maximum No. of Prequalified Tenderers⁴
1. Superb design quality with highly complex functional requirements and/or construction methodology involving specialised plant/equipment	4
2. Highly complex functional requirements and/or construction methodology involving specialised plant/equipment with special constraints (delivery programme, site/environmental constraints etc.)	5
3. Special constraints (delivery programme, site/environmental constraints etc.)	5
4. Operational efficiency & effectiveness (e.g. term D&B contracts ⁵)	No prequalification is required normally.

3.4.4 Prequalification documents for D&B tenderers shall be designed to make prospective tenderers aware of all salient features of the project and any major constraints. The documents shall expressly spell out the fact that the contracts shall be executed on a design-and-build basis.

⁴ Work departments should note that any limitation on the number of prequalified suppliers should be justified on the basis of "efficient operation of the procurement system". Factors which may generally be taken into account in determining the limitation on the number of applicants to be prequalified on the basis of "efficient operation of the procurement system" include time (e.g. time needed to conduct evaluation, time available before tender closing, etc.) and resources (e.g. high costs incurred in the evaluation process, efforts spent or to be incurred, etc.). Since considerations for each case may vary, works departments should ensure that there are adequate justifications for prequalification and seek legal advice in the event of doubt.

⁵ Term D&B tenders may adopt marking scheme or formula approach according to the complexity and scale of proposed works.

- 3.4.5 Prequalification document must be prepared on an individual basis, taking account of the circumstances of a particular project. A specimen prequalification document for use in D&B tenders is in **Appendix B**. Prequalification document shall be collected by those applicants who have expressed an intention to apply for prequalification.
- 3.4.6 The prevailing TC(W) on Prequalification of Tenderers for Public Works Contracts provides guidance on the information required to be submitted by contractors seeking prequalification. In addition, applicants seeking prequalification for D&B tenders may be required to submit the following :-
- (a) details of consultants, if any, or the applicants' own in-house staff who shall be responsible for carrying out the design;
 - (b) qualifications, experience and availability of the consultants and/or staff as referred to in (a) above; and
 - (c) proposals for undertaking the project which shall comprise proposals for the control and co-ordination of the D&B process with due acknowledgement of the necessary approvals, integrated quality assurance, environmental and safety considerations.
- 3.4.7 Prequalified tendering including its need and the evaluation criteria for the prequalification shall be established in advance by works departments based on SPR and TC(W), but still subject to approval by PS(Tsy)⁶, acting on the advice of CTB having regard to the circumstances and merits of individual submissions.
- 3.4.8 A Standard Prequalification Marking Scheme comprising Stage I Screening and Stage II Marking which has been approved by the PS(Tsy), is given in Appendix B and the use of it should be expressly stated in the request for approval of prequalified tendering as stated in above item 3.4.7. If the Standard

⁶ See footnote 3 above.

Prequalification Marking Scheme is not used in its entirety, approval by PS(Tsy) on the use of non-standard prequalification marking schemes shall be sought in accordance with SPR.

- 3.4.9 Additionally, the evaluation criteria may include assessment criteria as described in (a) to (c) in paragraph 3.4.6 above. The evaluation criteria, including a prequalification marking scheme and relative weighting assigned for each criterion, shall be stated in the prequalification document.
- 3.4.10 A Tender Assessment Panel as described in the prevailing TC(W) on Prequalification of Tenderers for Public Works Contracts shall be established to evaluate the prequalification submissions.
- 3.4.11 Following receipt of prequalified submissions, an acknowledgement shall be sent to each applicant who made a submission.
- 3.4.12 Following the approval of prequalification results by the relevant tender board, each applicant shall be notified separately of the result. Unless the identities of the successful prequalified applicants are to be disclosed (see paragraph 29 in the “Instructions to Applicants” section of the specimen prequalification document at **Appendix B**), departments should not let individual applicants know who else have been successfully prequalified or the number of successfully prequalified applicants. Until the conclusion of the tender exercise, all oral and written communications regarding the number and identities of the successfully prequalified applicants should be classified as “RESTRICTED (TENDER)” and the access to this information should be restricted on a need-to-know basis. Request for feedback or debriefing from unsuccessful applicants shall only be entertained after the conclusion of the tender exercise. The guidelines and procedures as described in the prevailing TC(W) on Feedback and Debriefing to Unsuccessful Bidders shall be observed in providing feedback and debriefing information to applicants.

3.4.13 The notification to successfully prequalified applicants (hereinafter called tenderers) shall state when tender documents will be available and works departments shall seek their confirmations to submit tenders.

3.5 Invitation to Tender

3.5.1 Except for term D&B contracts under the jurisdiction of ArchSD where the minimum tender period should be set at 40 days, sufficient time shall be allowed for tenderers to develop their tenders. A minimum tender period of 70 days shall be allowed. For complex buildings and buildings of outstanding aesthetic requirements, the tendering period should be set at about 112 days (i.e. 16 weeks). The minimum period should not be changed unless approval is obtained from WB of DEVB.

3.5.2 The tender documentation shall include:-

- (a) Form of Tender.
- (b) Conditions of Tender including any Special Conditions of Tender. It should be made clear to tenderers what information they have to submit with their tenders in order that a full assessment can be made. Instructions shall be provided to identify separate requirements for Tender Price Documents and Technical Submission. See paragraphs 3.5.3 to 3.5.5 below. Any requirement for tenderers to conduct a design presentation of their proposals shall be included as a Special Condition of Tender.

The requirement for contractors to have obtained ISO 9001 certification for works contracts under the prevailing TC(W) on ISO 9001 Certification is not applicable to D&B contracts. Those contractors who have been mandatorily suspended from tendering or are under voluntary suspension, solely due to the failure to obtain ISO 9001 certification, are also eligible to submit

tenders for D&B contracts. The General Conditions of Tender regarding contractors under suspension in **Appendix G Annex G3** should be incorporated in the tender document. Notwithstanding the above, D&B contracts should include a provision in the Employer's Requirements that the contractor shall implement and maintain a documented quality system to control all activities of the Works including the management, design, manufacture, construction/installation, monitoring, testing and commissioning (if applicable) of the Works, and to ensure that these activities comply with the Employer's Requirements.

- (c) D&B General Conditions of Contract (D&B GCC) and any Special Conditions of Contract (D&B SCC). The D&B GCC shall be the prevailing edition of the Government of the Hong Kong Special Administrative Region General Conditions of Contract for Design & Build Contracts. The D&B SCC is shown in **Annex G12** of the Administrative Procedures.

- (d) The Employer's Requirements which shall include :-
 - (i) the design brief;

 - (ii) requirements for environmental management plan;

 - (iii) requirements for design checking and design approval;

 - (iv) requirements for construction and site safety supervision;

 - (v) requirements for a breakdown of the Contractor's rates and prices;

 - (vi) information provided, e.g. where a D&B GCC Inspection of the Site Alternative I (Method

Statement Approach) is used, site survey plans, ground investigation data and other relevant factual information;

- (vii) provisional sum, contingency sum and provisional quantities where applicable;

and will generally also include :-

- (viii) (where a D&B GCC Inspection of the Site Alternative I (Method Statement Approach) is used) requirements for Sub-surface Assessment and associated Method Statements (see **Appendix F**);

and may also include :-

- (ix) the budget of the Project provided that this will not disclose the estimated contract value, and
- (x) details of the Project Control Group meetings.

If works departments have limited experience of a particular type of construction, outside expertise shall be engaged at an early stage of the process for the satisfactory preparation of the Employer's Requirements.

Where consultants are employed by works departments to prepare Employer's Requirements, it is a mandatory requirement to include the standard Special Conditions of Employment Clause in the consultancy agreement to oblige the consultants to report on situations which may give rise to a conflict of interest. In case of conflict of interest arisen, the consultants should be prohibited from participating, bidding or being financially involved in that or any related tender exercise in accordance with SPR 192 and prevailing TC(W).

Guidance notes on the preparation of the Employer's Requirements are in **Appendix C**.

- 3.5.3 Tender documentation may vary depending on the types of projects, i.e. building or civil engineering works and the extent of electrical & mechanical (E&M) and building services works and specialist services involved. However, to assist tenderers to prepare their tender submissions, tender documentation should be clearly defined to identify the parts of tenders to be submitted under Tender Price Documents or Technical Submission. Please see Appendix G Annex G3 on GCT for Submission of Tender.
- 3.5.4 For D&B tenders adopting marking scheme, a two-envelope approach shall be adopted. The tenders shall consist of two parts, namely the Technical Submission and the Tender Price Documents. They shall be enclosed in two separate sealed envelopes, clearly marked with the words "Technical Submission" and "Tender Price Documents" respectively, together with the tender reference on the outside of the envelope and delivered in a manner as required by tender notice. The two envelopes may be placed in a further sealed envelope.
- 3.5.5 It is expected, because of the extent of the technical information to be submitted, that it might not be practicable to have all of the Technical Submission to be placed in the same sealed envelope. In such cases, the Technical Submission shall be placed in more than one sealed envelopes clearly marked with the words Technical Submission - Part 1 of [No.], etc.
- 3.5.6 A Specimen Notes to Tenderers (NTT), General Conditions of Tender (GCT) and Special Conditions of Tender (SCT) is at Appendix G. The NTT, GCT and SCT are to be used selectively in the light of the requirements of D&B tenders in question.

- 3.5.7 A Specimen Special Conditions of Contract (SCC) for D&B Contracts is at **Annex G12**. SCC for D&B contracts which are not part of this standard library (including any modification to the SCC in the library) may be drafted and used as required after approval given by the Head of Department/Office or his delegate. This delegation should not be given to an officer below the rank of D1 level. Should the Head of Department/Office or the delegated officer have any doubt as to the wording of an SCC not in the library, then the clause should be forwarded to the Legal Advisory Division (Works) (LAD(W)) in the DEVB for advice through the relevant Contract Advisor without reference elsewhere. Contentious cases involving a major point of principle or change in policy should, at the discretion of the Head of Department/Office, be referred to the Works Group Directors' Meeting for consideration.
- 3.5.8 Tender documents should be self-explanatory. Clarifications and changes of contractual relevance to tender documentation shall be covered by tender addenda notwithstanding clarifications and changes that have been given in pre-tender meetings. See paragraph 3.12 on Handling of Tender Qualifications.
- 3.5.9 Depending on the nature of D&B projects, works departments may consider making arrangement for site visits for the purpose of tender. The site visits should be arranged as soon as possible after an invitation to tender, and be executed in proper and organised manners.
- 3.5.10 In instances where a deadline is set for tenderers to submit queries on tender documentation then a deadline shall also be set for providing the answers sufficiently in advance of the tender closing date for the tenderers to reasonably finalise their tenders.
- 3.5.11 Questions and answers of contractual relevance must be put in writing, and both questions and answers conveyed to all tenderers as a tender addendum. However, questions and answers regarding information or suggestions of a commercial

nature must be treated as confidential to the relevant tenderers. Handling of tender addendum shall be in accordance with Section 5.2 under Chapter 6 of the Project Administration Handbook for Civil Engineering Works or the Project Administration Handbook of the Architectural Services Department as appropriate.

When there is difficulty in distinguishing whether a question is commercial or contractual, legal advice may be sought from LAD(W) of DEVB. Please also refer to paragraph 3.12 on Handling of tender qualifications.

3.6 Tender Evaluation Criteria

3.6.1 Tender evaluations shall be conducted according to assessment criteria set out in marking schemes. Marking schemes should be exhaustive, whilst tailored to reflect the priorities of the Employer's Requirements. The most suitable tenderer will be recommended for (i) award of contract or (ii) further negotiation.

The goal is to identify a tender which will deliver a project that :-

- (a) fulfils the client's needs;
- (b) provides efficient and reliable services;
- (c) is economically to maintain;
- (d) is environmentally friendly;
- (e) has good safety features; and
- (f) is best value for money.

3.6.2 The use of a marking scheme requires evaluation of Technical Submission to be conducted separately from the evaluation of Tender Price Documents and therefore, a two-envelope approach shall be adopted, i.e. Tender Price Documents and

Technical Submission shall be submitted in two separate sealed envelopes. See paragraphs 3.5 and 3.7 of the Administrative Procedures.

- 3.6.3 Provisions for the use of marking schemes in evaluating tenders are contained in the prevailing SPR. Specific guidelines for adopting marking scheme approach for tender evaluation are contained in Appendix III(G) to the SPR. Reference can also be made to the prevailing TC(W) on Tender Evaluation Methods for Works Contracts as appropriate.
- 3.6.4 Marking schemes for tender assessments must be established prior to tender invitation in order to provide a fair and objective means to assess tenders. Assessment criteria that could be included in marking schemes are listed out under the headings of Price and Non-price in **Table 3.1: Assessment Criteria Checklist**. Works departments may formulate their own assessment criteria checklist based upon that shown in **Table 3.1**. Certain requirements of tenderers which have been established at prequalification stage, e.g. financial standing and project experience need not be the subject of the assessment criteria checklist. However, tenderer's performance should be included in marking schemes to take into consideration their latest performance records. Furthermore, recurrent costs of life cycle shall also be an attribute in marking schemes for tender assessment.
- 3.6.5 Concern on subjectivity cannot be wholly eliminated from assessment procedures. Assessment criteria should therefore be carefully selected to minimise this concern.
- 3.6.6 Marking schemes⁷ for use in tender assessment, including assessment criteria, marks and price/non-price ratio, shall be pre-approved by relevant tender boards. Tender Assessment

⁷ Works departments should note that a Standard Tender Marking Scheme for use with D&B contracts, with primary objectives based on operational efficiency and effectiveness where prequalification is not required, has been approved by CTB and included in the prevailing TC(W) on Tender Evaluation Methods for Works Contracts. Separate approval by CTB of the use of it in its entirety is not necessary.

Panel shall be established and hold meetings to agree to the assessment criteria to be included in marking schemes. The Tender Assessment Panel shall agree to the overall marks for each of the assessment criteria. The Tender Assessment Panel should carefully consider and justify the use of a particular price/non-price ratio on a case-by-case basis. Based on the primary objectives of D&B projects, the respective price/non-price ratios are recommended in the table below.

D&B Project Primary Objectives	Recommended non-price to price ratios
1. Superb design quality with highly complex functional requirements and/or construction methodology involving specialised plant/equipment	60%:40%
2. Highly complex functional requirements and/or construction methodology involving specialised plant/equipment with special constraints (delivery programme, site/environmental constraints etc.)	50%:50%
3. Special constraints (delivery programme, site/environmental constraints, etc.)	40%:60%
4. Operational efficiency & effectiveness (e.g. term D&B contracts)	40%:60% May adopt Formula Approach ⁸

⁸ Section 3 is drafted on the basis that D&B projects adopt marking scheme approach and therefore, some of the paragraphs may not be applicable to D&B projects adopting formula approach. In adopting formula or marking scheme approach for term D&B contracts, works departments shall draw reference to the prevailing TC(W) on Tender Evaluation Methods for Works Contracts.

- 3.6.7 Having first determined the overall marks, Tender Assessment Panel shall determine the individual marks for each of the sub-criteria under consideration.
- 3.6.8 Notwithstanding the guidelines above and others specified elsewhere in the Administrative Procedures, relevant tender boards' approval of marking scheme⁹ shall be sought on a project by project basis. Criteria and marks shall not be changed except in exceptional circumstances and such changes must be agreed by the respective tender boards. The reasons for the changes should be recorded.
- 3.6.9 An outline of the assessment criteria including marking schemes shall be included in tender documents as required by the respective GCT and NTT to assist tenderers in preparing their tenders. Works departments may wish to consider the assessment criteria given in the Specimen Tender Marking Schemes for building works and civil engineering works as shown in **Table 3.2** and **Table 3.3 respectively**. Three works categories, namely, roads and bridges, tunnelling works, and process treatment plant, are covered in the Specimen Tender Marking Scheme for civil engineering works. Works departments shall also refer to items 3.6.12 and 3.6.13 below.
- 3.6.10 Marking schemes shall be transparent and understandable and shall be included in the General Conditions of Tender. It shall be pragmatic, systematic, and repeatable for use in projects of a similar nature, scale and constraints. Minimum standards or essential requirements, if any, shall be stipulated in the Marking Guidelines. Non-compliance with such minimum standards or essential requirements shall render the tender as non-conforming tender. The method of evaluation shall ensure that best value for money is recognised and achieved. That is to say, marking schemes shall state clearly: - (1) the mandatory Employer's Requirements on what have to be complied with at tender stages, failing which the tenders will be regarded as non-conforming, and their technical proposals will not be

⁹ Except for the Standard Tender Marking Scheme for D&B contracts with primary objectives based on operational efficiency and effectiveness where prequalification is not required.

further assessed according to the marking schemes; and (2) that marks will be assessed based on the degree of compliance with other Employer's Requirements. The marks and passing marks, if any, for each of the assessment criteria should be shown in the marking schemes. The essential requirements which are required to be submitted with the tender for the purpose of tender evaluation shall be specified in the tender conditions. Failure on the part of the tenderer to comply with the said tender condition shall render its tender invalid.

3.6.11 In order to cut down the cost of tender preparation, works departments may consider suitably limiting the number of pages of technical proposals and drawing submissions and shall specify clearly these limits in the tender documents. Works departments may refer to the proposed Specimen Tender Marking Schemes as shown in Tables 3.2 and 3.3.

3.6.12 For D&B contracts which are adopted with the primary objectives of operational efficiency and effectiveness, e.g. term D&B contracts, their simple nature does not require prequalification of tenderers. Works departments shall use the Standard Tender Marking Scheme or Formula Approach given in prevailing TC(W) on Tender Evaluation Methods for Works Contracts. If works departments wish to make any modifications to the Standard Tender Marking Scheme to suit the particular nature of individual contracts, they shall obtain policy support from DEVB before seeking approval from the relevant tender board in accordance with the SPR.

3.6.13 For D&B contracts involving prequalification of tenderers, works departments shall continue to propose tender marking scheme and seek approval from the relevant tender board in accordance with the SPR.

3.7 Opening of Tenders

3.7.1 After tenders have been opened and authenticated, the tender opening team shall place the originals of the Tender Price Documents in a sealed envelope. The sealed envelope,

together with the originals of the Technical Submission, will be collected by the respective works departments while the duplicates of the submissions will be kept by relevant tender boards.

3.7.2 Works departments shall appoint an officer of D2 rank or above, who is not involved in the tender exercise for the safe custody of the sealed envelope. To guard against inadvertent placement of any Tender Price Documents in Technical Submission by tenderers, the officer or his delegated officer not lower than senior professional rank shall check against the Technical Submission collected from the tender opening team before passing them to Tender Assessment Panel for evaluation.

3.7.3 Tender Assessment Panel shall only open the sealed envelope which contains the Tender Price Documents after the completed evaluation of all Technical Submissions based on the approved marking scheme. Generally, no alteration to the Technical Submission and hence the technical scores shall be allowed after the Tender Price Documents are opened. Reference shall be made to the relevant guidelines as contained in the prevailing TC(W) on Tender Evaluation Methods for Works Contracts and TC(W) on Examination of Tenders and Submission of Tender Reports.

3.8 Tender Assessment Panel

3.8.1 A Tender Assessment Panel similar to that as described in the prevailing TC(W) on Tender Evaluation Methods for Works Contracts for marking scheme approach shall be established to evaluate tender submissions.

3.8.2 All members of the Tender Assessment Panel should be identified by name and post in the Tender Report.

3.9 Assessment of Tenders

- 3.9.1 The general procedural requirements for the evaluation and examination of tenders, the submission of tender reports, and WTO GPA are contained in the prevailing TC(W).
- 3.9.2 All conforming tenders shall be treated equally during tender assessment. Works departments shall not consider alternative tenders if they have not been invited according to the relevant SCT 2 as shown in Annex G4. See also paragraphs 3.9.11 and 3.12.1 below.
- 3.9.3 On expiry of tender period or any extension thereto, tender assessment will commence which will include a certain degree of pre-contract communications. These communications will likely include commercially sensitive information/suggestions in relation to respective tenders. Therefore, from tenders are received and opened until a decision is made on the acceptance or otherwise, not only shall all verbal and written communications regarding the tenders be classified as RESTRICTED (TENDER) but particular care must be taken to protect the confidentiality of anything considered commercially sensitive to relevant tenderers.
- 3.9.4 Notwithstanding the Conditions of Tender are specific, tenderers may fail to provide the necessary tender information which may lead to delays in the tender assessment. The Tender Assessment Panel shall examine tenders and identify missing or incomplete technical information and any qualified items. Any clarification or information submitted by a tenderer after the close of tender, irrespective of whether or not the clarification or information is submitted at the invitation of the Employer, will not be considered if such clarification or information would alter the tender in substance or give the tenderer an advantage over the other tenderers. In case of doubts, legal advice should be sought from LAD(W) of DEVB.
- 3.9.5 Tenderers shall not be permitted to revise or correct Technical Submission or Tender Price Documents other than the

provision of missing or incomplete technical information and clarifications of any qualified items as provided in paragraph 3.9.4 above. Where it is necessary to ascertain compliance or otherwise with the Conditions of Tender and Employer's Requirements, only clarifications of the intentions of the tenderer and interpretation of Technical Submission shall be sought.

3.9.6 Essentially two main documents will be considered in the assessment process. These being:

(a) Tender Price Documents; and

(b) Technical Submission;

and the assessment will, in the main, identify a tenderer who best meets :-

(a) the Employer's Requirements at the best price; and

(b) other prescribed criteria.

3.9.7 Members of the Tender Assessment Panel shall evaluate Technical Submissions individually and concurrently in strict accordance with the pre-determined criteria prior to the consolidation of assessment results. Each member's assessment shall be included in Tender Report. Only after Tender Assessment Panel agrees to the final technical assessment results shall Tender Price Documents be considered.

3.9.8 Where tenders are subject to very tight programme schedule and with the personnel approval of Head of Department, the Tender Price Documents and Technical Submission may be separately evaluated by the project team and the Tender Assessment Panel concurrently, but the project team and the Tender Assessment Panel must not exchange any information received on the tenders until the whole evaluation is completed and they shall not make alteration to their assessment

thereafter except for the corrections as quoted in paragraph 3.9.4 above. Heads of Department should only approve the concurrent assessment of the Technical Submission and Tender Price Documents as an exceptional arrangement and should ensure that there are adequate measures to safeguard the integrity of the tender evaluation process. When the concurrent assessment approach is adopted, departments should record the names of the involved parties in the technical assessment and price assessment and keep the period of assessment to the minimum.

- 3.9.9 To achieve a gradation in marking of sub-assessment criteria, the sub-assessment criteria shall be assessed according to agreed marking guidelines. For price assessment, tender prices shall be discounted to the net present values for comparison purposes in accordance with the provisions in the Notes to Tenderers. The Management Accounting Division of Financial Services and the Treasury Bureau may be consulted on the method for calculating the net present value. In performing the discounted cashflow calculation to arrive at the net present value, the officer examining the tenders shall use the construction programmes submitted by the tenderers and only use the tentative construction programme forecast by the Supervising Officer designate where construction programmes are not submitted by tenderers, or where the programmes submitted are found to be unrealistic. Detailed explanation shall be given in Tender Report if the latter applies.
- 3.9.10 Price assessment shall be made in accordance with a system in which marks are calculated in proportion to the lowest tender price or in cases where paragraph 3.9.9 applies, their net present values.
- 3.9.11 As the maximum construction period is fixed, it is unlikely that a tenderer will propose a longer construction period than the required, thus disqualifying his own bid. However, provided that a tenderer is offering the same terms and conditions as the specified construction period, an offer of a shorter construction period shall be dealt with as an alternative tender, and not as a

qualified tender, and shall be evaluated under the aspect of price by discounting the tender price by the known amount of the benefit to the Employer for his early use of the project such as savings on professional and site supervisory staff, interest on the capital invested and gain of revenue, etc. In such case, for the purpose of price assessment, the tender price shall be discounted by the known amount of the benefit prior to performing discounted cashflow calculation to arrive at a net present value.

3.9.12 The assessment of buildability of each tendered design shall be carried out with due consideration of the following :-

- (a) can activities be arranged to form production cycles;
- (b) what is the work content and time for each activity;
- (c) will the design create bottle-necks or constraints;
- (d) can activities be reduced or combined;
- (e) is there adequate skilled labour;
- (f) are appropriate plant and equipment available;
- (g) will the design create waste of material and time;
- (h) will available plant and equipment have to lie idle;
- (i) is the design labour intensive;
- (j) can the design be constructed right at the first time;
- (k) will the design lead to minimal defects; and
- (l) can a better design be engineered?

- 3.9.13 Buildability is defined as the extent to which the design of a project facilitates ease of construction, subject to the overall requirements of the completed project.
- 3.9.14 Designs which encourage logical sequences of operations and embrace the principle of delivering works right at the first and every time will help to achieve the aims of tender evaluation on Tender Price Documents and Technical Submission. However, works departments shall conduct functional analysis for each of the tendered designs before finalising and submitting the Tender Report.
- 3.9.15 Client departments expect that projects they are commissioning will provide the functions they require at a price they are willing to pay. The reduction of functionality of the project will reduce the utility of its respective functions and hence give rise to objection and displeasure. Expenditure to increase the functional utility beyond that which is required is of little value to the client departments.
- 3.9.16 The following questions shall be considered for each functional requirement in each tendered design:
- (a) what is it;
 - (b) what does it do;
 - (c) what is it worth;
 - (d) what does it cost (including its recurrent cost of life cycle);
and
 - (e) what else would work.
- 3.9.17 Each of the functions of the project provides utility for the client department. Once the value of the function is ascertained and defined, the design and specifications which provide the same utility at the best price can be identified. The objective is to obtain the best value for money.

- 3.9.18 The tender with the highest combined price and non-price score should normally be recommended. If the tender with the highest combined price and non-price score is not recommended for acceptance, this shall be noted and explained in the Tender Report.
- 3.9.19 The Tender Assessment Panel shall maintain full records of all correspondences that have been exchanged in the process of the tender assessment.

3.10 Permitted Alterations

- 3.10.1 After technical assessment of all tenders, only those tenders complying with the Conditions of Tender and warranting serious consideration shall have the breakdown of the Contractor's rates and prices checked in detail.
- 3.10.2 Except for alterations in accordance with the Special Condition of Tender permitting the Employer's Requirements to be amended to incorporate aspects of the Technical Submission, provisions of GCT, and items as shown below, works departments shall follow prevailing TC(W) on Correction Rules for Tender Errors, rule (2) under Section 2 among others, and any amendments currently in force for permitted alterations without prior approval of relevant tender boards.
- (a) Reducing the amount of the Contingency Sum in accordance with GCT(33) to provide the Employer with the power to unilaterally reduce the amount of the Contingency Sum prior to the award of contract.
 - (b) Errors in calculations of the provisional sum for Mandatory Provident Fund reimbursements.
- 3.10.3 Notwithstanding the above, works departments shall also refer to the prevailing TC(W) and any amendments currently in force on Examination of Tenders and Submission of Tender Reports.

3.11 Procedure after Correction of Errors and Examination of Rates and Prices

3.11.1 After the nature and amount of errors in any tender warranting closer examination have been found and corrected as provided in sub-section 3.10 above, Supervising Officer designate shall communicate in writing to each relevant tenderer on any substantially over or under-priced item and any item not priced. Before making a recommendation in Tender Report, works departments shall require the tenderer to confirm in writing that he is prepared to abide by his tender. Works departments shall also refer to the prevailing TC(W) on Rejection of Unreasonably Low Bids.

3.12 Handling of Tender Qualifications

3.12.1 It is generally stated in tender documents as an instruction to tenderers that any qualification of the tender may cause the tender to be disqualified, and the Employer may not consider the tender further. The tender may, however, be qualified inadvertently owing to different interpretation of particular statements or remarks made by the tenderer in the tender. Approval from the appropriate tender board is NOT required for approaching a tenderer for the purposes of clarifying the purpose or meaning of particular statements or remarks in his tender; reminding him of the likely consequences of a qualified tender; and seeking an unequivocal withdrawal of any qualifications by a reasonable deadline. Provided that a tenderer is offering the same terms and conditions as the specified construction period, an offer of a shorter construction period shall be treated as an alternative tender which should be dealt with as described in paragraphs 3.9.2 and 3.9.11 of the Administrative Procedures.

3.12.2 Care must be exercised in approaching tenderers for clarification of tender qualifications, and legal advice should be

sought where necessary. Under no circumstances can a qualified tender be rejected, expressly or otherwise, without the prior approval of the relevant tender board.

3.12.3 Before making a firm recommendation for contract award, if it is considered necessary or desirable to conduct negotiations with a tenderer or tenderers for a final attempt to remove or modify the tender qualifications which have not been withdrawn during the clarification process, prior approval and authority shall be obtained from the relevant tender board or its delegated authority.

3.12.4 [Not used]

3.12.5 Accepting withdrawals of tender qualifications after clarifying the intention and interpretation with the tenderer shall be in accordance with the prevailing TC(W) on Examination of Tenders and Submission of Tender Reports.

3.13 Approval by Relevant Tender Boards

3.13.1 Works departments shall prepare and submit the Tender Report to the relevant tender board in the same manner as for conventional contracts. Notwithstanding any prequalification exercise conducted and in addition to tender assessment results, marking schemes, price/non-price ratio, assessment criteria and other requirements as shown in the paragraphs below, the Tender Report shall also reflect the tenderers' current qualification, technical and financial capability and performance.

3.13.2 The Tender Report shall contain a description of the tendering/assessment/negotiation process. A representative of the Controlling Officer (normally the Head of Department) should attend the relevant tender board to present the Tender Report and answer queries. Usually a D2 Officer, but in any event an officer not below the rank of D1, should attend.

3.13.3 The duplicate copies of the Form of Tender held by the tender board will be forwarded to respective works departments after the tender board's approval of the acceptance of the tender.

3.14 Pre and Post Tender Meetings with Tenderers

3.14.1 Departments shall follow the procedures promulgated under the prevailing TC(W) on Pre- and Post Tender Meetings, particularly on the following:

- (a) the grounds for holding pre-tender meetings;
- (b) the arrangements for post-tender meetings before acceptance; and
- (c) the needs for resultant changes to the tender documents to ensure any matters agreed are contractually binding.

3.14.2 Departments shall follow guidelines and procedures as contained in the prevailing SPR on Tender Negotiations. Certain aspects of these guidelines are particularly important. These are:-

- (a) Negotiators

The choice of a negotiator to head the team shall be nominated by the Controlling Officer (normally Head of Department), who shall take into account the appointee's negotiation skills and experience.

- (b) Authority

Negotiators shall have the authority to make decisions and reach agreements. If there are any limits on the authority of the negotiators, this shall be made known to all parties. Such limits will be stipulated by the relevant tender board or the concerned Controlling Officer authorising the negotiations.

(c) Records

Records of tender negotiations may assume a high degree of contractual significance. Consequently it is of prime importance that records shall be kept and agreed by both parties.

3.15 Contract Award

3.15.1 Following approval of the Tender Report by the relevant tender board, works departments shall send a letter of acceptance to the successful tenderer accepting his tender and inviting him to execute the Articles of Agreement on a specified date.

3.15.2 The Contract to be signed shall contain:-

- Articles of Agreement.
- Form of Tender.
- Letter of acceptance.
- GCC (and SCC).
- Employer's Requirements including the drawings referred to therein.
- Contractor's Proposals including a statement of the Contract Sum, the completed breakdown of the Contractor's rates and prices and the drawings referred to therein.
- Correspondences and other agreed documents pertaining to the award as may be referred to in the letter of acceptance.

3.15.3 Not Used.

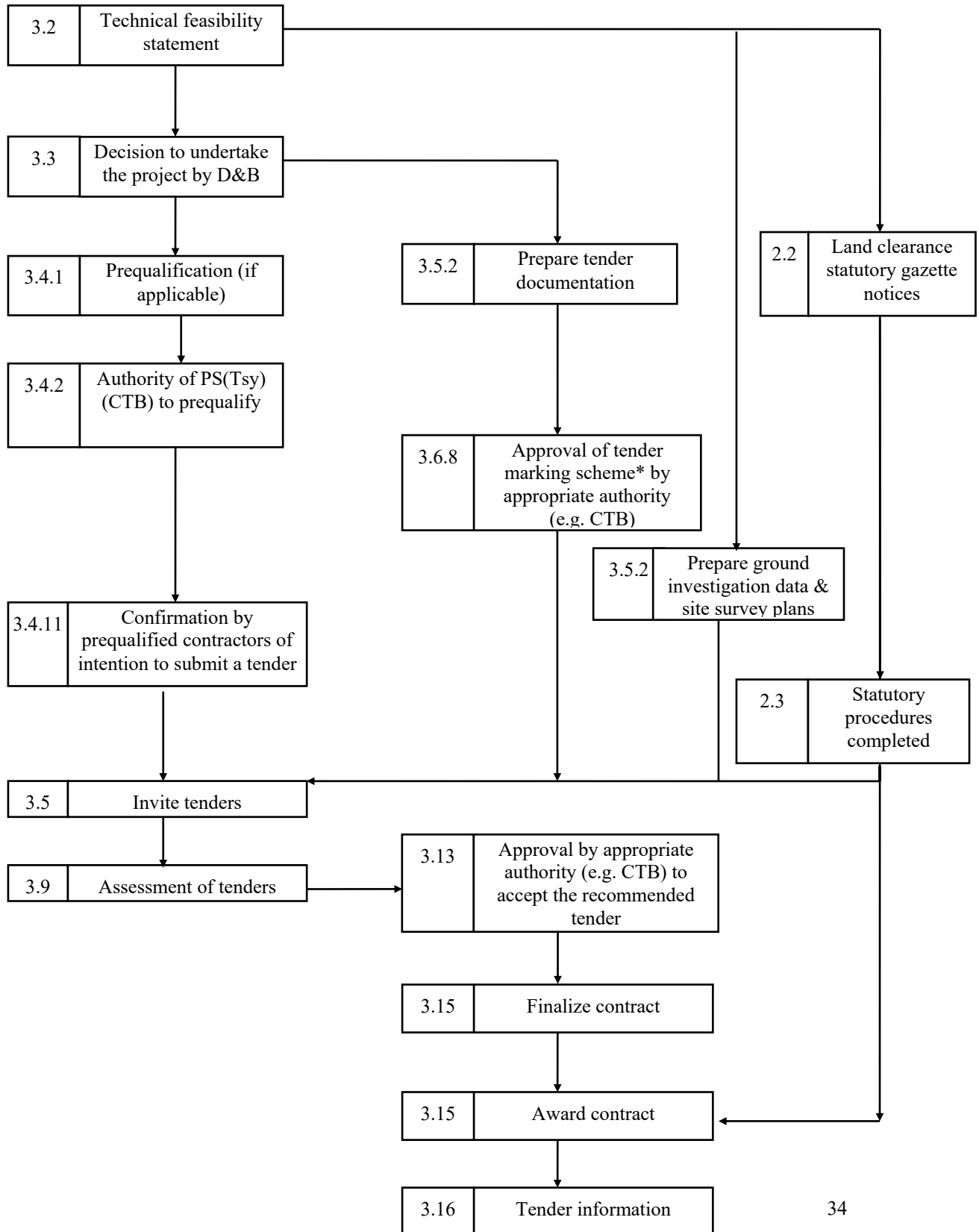
3.16 Tender Information

3.16.1 The prevailing FC on Access to Tender Information sets out the types of tender information that may be disclosed and provides guidelines for handling requests for tender information.

- 3.16.2 Guidelines and provisions promulgated in the prevailing TC(W) on Feedback and Debriefing to Unsuccessful Bidders shall be followed in notifying unsuccessful tenderers.
- 3.16.3 Works departments shall keep a record of all contracts awarded that are covered by the WTO GPA. Documentation relating to all aspects of the procurement process covered by WTO GPA shall be retained for 3 years.
- 3.16.4 For tenders which are covered by the WTO GPA, the Bid Challenge System will apply. Details of the bid challenge system can be found in the Rules of Operation of the Review Body on Bid Challenge. See paragraph 28 under Section A “Instructions to Applicants” of Appendix B and Clause (j) of the NTT Clauses in Appendix G Annex G11 of the Administrative Procedures.

FIGURE 3.1

DESIGN & BUILD CONTRACTS - PRE-CONTRACT PROCEDURES



Note : numbers relate to paragraph numbers. * - See footnote 7 above.

TABLE 3.1

ASSESSMENT CRITERIA CHECKLIST

Main Points	Sub-Points	Discussion
1. Price	<ul style="list-style-type: none"> • Overall amount • Sufficient breakdown to permit check • Financial offers 	<p>Including compliance with budget</p> <p>i.e. to conduct discounted cashflow calculation, enable milestone payments and a basis for valuation of changes.</p> <p>i.e. shorter construction period. (Tender sum to be discounted, see paragraph 3.9.11)).</p>
2. Non-price	<ul style="list-style-type: none"> • Compliance with Brief • Programme • Sectional completion • Availability of outline design • Aesthetics • Method Statement • Recurrent cost of Life cycle • Quality standards • Quality assurance • Safety aspects • Environmental aspects • Maintenance Factors • Project management • Design method and management • Validity of Sub-surface Assessment and Method Statements • Equipment/Recurrent costs • Guarantees offered • Clear options offered i.e. Lack of 'tags' or ambiguities • Offers exceeds the Design Brief • Others (Project specific items) • Functional and planning requirements 	<p>Assessment of the adequacy and reliability of the technology</p> <p>Clarify and supporting documents to permit check</p> <p>Relevant where there are interfacing projects</p> <p>Integration with structure and other design to ensure constructability</p> <p>Long term operating and maintenance cost shall be duly accounted for</p> <p>Clear statement required of specification, finish, quality and standards</p> <p>Of construction in particular</p> <p>Quality of material, availability of servicing, common use of single brand or supplier, access for maintenance</p> <p>Experience of nominated personnel and management structure and plant resource</p> <p>Design programme</p> <p>See Note 8 under Appendix E</p> <p>Operation and maintenance. Quality of E&M and BS Equipment Reputation and permanency of Manufacturer/Supplier</p> <p>Warranties, benefits assigned to owner</p> <p>In terms of quality, time and other consequences</p> <p>i.e. provisions with quality or standard over and above major aspects.</p> <p>i.e. Rateable value, maximum net useable floor area, etc.</p>

TABLE 3.2

**SPECIMEN TENDER MARKING SCHEME
FOR BUILDING WORKS**

**CONTRACT NO.
DESIGN AND CONSTRUCTION OF
PROGRAMME NO.
TENDER MARKING SCHEME**

- A. Assessment of the tenders comprises two stages.
- B. At Stage I, the tenders will be vetted against a set of Mandatory Requirements. At Stage II, the tenders will be assessed based on the marking criteria set out under “Stage II – Marking” below.
- C. The assessment will be carried out by the Tender Assessment Panel.
- D. The Tender Assessment Panel (TAP) comprises the following officers:-

Chairman -

Members -

[Note: Paragraph D should be included in the submission to relevant tender boards only and need not be included in tender documents]

Stage I Screening

The Tenderer’s submission must satisfy **all** Mandatory Requirements listed below. In the event that the Tenderer’s submission does not satisfy **any one of** the Mandatory Requirements, his tender shall be treated as non-conforming and shall not be considered further.

	<u>Mandatory Requirement Satisfied</u>
(1) Submission of Declaration of Compliance. <i>[Note: The declaration is for confirmation of compliance with all the mandatory requirements that could not be verified at Stage I, e.g. compliance with special pricing requirements which could not be verified until the pricing envelope is opened after completion of technical assessment. It should state clearly that a tender will be disqualified should subsequent checks reveal non-compliance of any of the mandatory requirements despite that such declaration has been made.]</i>	Yes/No
(2) Confirmation of compliance with the mandatory design requirements (e.g. minimum Net Operating Floor Area and permissible variation, maximum Gross Floor Area, height restriction, etc.)	Yes/No
(3) Other project specific mandatory requirements	Yes/No

[Note: Mandatory Requirements should be factual, self-contained and required “yes” or “no” answers.]

Stage II - Marking

- A. The assessment of the tenders is based on the attached marking criteria where marks, subject to a stated maximum, will be given to each of the criteria listed. The maximum marks are chosen to give a suitable weighting to each criterion.
- B. Tenders are required to satisfy the passing mark specified for Assessment Criterion 2.1 of the Marking Scheme in order to be considered to have passed Stage II - Marking.
- C. The marking criteria:-

	Assessment Criteria	Marks	
		Range	Passing
1.0	Price (See item 1 of Annex I)		
1.1	Tender Price	min. 50	
	(A) Sub-total	min. (50)	
2.0	Non-price (See item 2 of Annex I)		
2.1	Design		
	(a) Aesthetics and Overall Appearance	5 – 9	--
	(b) Functional and Planning Requirements	7 – 15	--
	(c) Structure and Buildability	4 – 6	--
	(d) Building Services + M&E + Electronic Systems	4 – 7	--
	(e) Environmental Friendliness, Health & Safety	max. 2	--
	(f) Life Cycle Plan & Energy Efficiency	2 – 6	--
	(g) Innovation and Technology	2 – 8	--
	(B) Sub-Total	max. (36)	(50%)
2.2	Technical Submission		
	(a) Method Statement	3 – 6	--
	(b) Programme	max. 2	--
	(C) Sub-Total	max. (8)	--
2.3	Technical Resources		
	(a) Project Management Team	max. 2	--
	(b) Design Management Team	max. 2	--
	(D) Sub-Total	max. (4)	--
2.4	Quality Assurance / Construction Quality / Safety and Environmental Protection Plans	max. 2	--
2.5	Past Performance	max. 3.5	--
2.6	Offer Exceeding Requirements other than item 2.1(g)	max. 1.5	--
	(E) Sub-Total	max. (7)	--
TOTAL MARKS (A+B+C+D+E)		100	--

Limiting Number of Pages

Works department may consider limiting the number of pages of technical proposal and drawing submissions in the form as shown below:

Tenderer shall submit technical proposal in no more than [X1] pages A4 and [X2] pages A3 drawings with margin not less than 25mm and character font size not less than 12. [X3] mark shall be deducted from the overall mark for each extra page. [X4] mark should be deducted if the submission does not conform to the font size, margins, paper size and other format requirements. The maximum deduction of marks regarding non-conformance on number of pages and formats shall be [X6]. Works departments shall insert figures in [X1,X2,X3,X4,X5 X6] as appropriate according to nature and complexity of tenders

[NOTE: The above Non-price criteria, maximum and passing marks and the following explanatory notes cater for design and build contracts for building works where the price and non-price weightings are at 50/50 percent of the total combined scores. They are for illustration only and the actual price/non-price ratio shall be determined on a project by project basis and justified to relevant tender boards. Guidance is given in Section 3.6 of the Design & Build Administrative Procedures Handbook Please refer to the “Checklist for Drawing up Marking Scheme for Tender Assessment” maintained by the Government Logistics Department at http://gld.host.cc.gov.hk/sarg/gld/marking_scheme/Tender_Checklist.pdf for additional guidance.]

EXPLANATORY NOTES FOR TENDER MARKING SCHEME**1.0 Price Assessment**

1.1 Tender Price (maximum 50 marks) : The lowest tender (T1) among all the conforming tenders will be awarded the maximum mark, i.e., M1 = 50. Marks will then be allocated to other conforming tenders (T2, T3 and T4) proportionally in relation to the tender prices as follows:

Tender prices: TP1, TP2, TP3, TP4 (TP1 being the lowest tender price among the conforming tenders)

Note: Tender prices will be discounted to “net present value” for comparison purposes.

Allocation of Marks:	$M1 = \text{Max. Mark (i.e. 50)}$
	$M2 = \text{Max. Mark} \times \frac{TP1}{TP2}$
	$M3 = \text{Max. Mark} \times \frac{TP1}{TP3}$
	$M4 = \text{Max. Mark} \times \frac{TP1}{TP4}$

1.2 For the purpose of calculation using the above formula, please refer to item 5.2 below for the definition of conforming tender.

2.0 Non-price Assessment¹⁰

- | | | |
|------------|--|------------------|
| 2.1 | Design (max. 36 marks) | -[Criterion] |
| | (a) Aesthetics and Overall Appearance (5 -9 marks) | -[Sub-criterion] |
| | (1) Projection of the required identity and image of the project (1 – 3 marks) |) |
| | (2) Response to the urban/natural context of the project (0.5 – 2 marks) |) |
| | (3) Visual impact (1 – 2 marks) |) |
| | (4) Quality of finish (1 – 2 marks) |) |
| | (5) Landscape provisions and design (0.5 – 1 mark) |) |
| | (b) Functional and Planning Requirements (7 - 15 marks) | |
| | (1) Optimisation of the development taking into account gross floor area requirements, plot ratio, floor height, permitted site coverage, lighting and ventilation requirements under the Building (Planning) Regulations, etc. (1 – 3 marks), | |
| | (2) Optimisation of the Schedule of Accommodation Area Requirements taking into account the Schedule of Accommodation and Room Data Sheets, etc. (2 – 4 marks) | |
| | (3) Efficiency in spatial relationship and circulation (vehicles and pedestrian) requirements | |

¹⁰ Items with numbering 2.1, 2.2, etc. are assessment criteria. Items with numbering (a), (b), etc. are sub-assessment criteria. Items with numbering (1), (2), etc. are aspects of sub-criteria.

- (2 – 4 marks)
- (4) Efficiency and completeness of design layout (1 - 3 marks)
 - (5) Adequacy of solutions to meet architectural design requirements, including ease of operation and maintenance (1 – 3 marks)
- (c) Structure and Buildability (4 - 6 marks)
- (1) Effectiveness of structural layout (1 – 3 marks)
 - (2) Adequacy of solutions to meet structural design requirements (1 – 2 marks)
 - (3) Ease of construction (0.5 - 1 mark)
 - (4) Risk mitigation during construction (0.5 - 1 mark)
- (d) Building Services + M&E + Electronic Systems (4 - 7 marks)
- (1) Efficiency of design and planning of services and systems (1 – 3 marks)
 - (2) Adequacy of solutions to meet building services design requirements, including ease of operation and maintenance (1 – 3 marks)
 - (3) Flexibility for future replacement, alterations and expansion (0.5 – 1 mark)
- (e) Environmental Friendliness, Health and Safety (max. 2 marks)
- (1) Sustainability of design with green measures incorporated, including use of environmentally friendly materials, such as reusable and recyclable products and processes (0.5 – 1 mark)
 - (2) Adequacy of health and safety considerations (0.5 – 1 mark)
- (f) Life Cycle Plan and Energy Efficiency (2 – 6 marks)
- (1) Adequacy of Life Cycle Plan for the building with reference to recognized international standards (e.g. ISO 15686) in service-life planning of key materials, equipment and systems used for architectural, structural and building services works, including service life predictions, maintenance and repair requirements, replacement schedules and mid-life refurbishment plans, if appropriate (0.5 – 2 marks)
 - (2) Cost effectiveness of design in terms of durability, maintenance and repair needs, and frequency and availability of replacement of the proposed key materials, equipment and systems throughout the service life of the building development, including *[where possible]* a comparison of economic benefit of each proposed key material, equipment and system with that specified in the Employer's Requirements or other choices which are commonly used in conventional building projects with supporting documentation (0.5 – 2 marks)
 - (3) Optimization of building orientation and design to maximize daylight utilization, control undesirable heat gains and enhance cooling effect in summer (0.5 - 1 mark)

- (4) Incorporation of energy-saving measures other than those in (03) above, energy-efficient features and renewable-energy technologies with details of benefits provided in qualitative terms (max. 1 mark)
- (5) Estimation of energy efficiency of building design achieved through the incorporation of energy-saving measures, energy-efficient features and renewable-energy technologies, including *[where possible]* a projection of the reduction in energy consumption by each of such provisions with detailed calculation provided (0.5 – 1 mark)

[Note: The maximum (i.e. 6 marks) should be adopted for this sub-criterion for major building contracts]

- (g) Innovation and Technology (2–8marks)
Adoption or application of the following design solutions and technology with demonstration of originality and applicability to enhance quality, improve buildability, minimize risks and impacts of the project or to make meaningful impacts to the end-uses, construction industry and/or stakeholders if possible:
 - (1) Innovative and intelligent structural design solutions (0.5 – 3 marks)
 - (2) Innovative and intelligent design solutions of building services, M&E, electronic systems and other operation and maintenance facilities (0.5 – 2.5 marks)
 - (3) Innovative and intelligent architectural design and landscape design solutions (0.5 – 2.5 marks)
 - (4) New data-driven technology in the design solutions (such as virtual reality / augmented reality / 3D printing for spatial simulation, etc.) (0.5 – 1.5 marks)

2.2 Technical Submission (max. 8 marks)

- (a) Method Statement (3 – 6 marks)
 - (1) Understanding of site constraints (0.5 – 1 mark)
 - (2) Adequacy of detailed descriptions of design and construction sequences and building services installations (0.5 – 1 mark)
 - (3) Adequacy of details of proposals for temporary works and monitoring construction impacts (0.5 – 1 mark)
 - (4) Adequacy of safety, health and environmental protection considerations during construction (0.5 – 1 mark)
 - (5) Provision of construction methods / measures / logistics to enhance quality, productivity and safety of construction works by adopting more innovative and intelligent construction solutions (such as smart and holistic construction methods) with due regard to the specific site conditions, or smart and advanced application of other technological means (such as artificial intelligence, virtual reality, augmented reality, 3D printing, digital / we-based technologies, autonomous equipment, drones, etc.) to effectively implement the proposed design solutions (1 – 3 marks)
- (b) Programme (max. 2 marks)
 - (1) Adequacy of design programme (0.5 – 1 mark)
 - (2) Adequacy of construction programme (0.5 – 1 mark)

2.3 Technical Resources (max. 4 marks)

- (a) Project Management Team (max. 2 marks)
 - (1) Qualification of project management team (0.5 - 1 mark)
 - (2) Experience of project management team (0.5 - 1 mark)
 - (3) Effectiveness in liaison management (0.5 - 1 mark)
- (b) Design Management Team (max. 2 marks)
 - (1) Qualification of design management team (0.5 - 1 mark)
 - (2) Experience of design management team (0.5 - 1 mark)
 - (3) Effectiveness in liaison management (0.5 - 1 mark)

[Note: Marking shall be based on specified ranges of staff qualification and experience requirements which exceed the Employer's Requirements.]

2.4 Quality Assurance/Construction Quality/Safety and Environmental Protection Plans (max. 2 marks)

- (a) Adequacy of details and project specific procedures in Quality Assurance Plan to ensure design and construction quality (0.5 – 1 mark)
- (b) Adequacy of details and project specific procedures in Safety Plan (0.5 – 1 mark)
- (c) Adequacy of details and project specific procedures in Environmental Protection Plan (0.5 – 1 mark)

2.5 Past Performance (max. 3.5 marks)

- (a) Workmanship (max. 0.4 mark)
- (b) Progress (max. 0.4 mark)
- (c) Site safety (max. 0.4 mark)
- (d) Environmental pollution control (max. 0.4 mark)
- (e) General obligations (max. 0.2 mark)
- (f) Attitude to claims (max. 0.2 mark)
- (g) Record against convictions under the Immigration Ordinance, Employment Ordinance or other site safety, environment related and road opening offences (max. 0.4 mark)
- (h) Safety rating (max. 0.8 mark)
- (i) Training rating¹¹ (max. 0.2 mark)
- (j) Overall performance (max. 0.4 mark)
- (k) Other aspects, if any (max. 0.2 mark)

[Note: Guidelines for marking criteria 2.5 shall follow Appendix C1 of the latest update of TC(W) No. 4/2014A on "Tender Evaluation Methods for Works Contracts", including the guidelines for joint venture tenderers.]

2.6 Offer Exceeding Requirements other than item 2.1(g) (max. 1.5 marks)

Works departments shall carefully set out the specific aspects and details of this particular assessment criterion so that it will not overlap with other assessment criteria in the marking scheme. If works department cannot identify any such aspects, the mark for this criterion should be redistributed to other assessment criteria.

¹¹ Include "training rating" for Group C tenders. Otherwise delete "training rating".

Notes:

1. Each aspect of the sub-criterion in Assessment Criteria 2.1 and 2.2 and each sub-criteria in Assessment Criteria 2.4 and 2.6 will be assessed in accordance with the Marking Yardstick as shown in the following table to derive the mark awarded for the respective sub-criterion or assessment criterion. The cumulative mark for all sub-criteria will derive the sub-total for each assessment criterion. The total mark of all the assessment criteria will derive the total Non-price score.

Marking Yardstick

Grade	% of Max. Mark to be apportioned to the Respective Aspect/Sub-criterion
Very Good	100
Good	75
Satisfactory	50
Less	25
Poor	0

Detailed marking guidelines should be prepared for the internal use by the Tender Assessment Panel members to facilitate objective and consistent award of non-price scores. These guidelines should be given to the tenderers as far as possible to facilitate their preparation of Technical Submission.

3.0 Price Score (maximum = 50)

- 3.1 The Price Score of each tender is equal to the marks allocated to the respective tender in accordance with Para. 1.1 above (i.e., for tender T1, P1 = M1; for tender T2, P2 = M2; for tender T3, P3 = M3; for tender T4, P4 = M4).

4.0 Non-price Score (maximum = 50)

- 4.1 The tender with the total of the marks obtained for Assessment Criteria 2.1 to 2.6 (“total non-price marks”) being highest among all the conforming will be awarded the maximum Non-price Score of 50. For example, if T2 has the highest total non-price marks of 45 among the conforming tenders (i.e. N2 = 45 marks), the Non-price Score of this tender will be 50 (i.e. Q2 = 50). Non-price Scores will then be allocated to other conforming tenders (T1, T3 and T4) proportionally in relation to the total non-price marks as follows:

Total non-price marks: N1, N2, N3, N4 (N2 being the highest total non-price mark among the conforming tenders)

Allocation of Scores: Q2 = Max. Score (i.e. 50)

$$Q1 = \text{Max. Score} \times \frac{N1}{N2}$$

$$Q3 = \text{Max. Score} \times \frac{N3}{N2}$$

$$Q4 = \text{Max. Score} \times \frac{N4}{N2}$$

5.0 Total Combined Score (maximum = 100)

5.1 The Total Combined Score of each tender is equal to the sum of the respective Price Score and Non-price Score (e.g. for tender T1, the Total Score = P1 + Q1).

5.2 For the purpose of calculation using the formulae quoted above, a conforming tender means which

- (a) conforms to the essential requirements of the tender documentation;
- (b) is submitted by a tenderer which complies with the conditions of participation;
- (c) has passed Stage I – Mandatory Screening; and
- (d) In respect of its technical submissions, has satisfied the passing mark requirements.

A conforming tender with abnormally low or high tender price or is considered unsuitable for recommendation for the award of the contract (such as financially, commercially or technically incompetent) remains to be a conforming tender. However, any tender failing to reach any set passing mark will be disregarded in the formula calculations.

Table 3.3

**SPECIMEN TENDER MARKING SCHEME
FOR CIVIL ENGINEERING WORKS**

CONTRACT NO.
DESIGN AND CONSTRUCTION OF
PROGRAMME NO.
TENDER MARKING SCHEME

- A. Assessment of the tenders comprises two stages.
- B. At Stage I, the tenders will be vetted against a set of Mandatory Requirements. At Stage II, the tenders will be assessed based on the marking criteria set out under “Stage II – Marking” below.
- C. The assessment will be carried out by the Tender Assessment Panel.
- D. The Tender Assessment Panel (TAP) comprises the following officers:-
- Chairman -
- Members -

[Note: Paragraph D should be included in the submission to the CTB only and need not be included in the tender documents.]

Stage I - Screening

The Tenderer's submission must satisfy **all** Mandatory Requirements listed below. In the event that the Tenderer's submission does not satisfy **any one of** the Mandatory Requirements, his tender shall be treated as non-conforming and shall not be considered further.

	<u>Mandatory Requirement Satisfied</u>
(1) Submission of Declaration of Compliance. <i>[Note: The declaration is for confirmation of compliance with all the mandatory requirements that could not be verified at Stage I, e.g. compliance with special pricing requirements which could not be verified until the pricing envelope is opened after completion of technical assessment. It should state clearly that a tender will be disqualified should subsequent checks reveal non-compliance of any of the mandatory requirements despite that such declaration has been made.]</i>	Yes/No
(2) Compliance with the mandatory design requirements (e.g. alignment of tunnels, general layout of road and bridge, etc.)	Yes/No
(3) Other project specific mandatory requirements.	Yes/No

[Note: Mandatory Requirements should be factual, self-contained and required “yes or “no” answers. Please refer to the guidelines on setting of mandatory requirements given in items 11 to 19 of “Checklist for drawing up marking scheme for tender assessment” published by the Financial Services and Treasury Bureau at http://gld.host.ccgo.hksarg/gld/marketing_scheme/Tender_Checklist.pdf]

Stage II - Marking

- A. The assessment of the tenders is based on the attached marking criteria where marks, subject to a stated maximum, will be given to each of the criteria listed. The maximum marks are chosen to give a suitable weighting to each criterion.
- B. Tenders that do not satisfy the passing mark specified for Assessment Criterion 2.1 of the Marking Scheme shall be treated as non-conforming and shall not be considered further.
- C. Not used.
- D. The marking criteria:-

	Assessment Criteria	Marks	
		Maximum	Passing
1.0	Price (See item 1 of Annex I)		
1.1	Tender Price	100	--

	Assessment Criteria	Road & Bridge Project		Tunnel Project		Process Treatment Plant Project	
		Marks		Marks		Marks	
		Maximum	Passing	Maximum	Passing	Maximum	Passing
2.0	Non-Price (See item 2 of Annex I)						
2.1	Design						
	(a) Aesthetics and Overall Appearance	0 – 12	--	0 – 4	--	0 – 10	--
	(b) Functional and Planning Requirements	0 – 15	--	0 – 20	--	0 – 15	--
	(c) Structure and Buildability	0 – 20	--	0 – 25	--	0 – 12	--
	(d) E&M Installation	0 – 4	--	0 – 4	--	0 – 8	--
	(e) Operation and Maintenance	0 – 2	--	0 – 2	--	0 – 8	--
	(f) Environmental Friendliness, Health & Safety	0 – 4	--	0 – 4	--	0 – 8	--
	(g) Life Cycle Plan & Energy Efficiency	0 – 4	--	0 – 4	--	0 – 10	--
	(h) Innovation	0 – 4	--	0 – 4	--	0 – 5	--
	(A) Sub-Total	(60)	(30)	(60)	(30)	(60)	(30)
2.2	Technical Submission						
	(a) Method Statement	0 – 16	--	0 – 16	--	0 – 16	--
	(b) Outline Programme	0 – 4	--	0 – 4	--	0 – 4	--
	(c) Quality of Submission	0 – 2	--	0 – 2	--	0 – 2	--
	(d) Risk Management	0 – 3	--	0 – 3	--	0 – 3	--
	(B) Sub-Total	(20)	--	(20)	--	(20)	--
2.3	Technical Resources						
	(a) Project Management Team	0 – 5	--	0 – 5	--	0 – 5	--
	(b) Design Management Team	0 – 5	--	0 – 5	--	0 – 5	--
	(c) Proposed Essential Plant and Equipment	0 – 5	--	0 – 7	--	0 – 3	--
	(C) Sub-Total	(10)	--	(10)	--	(10)	--
2.4	Quality Assurance / Construction Quality / Outline Safety / Outline Environmental Management Plans	0 – 4	--	0 – 4	--	0 – 4	--
2.5	Past Performance	0 – 8	--	0 – 8	--	0 – 8	--
2.6	Offer Exceeding Requirements	0 – 3	--	0 – 3	--	0 – 3	--
	(D) Sub-Total	(10)	--	(10)	--	(10)	--
	TOTAL MAXIMUM MARK for 2.0 (A+B+C+D)	100	--	100	--	100	--

[Works department may consider limiting the number of pages of technical proposal and drawing submissions in the form as shown below:

Tenderer shall submit a technical proposal in no more than [X1] pages A4 and [X2] pages A3 drawings with margin not less than 25mm and character font size not less than 12. [X3] mark shall be deducted from the overall mark for each extra page. [X4] mark should be deducted if the submission does not conform to the font size,

margins, paper size and other format requirements. The maximum deduction of marks regarding non-conformance on number of pages and formats shall be [X6]¹²

[NOTE: The maximum marks for Price and Non-price criteria is set at 100 respectively. The above Non-price criteria, maximum and passing marks are used for design and build civil engineering contracts. They are indicative only and shall be determined on a project by project basis. Price/Non-price weighting should be determined based on the primary objective of the D&B project. Guidance is given in Section 3.6 of these Administrative Procedures. Please refer to the "Checklist for Drawing up Marking Scheme for Tender Assessment" published by the Financial Services and Treasury Bureau at http://gld.host.ccgo.hksarg/gld/marking_scheme/Tender_Checklist.pdf and guideline for adopting a marking scheme for Tender Evaluation SPR 350(f) and 445(d) of the SPR for additional guidance.]

¹² Works departments to insert figures in [X1, X2, X3, X4, X5, X6] as appropriate according to nature and complexity of tenders.

EXPLANATORY NOTES FOR TENDER MARKING SCHEME

1.0 Price Assessment

1.1 Tender Price (100 marks) :

1.2 For example, in a project where the price to non-price ratio is set at 50/50, the lowest tender (T1) among all the conforming tenders will be awarded the maximum mark, i.e., M1 = 100 . Marks will then be allocated to other conforming tenders (T2, T3 and T4) proportionally in relation to the tender prices as follows:

Tender prices: TP1, TP2, TP3, TP4 (TP1 being the lowest tender price among the conforming tenders)

Note: 1. Tender prices will be discounted to “net present value” for comparison purposes.

Allocation of Marks:	M1 = Max. Mark (i.e. 100)
	M2 = Max. Mark x $\frac{TP1}{TP2}$
	M3 = Max. Mark x $\frac{TP1}{TP3}$
	M4 = Max. Mark x $\frac{TP1}{TP4}$

1.3 For the purpose of calculation using the above formulas, please refer to item 5.2 below for the definition of conforming tender.

2.0 Non-price Assessment

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
2.0 Non-price (Permitted Maximum: 100 marks)							
2.1 Design (Permitted Maximum: 60 marks)							
a) Aesthetics and Overall Appearance	- Visual impact	0 -12	Permitted marks (0 – 6) <ul style="list-style-type: none"> - Material & colour selection - Quality of finish of enclosures, viaduct superstructure, columns, and associated structural elements - Form of Structures / Facilities - ACABAS considerations [Note: Since ACABAS membership comprises of both government and outside representatives, the provisions of the SPR on avoidance of conflict of interest and confidentiality of tender information (including SRP 186 and 187) should be considered if members of ACABAS are invited to take up the advisory role for the purpose of tender assessment.] 	0 - 4	Permitted marks (0 – 3) <ul style="list-style-type: none"> - Internal finishes for traffic related tunnels e.g. VE panel, cladding, painting - Lining finish for drainage tunnel 	0 - 10	Permitted marks (0 – 6) <ul style="list-style-type: none"> - Material & colour - Quality of finish of superstructure, columns, and associated structural elements - Integration of architectural theme
	- Project identity and image		Permitted marks (0 – 3) <ul style="list-style-type: none"> - Type of bridge e.g. cantilever suspended span, steel truss, etc. - Form and shape - Steel or concrete 		- Normally not required		- Normally not required
	- Integrate with and contribute to the surrounding community		Permitted marks (0 – 3) <ul style="list-style-type: none"> - Overall design to harmonize with the adjacent environment - Response to the urban / natural context of the project 		- Normally not required		Permitted marks (0 –3) <ul style="list-style-type: none"> - Social harmony of the design of the building facilities

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
	- Adequacy of landscaped and open space		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 3) - Landscape works for treatment plant
b) Functional and Planning Requirements	- Design parameters and approach	0- 15	Permitted marks (0 – 7) - Loadings requirements - Traffic flow - Dynamic / dead loading requirements - Wind effect - TCSS - Vibration control	0 - 20	Permitted marks (0 – 15) - Dimensional parameters - Traffic flow - Hydraulic - Control of water inflow - TCSS for traffic tunnel	0 - 15	Permitted marks (0 – 10) - Building footprint analysis - Process flow diagram and design flowchart - Process design (i) Project specific design e.g. Disinfection process design (ii) Sewage treatment (iii) Incineration (iv) Water treatment
	- Space requirements including alignments and levels		Permitted marks (0 – 7) - Site constraints - Span of bridge - Dimension, alignments, levels		Permitted marks (0 – 5)		Permitted marks (0 – 8) - Environmental control plant & monitoring e.g. air, noise, waste - Arrangement of equipment, duct run, pipe run, etc. - Energy consumption - Consumable consumptions e.g. chemical, water, lubrication, etc
	- Efficiency and completeness of design layout		Permitted marks (0 – 4) - Traffic analysis		Permitted marks (0 – 5) - Appreciation of constraints - Durability and maintenance		
c) Structure and Buildability	- Effectiveness of structural layout	0 - 20	Permitted marks (0 – 10) - Appreciation of constraints, proposal for structural elements, good articulation of the structures	0 - 25	Permitted marks (0 – 15) - Appreciation of constraints, proposal for structural elements, good articulation of the structures	0 - 12	Permitted marks (0 – 7) - Appreciation of constraints, proposal for structural elements, good articulation of the structures - Structural support for major

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
					<ul style="list-style-type: none"> - Temporary works design - Ventilation, dewatering design - Fire escape design - Lighting design 		<ul style="list-style-type: none"> equipment - Vibration from major equipment
	<ul style="list-style-type: none"> - Adequacy of solution to meet structural design requirements 		Permitted marks (0 – 10) <ul style="list-style-type: none"> - Durability 		Permitted marks (0 – 10)		Permitted marks (0 – 4)
	<ul style="list-style-type: none"> - Ease of construction 		Permitted marks (0 – 5) <ul style="list-style-type: none"> - Foundation type - Structural form - Erection method and construction sequence 		Permitted marks (0 – 5) <ul style="list-style-type: none"> - Design layout to suit site constraint 		Permitted marks (0 – 2)
d) M&E Installation	<ul style="list-style-type: none"> - Efficiency of design and planning of M&E systems 	0 - 4	Permitted marks (0 – 1) <ul style="list-style-type: none"> - Steel layout - CCTV camera - Drainage - Ornamental lighting 	0 - 4	Permitted marks (0 – 1) <ul style="list-style-type: none"> - Ventilation and lighting 	0 - 8	Permitted marks (0 – 2) <ul style="list-style-type: none"> - Construction sequences
	<ul style="list-style-type: none"> - Effectiveness of solutions to meet M&E design requirements 		Permitted marks (0 – 1) <ul style="list-style-type: none"> - No. of lighting per m2 - Noise enclosure - No. of CCTV per m 		Permitted marks (0 – 1) <ul style="list-style-type: none"> - Fire prevention requirements 		Permitted marks (0 – 2) <ul style="list-style-type: none"> - Reliability - Duty / standby provision
	<ul style="list-style-type: none"> - Phasing of M&E works completion including testing and commissioning proposals 		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 2)
	<ul style="list-style-type: none"> - Flexibility for future replacement, alterations and expansion 		Permitted marks (0 – 1)		Permitted marks (0 – 1)		Permitted marks (0 – 3) <ul style="list-style-type: none"> - Testing and commission, program, resources arrangement

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
e) Operation and Maintenance	- Adequacy of operation and maintenance facilities and provisions	0 - 2	Permitted marks (0 – 2) - Identifying the potential risk and danger at each construction stage, corresponding precautions and remedial / contingency measures	0 - 2	Permitted marks (0 – 2) - Durability	0 - 8	Permitted marks (0 – 3) - Outline interim operation plan
	- Ease of operation and maintenance		Permitted marks (0 – 2) - Statement of maintainability		Permitted marks (0 – 2) - Ease of maintenance		Permitted marks (0 – 6) - Maintenance access - Lifting arrangement - Major preventative maintenance schedule - Occupational safety - Compliance (Environmental Performance) - Compliance (Operational Requirements)
f) Environmental Friendliness, Health & Safety	- Sustainability of design with green measures incorporated.	0 - 4	Permitted marks (0 – 2)	0 - 4	Permitted marks (0 – 2)	0 - 8	Permitted marks (0 – 3)
	- Use of environmentally friendly materials, such as reusable and recyclable products, and processes.		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 3)
	- Adequacy of health and safety considerations.		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 3)
g) Life Cycle Plan & Energy Efficiency	- Adequacy of Life Cycle Plan in service-life planning of key materials, equipment and systems used for civil engineering and M&E works, including service life predictions, maintenance and repair	0 - 4	Permitted marks (0 – 2)	0 - 4	Permitted marks (0 – 2)	0 - 10	Permitted marks (0 – 4)

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
	requirements, replacement schedules and mid-life refurbishment plans, if appropriate						
	- Cost effectiveness of design in terms of durability, maintenance and repair needs, and frequency and availability of replacement of the proposed key materials, equipment and systems throughout the service life, including <i>[where possible]</i> a comparison of economic benefit of each proposed key material, equipment and system with that specified in the Employer's Requirements or other choices which are commonly used in conventional civil engineering projects with supporting documentation.		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 4)
	- Estimation of energy efficiency of design achieved through the incorporation of energy-saving measures, energy-efficient features and renewable-energy technologies, including <i>[where possible]</i> a projection of the reduction in energy consumption by each of such provisions with detailed calculation provided.		Permitted marks (0 – 2)		Permitted marks (0 – 2)		Permitted marks (0 – 4)
h) Innovation	- Adoption of innovative design solutions and construction methods to enhance quality, save construction time or cost, or minimize risks	0 - 4	Permitted marks (0 – 1.5)	0 - 4	Permitted marks (0 – 1.5)	0 - 5	Permitted marks (0 – 2)

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
	and impacts.						
	- Adoption of innovative designs of M&E systems and other operation and maintenance facilities to enhance quality, save construction time or cost, or minimize risks and impacts.		Permitted marks (0 – 1.5)		Permitted marks (0 – 1.5)		Permitted marks (0 – 2)
	- Incorporation of innovative green measures.		Permitted marks (0 – 1.5)		Permitted marks (0 – 1.5)		Permitted marks (0 – 2)
2.2 Technical Submission (Permitted Maximum: 20 marks)							
	a) Method Statement	(Permitted Maximum: 0 -16 marks)					
		<ul style="list-style-type: none"> - Understanding of site constraints. Permitted marks (0 – 5) - Adequacy of detailed descriptions of design and construction sequences and including installation of M&E system. Permitted marks (0 – 5) - Adequacy of details of proposals for temporary works and monitoring construction impacts. Permitted marks (0 – 5) - Adequacy of safety, health and environmental protection considerations during construction. Permitted marks (0 – 5) 					
	b) Programme	(Permitted Maximum: 0 - 4 marks)					
		<ul style="list-style-type: none"> - Adequacy of design programme. Permitted marks (0 – 3) - Adequacy of construction programme. Permitted marks (0 – 3) 					
	c) Quality of Submission	(Permitted Maximum: 0 - 2 marks)					
		<ul style="list-style-type: none"> - Adequacy of submitted documentation in compliance with the Employer's Requirements. Permitted marks (0 – 2) - Clarity, structure, reader-friendliness and quality of presentations. Permitted marks (0 – 2) 					
	d) Risk Management	(Permitted Maximum: 0 - 3 marks)					
		<ul style="list-style-type: none"> - Risk identification according to the proposed design and method of construction. Permitted marks (0 – 1) - Risk assessment. Permitted marks (0 – 1) 					
		<ul style="list-style-type: none"> - Risk response strategies. Permitted marks (0 – 1) 					

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
	- Risk monitoring and control strategies.		Permitted marks (0 – 1)				
2.3 Technical Resources (Permitted Maximum: 10 marks)							
a) Project Management Team	(Permitted Maximum: 0 - 5 marks) - Qualification of project management team. Permitted marks (0 – 3) - Experience of project management team. Permitted marks (0 – 3) - Effectiveness in liaison management. Permitted marks (0 – 3)						
b) Design Management Team	(Permitted Maximum: 0 - 5 marks) - Qualification of design management team. Permitted marks (0 – 3) - Experience of design management team. Permitted marks (0 – 3) - Effectiveness in liaison management. Permitted marks (0 – 3)						
c) Proposed Essential Plant and Equipment	- Number of proposed plant and equipment and their durations for use on site.	0 - 5	Permitted marks (0 –3)	0 - 7	Permitted marks (0 –4)	0 - 3	Permitted marks (0 – 2)
	- Environmental friendly plant and equipment.		Permitted marks (0 –3)		Permitted marks (0 – 4)		Permitted marks (0 – 2)
2.4 Quality Assurance/Construction Quality/Safety and Environmental Protection Plans (Permitted Maximum: 4 marks)							
a) Quality Assurance / Construction Quality/Safety and Environmental Protection Plans	- Adequacy of details and project specific procedures in Quality Assurance Plan to ensure design and construction quality. Permitted marks (0 – 3) - Adequacy of details and project specific procedures in Safety Plan. Permitted marks (0 – 3) - Adequacy of details and project specific procedures in Environmental Protection Plan. Permitted marks (0 – 3)						
2.5 Past Performance (Permitted Maximum: 8 marks)							
a) Past Performance	- Workmanship. Permitted marks (0 - 0.8) - Progress. Permitted marks (0 - 0.8) - Site safety and safety rating. Permitted marks (0 – 2.4) - Environmental control. Permitted marks (0 - 0.8)						

Assessment Criteria / Sub-Criteria	Aspects	Project Type					
		Permitted Maximum Marks	Road & Bridge Project	Permitted Maximum Marks	Tunnel Project	Permitted Maximum Marks	Process Treatment Plant
	<ul style="list-style-type: none"> - General obligations. Permitted marks (0 - 0.4) - Training rating². Permitted marks (0 - 0.4) - Attitude to claims. Permitted marks (0 - 0.4) - Record against convictions under the Immigration Ordinance, Employment Ordinance or other site safety, environment related and road opening offences. Permitted marks (0 - 0.8) - Other aspects, if any. Permitted marks (0 - 0.4) - Overall performance. Permitted marks (0 - 0.8) 						
2.6	Offer Exceeding Requirements (Permitted Maximum: 3 marks)						
	<ul style="list-style-type: none"> a) Offer Exceeding Requirements 	<ul style="list-style-type: none"> - Works departments shall carefully set out the specific aspects and details of this particular assessment criterion so that it will not overlap with other assessment criteria in the marking scheme. If works department cannot identify any such aspects, the mark for this criterion should be redistributed to other assessment criteria. - Permitted marks (0 – 3) 					
	Total	100					

² Include “training rating” for Group C tenders the tender invitation of which are issued on or after 1 October 2018. Otherwise delete “training rating”.

Notes:

1. Each aspect of the sub-criterion in Assessment Criteria 2.1 to 2.4 and 2.6 will be assessed in accordance with the Marking Yardstick as shown in the following table to derive the mark awarded for the respective sub-criterion or assessment criterion. The cumulative mark for all sub-criteria will derive the sub-total for each assessment criterion. The total mark of all the assessment criteria will derive the total Non-price score.

Marking Yardstick (Example)

Grade	% of Max. Mark to be apportioned to the Respective Aspect/Sub-criterion
Very Good	100
Good	75
Satisfactory	50
Less Satisfactory	25
Poor	0

(Note: Detailed marking guidelines should be prepared for the internal use by the Tender Assessment Panel members to facilitate objective and consistent award of Non-price scores. These guidelines should be given to the tenderers as far as possible to facilitate their preparation of Technical Submission.)

2. For the purpose of assessing past performance in attributes under Assessment Criterion 2.5, each participant/shareholder of a joint venture tenderer shall be separately assessed. The mark of the joint venture tenderer shall be the weighted average of the marks attained by each participant or shareholder for the respective attributes in this joint venture tenderer based on their respective percentages of financial participation and subject to the following rules.

For assessing past performance of each participant/shareholder of a past/existing joint venture contract, the past performance records of the whole joint venture contract shall be attributed to the participant/shareholder irrespective of the value of his share of works in the past/existing joint venture contract. If none of the participants/shareholders of the joint venture tenderer has any performance records for those contracts referred to in the attributes under Assessment Criterion 2.5 for the period under assessment, the marking shall be based on the average mark obtained by the other tenderers in the corresponding attribute under Assessment Criterion 2.5 who have satisfied (a), (b) and (c) under item 5.2 below. Where there are two participants/shareholders in the joint venture tenderer and there are no performance records aforesaid for a participant/shareholder of the joint venture tenderer for the period under assessment, the total mark for this joint venture shall then be the mark obtained by the other participant/shareholder of this joint venture with performance records aforesaid for the corresponding attributes. If there are more than one other participant/shareholder in this joint venture, the total mark for this joint venture shall be the weighted average of the marks obtained by these other participants/shareholders with performance records aforesaid only in accordance with their percentages of financial participation for the corresponding attributes. For example, if tenderer A is composed of 3 participants X, Y and Z with 30%, 30% and 40% of financial participation respectively. If participant X has obtained 1 mark, participant Y has obtained 0.5 mark and participant Z has no performance record for the attribute in question, the total mark for tenderer A shall be $(1 \times 0.3 + 0.5 \times 0.3) / (0.3 + 0.3) = 0.75$ marks.

3.0 Price Score (maximum = 50, where a price to Non-price ratio of 50/50 is adopted)

- 3.1 The Price Score of each tender is equal to 50% of the marks allocated to the respective tender in accordance with Para. 1.1 above (i.e., for tender T1, $P1 = 50\% \times$

M1; for tender T2, P2 = 50% x M2; for tender T3, P3 = 50% x M3; for tender T4, P4 = 50% x M4).

4.0 Non-price Score (maximum = 50, where a price to Non-price ratio of 50/50 is adopted)

4.1 For example, in a standard project with weighting of Price to non-price ratio of 50/50, the tender with the total of the marks obtained for Assessment Criteria 2.1 to 2.6 (“total Non-price marks”) being highest among all the conforming tenders will be awarded the maximum non-price Score of 50 . If T2 has the highest total Non-price marks of 90 (i.e. N2 = 90 marks), the non-price Score of this tender will be 50 (i.e. Q2 = 50). Non-price Scores (Q1, Q3 and Q4) will then be allocated to other conforming tenders (T1, T3 and T4) proportionally in relation to the total non-price marks as follows:

Total Non-price marks: N1, N2, N3, N4 (N2 being the highest total Non-price mark)

Allocation of Scores: Q2 = Max. Score (i.e. 50)

$$Q1 = \text{Max. Score} \times \frac{N1}{N2}$$

$$Q3 = \text{Max. Score} \times \frac{N3}{N2}$$

$$Q4 = \text{Max. Score} \times \frac{N4}{N2}$$

5.0 Total Combined Score (maximum = 100)

5.1 The Total Combined Score of each tender is equal to the sum of the respective Price Score and Non-price Score (e.g. for tender T1, the Total Score = P1 + Q1).

5.2 For the purpose of calculation using the formulas quoted above, a conforming tender means which

- (a) conforms to the essential requirements of the tender documentation;
- (b) is submitted by a tenderer which complies with the conditions of participation;
- (c) has passed Stage I – Mandatory Screening; and
- (d) In respect of its technical submissions, has satisfied the passing mark requirements.

A conforming tender with abnormally low or high tender price or is considered unsuitable for recommendation for the award of the contract (such as financially, commercially or technically incompetent) remains to be a conforming tender. However, any tender failing to reach any set passing mark will be disregarded in the formula calculations.

SECTION 4 POST CONTRACT AWARD PROCEDURES

4.1. Introduction

4.1.1 The post-award administrative activities are shown at **Figure 4.1**. On the award of Contract, Contractor will at first be involved in mobilising his organisation, developing his design and setting up site facilities. Large or special projects may require ordering of special plant and equipment. Works department will be required formally to allocate land to the Contractor and to draw up project control procedures in line with the Employer's Requirements as stipulated in the contract document, and include liaison and co-ordination with interfacing works and Government Departments. Statutory procedures may require finalising.

4.2 Supervising Officer

4.2.1 The identity of the Supervising Officer shall be advised by letter in accordance with the D&B GCC. The Supervising Officer replaces the Engineer, the Surveyor, and the Architect in other conventional standard forms of contract. However, his duties are different. Guidance Notes on the Supervising Officer's duties are at **Appendix E**.

4.3 Design Checking and Approvals

4.3.1 The extent of and the requirements for design checking shall be stipulated in the Employer's Requirements. Nevertheless, it will probably be necessary for the Supervising Officer to agree the final detail of the process of obtaining design consent from the Supervising Officer with the Contractor and Design Checker (if appointed). Guidance Notes on specifying the Design Checking Procedures are at **Appendix D**.

4.3.2 Durations for obtaining design consent by the Supervising Officer need not be applied uniformly and may be varied depending on the importance and/or extent of design checking required. Calendar days shall be stated having considered the number of working days when setting the timescales for obtaining design approval.

- 4.3.3 To the extent set out in the Employer's Requirements, design checking shall include checking of the Operation and Maintenance Manuals, and fulfilment to the operation and maintenance requirements.
- 4.3.4 In the context of D&B in determining whether the Supervising Officer should grant design approval, it should be kept in mind that the Contractor's Proposals form part of the Contract. Therefore, where specific proposals i.e. firm proposals, are set out in the Contractor's Proposals these firm proposals are to be provided. On the other hand, where only outline proposals are set out in the Contractor's Proposals, changes may be considered as design development, provided the Employer's Requirements are met under the Contract.

4.4 Construction and Site Safety Supervision

- 4.4.1 Under a D&B contract, the Contractor is generally required to comply with Quality Assurance procedures to an ISO 9000 standard.
- 4.4.2 The Contractor is fully responsible for providing his own construction checking and will also carry out and supervise compliance tests. The Supervising Officer's Representative's construction check should be commensurate with the confidence in the Contractor to perform inspections and tests adequately.
- 4.4.3 The Contractor shall be required to submit inspection, test and approval plans (ITAP) for each part of the Works, prior to the commencement of relevant parts of the Works on Site. The purpose of ITAP is to identify hold points and witness points where opportunity is given to the Supervising Officer's Representative to inspect, examine or test the Contractor's work. Hold points are stages in the construction process where work cannot proceed further without notification and successful inspection by the Supervising Officer's Representative. Witness points are also notified to the Supervising Officer's Representative, but work may proceed if inspection does not take place in the notified time frame.
- 4.4.4 A specimen guide for Supervising Officer's Representative hold points or witness points is given at **Table 4.1**. The number of hold points may be exhaustive at the beginning of the Contract and decrease in time at a rate depending on the measured efficiency of the Contractor's quality system. Generally, the extent of the Supervising Officer's Representative's construction check is expected to be significantly smaller than that for conventional Architect's/Engineer's design contracts but it should still be sufficient to ensure compliance with specifications, detect non-conformance works and deter other malpractices.

- 4.4.5 The responsibility of the Contractor to comply with the requirements of the prevailing Construction Site Safety Manual published by DEVB is mandatory for D&B contracts with estimated contract sums of \$20M and above. (See Special Conditions of Tender **Appendix G Annex G4** and Special Conditions of Contract **Appendix H**). The responsibility of the Supervising Officer in ensuring/promoting construction safety and health is no less than that for conventional Architect's/Engineer's design contracts.

4.5 Variations

- 4.5.1 These matters shall be dealt with in the manner stated in the D&B GCC. The general philosophy for a D&B contract is that Variations should not be required. However, in reality there are bound to be a limited number. Accordingly, if the need for Variations is justified and the Variations would require time adjustments, they should be carefully examined so as to limit impact on programme to a minimum.
- 4.5.2 D&B contract requires a wholly different approach to Variations than the traditional reactive role of the Architect/Engineer whereby variations can be issued to initiate changes. A more proactive role is necessary to distinguish changes from design development. If Variations are necessary, the Supervising Officer shall determine, among other things, if there are any extras or savings in time and cost in valuing Variations.
- 4.5.3 Variation is the consequence of work or circumstance that is not stated in or contemplated by the Employer's Requirements, e.g. changed in the Employer's Requirements.
- 4.5.4 Where the Employer proposes a Variation under the provision of the D&B GCC Clause 60, the Contractor is provided with an opportunity to advise on the probable effect of the proposed Variation. In such circumstances negotiation on these matters is normally expected before a Variation is finally ordered. The Contractor is entitled to be paid the Cost of preparing a quotation if the Contractor is requested to submit a lump sum quotation for a proposed Variation and the Variation is subsequently not ordered.
- 4.5.5 The Contractor may propose a Variation and in so doing shall provide details of time and cost saving. There is no contractual obligation for the Employer to accept Contractor proposed Variations although the Employer/Supervising Officer shall carefully consider any such proposals. Approval from relevant authority should be obtained before acceptance of the proposed Variation. Reference shall be made to the prevailing SPR. The contract provides for time limits to be set in considering a Variation proposed by the Contractor. In the event that the Contractor proposes a Variation to the

Employer's Requirements during the course of the Works, it shall be considered in terms of the criteria contained in paragraphs 4.5.7 and 4.5.8 hereafter.

- 4.5.6 If any change is considered to be outside the terms of the original contract but within the approved scope of the project, PS(Tsy)'s or the delegated authority's approval will be required. Supplementary Agreement may need to be entered into if the decision is taken to proceed. For procurements covered by WTO GPA, some contract variations, especially those which are not provided for in the original contract may amount to a new procurement, in particular when such contract variations are materially different in character from the original contract. Where contract variations amount to new procurements that are covered by WTO GPA, they should be treated as separate contracts for the purposes of the WTO GPA and procuring entities should ensure that all relevant WTO GPA requirements are complied with. In particular, open or selective tendering procedures shall be used unless the grounds for limited tendering or exceptions under the GPA apply to that particular contract variation.
- 4.5.7 A Contractor's proposed Variation shall be assessed against the Employer's Requirements and the Contractor's Proposals. The following aspects shall be considered :-
- (a) the price to complete the Works and savings to the Employer;
 - (b) feasibility of the proposed Variation;
 - (c) engineering merit of the proposed Variation vis-a-vis the Contractor's Proposals;
 - (d) assessment of future maintenance costs vis-a-vis the Contractor's Proposals;
 - (e) assessment of the appearance vis-a-vis the Contractor's Proposals (in the case of highway structures, the appearance of the structure is required to be considered by the Advisory Committee on the Appearance of Bridges and Associated Structures - ACABAS);
 - (f) whether the Employer might incur additional expense in the event that the Supervising Officer needs to vary adjacent works during the Contract;
 - (g) assessment of the risk of the Contractor's failure to perform;
 - (h) estimation of additional cost or savings of supervising the Works; and

- (i) adherence to the design criteria and particular requirements and planning constraints.

4.5.8 On conclusion of the assessment of the Contractor's proposed Variation, the Supervising Officer may recommend acceptance of the Variation provided that the Variation :-

- (a) is cost effective on a whole-life basis;
- (b) is aesthetically and technically acceptable;
- (c) offers acceptable standards for future maintenance, and
- (d) is designed in accordance with appropriate Codes of Practice.

4.5.9 For D&B contracts covered by the WTO GPA, works departments shall procure the additional works in accordance with the prevailing DEVB TC(W) – Tender Procedures for Procurement governed by the Agreement on Government Procurement of the World Trade Organization, the prevailing SPR and the provisions set out in WTO GPA.

4.6 Dispute Resolution

4.6.1 The procedure for settlement of disputes as set out in the D&B GCC is :-

- (a) the Supervising Officer's ruling, and if necessary, followed by;
- (b) optional mediation; and/or
- (c) arbitration.

4.6.2 The Guidelines for Claims Management and conduct of Negotiations in Works Contracts under the Public Works Programme issued by Works Bureau in December 1997 shall be followed.

4.6.3 Apart from the above, Dispute Resolution Advisor (DRA) System should be adopted in all capital engineering works contracts subject to the following selection criteria:

- (a) Civil and E&M engineering capital works contracts with estimated contract sums exceeding \$500M, except for those contracts which are of routine nature and primarily straightforward. Approval for exemption could be given by an officer of not lower than D2 level of works department; and

- (b) Works departments should also consider adopting the system in Civil and E&M engineering capital works contracts with estimated contracts sum not exceeding \$500M, taking into account the complexity of the works. In this regard, the decisions and justifications as to whether or not the System is adopted in these contracts should be properly documented and endorsed by officers of lower than D2 level of works departments.

4.6.4 For the adoption of DRA System, works departments shall observe the following:

- (a) For D&B under the jurisdiction of works departments other than Architectural Services Department (ArchSD), dispute resolution advisor system (voluntary adjudication system embodied) shall be adopted as appropriate in accordance with the Guidelines for the Use of the Dispute Resolution Advisor System issued by DEVB in March 2011.
- (b) For D&B under the jurisdiction of ArchSD, dispute resolution system shall be adopted as appropriate in accordance with the Dispute Resolution Advisor System handbook issued by ArchSD.

4.7 Project Control Group Meetings

4.7.1 Project Control Group meetings shall take place at least quarterly or at such intervening periods agreed by the parties concerned, as the need dictates.

4.7.2 The purpose of such meetings is to review progress on the design, design checking and construction with particular emphasis on the project programme for both time and expenditure, to discuss and attempt to resolve problems; before they become formal disputes and to anticipate future problems, and also to discuss any other matters relevant to the contract including interface with other projects.

4.7.3 Periodic site level meetings are not a substitute for Project Control Group meetings.

4.8 Membership of the Project Control Group

4.8.1 Membership of the Project Control Group shall comprise the following persons :-

- The Supervising Officer or the Supervising Officer's Representative.
- The Employer's representative.
- The Contractor's head office representative.
- The Contractor's agent (as D&B GCC clause 17(2)).

The following may be in attendance, as required :-

- The Design Checker or, if a company, its representative.
- The person delegated for construction checking.
- The Contractor's designer, or, if a company, its representative.

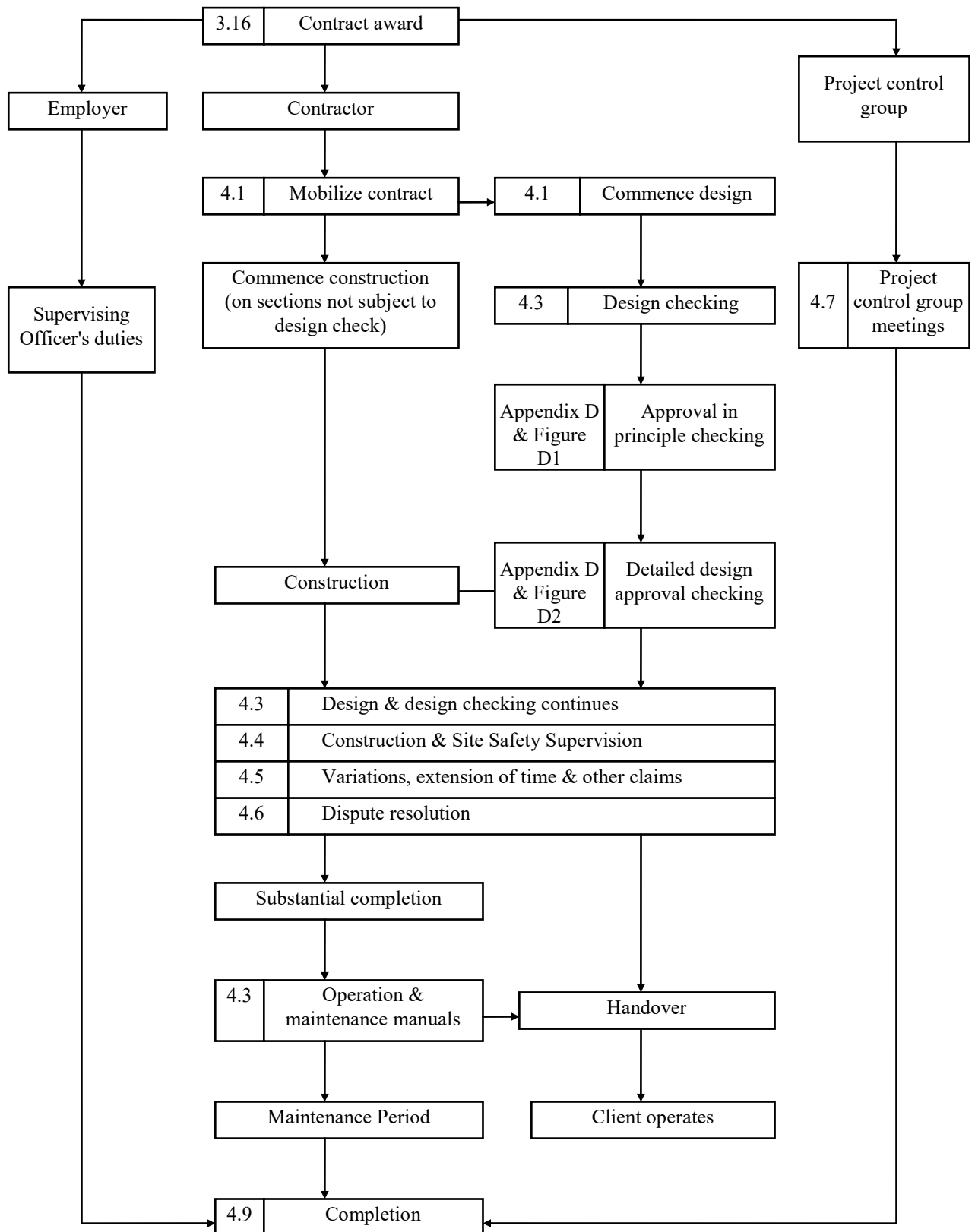
Others may include :-

- Representative(s) of sub-contractor(s).
- Representative of the client department.
- Representative(s) of interfacing projects.

4.9 Completion of Works

4.9.1 All procedures related to completion of works as provided in the Project Administration Handbook for Civil Engineering Works or Project Administration Handbook for Architectural Services Department shall be followed.

FIGURE 4.1 DESIGN & BUILD CONTRACTS - POST-CONTRACT AWARD PROCEDURES



Note : numbers relate to paragraph numbers.

TABLE 4.1

SPECIMEN GUIDE FOR SUPERVISING OFFICER'S CONSTRUCTION CHECKING IN DESIGN AND BUILD CONTRACTS

Item	Description	(A) Traditional Contract Frequency of Check	(B) Design & Build Frequency of Check		Remarks
			Supervising Officer	Contractor	
1.0	<u>Piling</u>				
1.1	Pile position	Every pile)		
1.2	Driving pile till set	Every pile)		
1.3	Cut-off pile to required level	On every pile cap group	) about 25%	Same as in Col A	
1.4	Eccentricity of pile	On every pile)		
2.0	<u>Sub-Structure</u>				
2.1	Excavation for pile caps	All	30%		
2.2	Building profile checking	Whole block)		
2.3	Pile cap formwork & re-bar	All)		
2.4	Supervision of concreting	All)		
2.5	Check for curing	All	) Check randomly	Same as in Col A	
2.6	Checking adequate time before dismantle formwork	All	) daily to 25% of works		
2.7	Check honeycomb patching	All)		
2.8	Check for debris and water before back-filling	All)		
2.9	Ground beam formwork and re-bar checking	All)		
2.10	Supervise concreting of ground beam	All)		
2.11	Check for services opening	All	2 hourly	hourly	
2.12	Check for debris and water before back filling	About every one hour)		
2.13	Check compaction procedure	All	) Daily to 25%	Same as in Col A	
2.14	Check soil treatment works	All)		
3.0	<u>Superstructure</u>				
3.1	Ground slab re-bar	All			
3.2	Casting of ground slab	<u>About</u> every 1 hr	Daily random check	hourly	
3.3	1st storey column re-bar and kicker	All)		
3.4	1st storey column and second storey beam formwork and re-bar, etc	All	)	Same as Col A	
3.5	Typical floor beams and kicker	All)		
3.6	Concreting to typ. element	All)		
3.7	Check of services openings	About every one hour	) 25%	hourly	
3.8	Check for honeycomb/repair	All)		

Item	Description	(A) Traditional Contract Frequency of Check	(B) Design & Build Frequency of Check		Remarks
			Supervising Officer	Contractor	
4.0	<u>Architectural Workmanship</u>				
4.1	Brick/Block laying	Everyday morning and afternoon	Once per day		
4.2	Plastering-spatterdash	Check before) proceed)			
4.3	Finished project	Check hollowness in every unit and corridor)	25%	Same as in Col A	
4.4	Internal partition	Every unit)			
4.5	Painting - internal	Every coat)			
4.6	Painting - external	Every coat)			
4.7	Wall tiling	Check application and soaking of tiles)			
4.8	Floor tiling	All)			
4.9	Liquid membrane	Every unit/coat)	25%	Same as in Col A	
4.10	Cement and screed	Every unit)			
4.11	Doors	Every unit)			
4.12	Door frames	Every unit)			
4.13	Alum inner frames	Every unit)			
4.14	Alum outer frames	Every unit)			
4.15	Chipping rendering	Every floor)			
5.0	<u>Sanitary - underground</u>				
5.1	Trench base compaction Manhole construction				
5.2	House sewer line checking	All)			
5.3	Sump construction	All)			
5.4	Concrete haunching	All)			
5.5	Water-test to line	All)			
5.6	Fixing of floor trap	All)			
5.7	Check formwork/rebar	All)			
5.8	Check honeycomb	All units)			
5.9	Alignment check of pipe	All)	25%	Same as in Col A	
5.10	Floor trap concrete of pipe area	All)			
5.11	Fixing of pedestal, basin and cistern	All)			
5.12	Concrete of pipe area	All)			
5.13	Water pipe installation	All)			
5.14	Services pipe in duct)			
5.15	Roof distribution mains	All)			
5.16	Water tank piping and access	All)			
6.0	<u>Building Services and Electrical & Mechanical Installations</u>				
6.1	Air-conditioning & Refrigeration Installation)			
6.2	Broadcast Reception Installation)			
6.3	Burglar Alarm & Security Installation)			
6.4	Commercial Kitchen Equipment	) Min twice per month	25%	Same as in Col A	Check by Bldg Serv,
6.5	Electrical Installation)			
6.6	Electronic Installation)			
6.7	Fire Service Installation)			
6.8	Liquefied Petroleum Gas Installation	)			E&M Inspector
6.9	Lifts and Escalators)			
6.10	Low Voltage Cubicle Switchboards)			
6.11	Other BS / E&M Installations)			
6.12	Test Performance for Installations	All	Functional test – 10% Performance test – 80% Safety test – 100%		

Item	Description	(A) Traditional Contract Frequency of Check	(B) Design & Build Frequency of Check		Remarks
			Supervising Officer	Contractor	
7.0 7.1 7.2 7.3	<u>Roofing</u> Cleaning of roof Apply bitumen membrane Laying of slab & blocks	Whole roof Every layer Once per year	) ) 25%)	Same as in Col A	
8.0 8.1 8.2 8.3 8.4 8.5 8.6	<u>Test Performance to various trades</u> Water tightness test to external brick wall, panel Water tightness test to wc/bath & kitchen floor trap Suction & high level water tank Roof ponding and water tightness test Water pipe leakage test Precast refuse chutes and staircases water-tightness test	As per specification All All All All	Same	Same as in Col A	
9.0 9.1	<u>Material tests</u> Material taken for testing	Test done according to schedule of material test	Same	Same as in Col A	
10.0 10.1	<u>Checking of Materials</u> Material delivery to site	Check randomly & during sample unit construction			
11.0	<u>Safety check</u> Scaffolding & machinery Helmet, boots & belt	Bi-weekly Daily	Weekly Daily	Random Check	
12.0	<u>Housekeeping</u> Common Housekeeping on site	Weekly	Weekly to twice daily	Random Check	
13.0	Not used.				
14.0 14.1	<u>Landscaping</u> Check materials/workmanship	All	25%	Same as in Col A	
15.0 15.1 15.2 15.3 15.4 15.5 15.6 15.7 15.8 15.9 15.10 15.11 15.12	<u>Construction Sewer Connection</u> Piling to line Piping laying Concrete haunching Water test to line Manhole construction Backfilling to trench <u>Drain :</u> Piling to trench Steel reinforcement Formwork erection Concrete to drain Fixing to galv grating Backfilling to trench	) ) ) ) ) ) ) ) All ) ) ) ) ) )	) ) ) ) ) ) ) 25% ) ) ) ) ) )	) ) ) ) ) ) ) ) Same as) in Col A)))))	

Item	Description	(A) Traditional Contract Frequency of Check	(B) Design & Build Frequency of Check		Remarks
			Supervising Officer	Contractor	
	<u>Road</u> :)))	
15.13	Compaction to road base)))	
15.14	Crusher run laying	) All	) 25%	) Same as	
15.15	Sand Blinding	)	)	) in Col A	
15.16	Expansion joint construction)))	
15.17	Laying of permix)))	

APPENDIX A ADVANTAGES AND DISADVANTAGES OF DESIGN & BUILD

A ADVANTAGES

(1) FAST-TRACK

From the approval of the Technical Feasibility Statement to completion of the Works, a D&B contract can be carried out faster than various corresponding stages in a conventional contract.

COMMENTS

This has advantages where time for completion is financially advantageous or essential as part of an overall programme. The time required for pre-qualification of tenderers and to prepare an adequate Employer's Requirements should not, however, be ignored.

(2) CONTRACTORS' EXPERTISE

Contractors' expertise in design and related construction methods is incorporated and is used at an earlier stage.

This is particularly valuable in specialised area. A conventional contract, for the most part, does not make use of this input.

(3) ECONOMY OF DESIGN

Because the design is submitted in competition with others, there is great incentive for the design to be economical, both in concept and in detail.

See Item 8 - Disadvantages.

(4) PLANT AND LABOUR

In a conventional contract, application of plant or labour saving proposals involving modifications of design is difficult to introduce particularly during construction. In contrast, in a D&B contract, because the Contractor is involved in the design stage, better use of plant and labour can be made by paying attention to these aspects in design.

In the Hong Kong situation where there are limitations on labour and plant, this is particularly valuable, apart from the saving of costs for the individual project.

(5) CONSULTANTS

Once a D&B contract is underway, the Contractor is solely responsible for producing design modifications and other requirements to meet his programme. A related advantage is that not all the detailed information has to be available at the start of the Contract.

In a conventional contract, often there are claims by the Contractor as a result of delay in receiving design information etc.

**(6) CONSULTANT/
CONTRACTOR CONFLICT**

Under a D&B contract the interface problem between the Employer's design consultant and the Contractor does not exist.

There is often conflict between the design consultants and the Contractor in a conventional contract.

(7) CLAIMS

Potential for a claim situation is significantly reduced because risk and responsibility for the design is on the Contractor with less opportunity for claims to be made.

Claims are, of course, possible under a D&B contract where the Employer's Requirements have been badly prepared and there may well be further Variations required.

**(8) CONTRACTOR
COORDINATION**

During construction, the Contractor is responsible for coordinating all the parties involved including such matters as utilities and other services. Minor modifications to design to accommodate local service problems can easily be made.

Under a conventional contract, there is often delay in the designer sorting out problems, resulting in claims.

(9) **PROFESSIONALISM IN THE CONTRACTING INDUSTRY**

By recognising and using the design and construction expertise inherent in the contracting industry, the image of the industry is improved and the quality of contracting service is also enhanced.

Even where a Contractor employs consultants to do his design, it could be expected that the Contractor's expertise will influence design solutions.

(10) **PROBLEM OR FAILURE IN THE WORKS**

If a major construction problem or design failure occurs, during the construction of the Works, the Contractor is clearly responsible.

Normally this could either be the designer's or Contractor's fault and it is very often hard to attribute responsibility.

(11) **PRODUCTIVITY OF STAFF**

The need for the Employer to carry out detailed design in-house or to employ consultants for this purpose is greatly reduced.

Releasing the Employer's staff from detailed design duties would allow more time to effectively deal with such projects. The productivity of the Employer's staff involved in construction is therefore significantly improved.

(12) **COSTS OF WORKS**

Under D&B contract, the cost of the Works is known with greater certainty and at an early stage.

Subject, of course, to the Employer minimising changes.

(13) **SUB-CONTRACT ARRANGEMENTS**

The non-existence of nominated subcontractors or suppliers makes matters simpler for the Employer.

(14) **OPERATION & MAINTENANCE MANUALS**

Because a single party responsible for O&M Manuals is more consistent.

B DISADVANTAGES

(1) PREQUALIFICATION

A D&B contract requires a heavy input from tenderers.

The tenderer for D&B contract should be prequalified as necessary with reference to the guidelines given in Section 3.4.

Selection procedures for the shortlisting have to be regular and be fair, otherwise there is opportunity for corruption, or there may be a major outcry from dissatisfied contractors not shortlisted.

(2) NOT COMPETITIVE

In the conventional open tender situation, there is a better chance of getting a lower tender price than is the case with a short list of tenderers.

Often the tenderer who wins the Contract has under-estimated actual costs with resulting problems during the Contract. With the detailed tendering procedures required in a D&B contract, tenderers are not likely to have made any such mistake, and with the competitive element in the design, significant economies and costs are likely to be made compared with a conventional contract.

(3) DIFFICULTY OF COMPARING TENDERS

Since tenderers will be offering different designs, tender assessment is a more complicated matter which might not solely be ruled by lower price.

Guidelines set for tender assessment must be strictly adhered to.

(4) **REDUCED EMPLOYER'S CONTROL DURING CONSTRUCTION**

The Employer's ability to influence and supervise during construction is significantly reduced.

This should not be a problem if the Employer's Requirements require sufficient submission of detailed samples and other information for approval, and during construction the Design Checker(s) and Supervising Officer ensure compliance with the Employer's Requirements.

(5) **LESS FLEXIBLE**

A D&B contract must ensure that the Employer's right in varying the Works is safeguarded and at a realistic cost.

Variations should be kept to a minimum.

(6) **CONTRACTOR'S DEFAULTS**

If there is work left by a defaulting D&B contractor to be completed by others, legal problems of responsibility for the unfinished work may arise.

There are practical difficulties in a new contractor taking over another contractor's design.

(7) **BRIEF REQUIREMENTS**

The client needs to set out clearly and in detail exactly what he requires at a very early stage.

This exercise should be done for many reasons. A conventional contract requires even more information, specifications, designs, etc., at the time of tendering.

(8) **UNDER-DESIGNED**

There may be a tendency for the Contractor to design-down to save costs.

Careful approval of submitted design and checking during construction is essential to ensure required design and quality to minimise subsequent maintenance requirements and costs.

(9) **CONTRACTUAL POWERS
OF EMPLOYER**

The Employer has less control over the Contract.

The Employer's position can be safeguarded by the respective roles of the Design Checker/Supervising Officer.

(10) **COSTS OF TENDERING**

Tendering costs are very high.

In the course of time these costs will be paid indirectly by the Employer. These costs can be reduced by limiting the number of tenderer by prequalifiication. In so far as it is possible, the Employer should provide maximum information to facilitate ease of tendering. Good cover and quality of site investigation information is necessary.

(11) **NUMBER OF FIRMS LIMITED**

Not all firms are capable of doing D&B contracts. This could cause higher costs due to limited capacity of the industry.

The situation is unlikely to develop, as the growth of D&B contracts is likely to be gradual; and Controlling Officers would consider the capacity of the industry when considering D&B as an option.

(12) **Late Start**

The construction may start quite a long time after the award of the contract.

Clear indication of the construction start date in the Employer's Requirement is necessary.

*(To be adopted in tenderer prequalification of D&B contract, in which the prequalification submissions are invited **on or after 1 October 2018.**)*

SPECIMEN PREQUALIFICATION DOCUMENT FOR DESIGN AND BUILD CONTRACTS

CONTRACT NO. []

[CONTRACT TITLE]

(PWP No. [])

(DEPARTMENT)

(DATE)

INDEX

INSTRUCTIONS TO APPLICANTS

A CONTRACT INFORMATION

- A1 Description of the Works
- A2 Employer and Project Team
- A3 Tender Documentation
 - Law applicable to the Contract
 - Articles of Agreement and Conditions of Contract
 - Type of Contract
 - Outline Employer's Requirements and Drawings
 - Sureties or security
 - Payment
 - Provision for Price Fluctuations
 - Currency
 - Guarantees and Undertakings
 - Environmental Permit
- A4 Tender Programme (Tentative)
- A5 Construction Programme
- A6 Other Information
- A7 Tender Conditions Related to Status of Prequalified Tenderers

B INFORMATION REQUIRED FROM APPLICANTS

- B1 Details of Applicants
- B2 Experience
- B3 Resources
- B4 Subcontracts
- B5 Project Management
- B6 Site Safety
- B7 Environmental Protection
- B8 Proposals for Undertaking the Project
- B9 Joint Ventures
- B10 Statement of Convictions
- B 11 Applicant's Summary
- B 12 Authenticities of Documents and Information

C SPECIFIC QUERIES

List of Appendix

- Appendix 1 Outline Employer's Requirements with List of Specifications
- Appendix 2 Outline Drawings Showing Proposals for the Project
- Appendix 3 Prequalification Marking Scheme
- Appendix 4 Proforma Submissions
- A. Stage I – Screening
- Form 1A Details of Approved Contractor / Supplier and specialist Contractor for Public Works
- Form 1B List of completed Design and Build contracts in Hong Kong in the past [] years with an adjusted original contract sum not less than HK\$[] million
- B. Stage II – Marking
- Form 1B Same Form 1B as above
- Form 1C List of completed contracts of [specific type of projects] in the past [] years with an adjusted original contract sum not less than HK\$[] million.
- Form 2A Information of convictions in current/ outstanding contracts in the past three years
- Form 2B Applicant's Consent and Authorization on Conviction Records
- Form 3A Details of Applicant
- Form 3B Joint venture details (if applicable)
- Form 3C Company structure and principal staff
- Form 3D Proposed key staff for this Contract
- Form 3E Proposed essential plant and equipment
- C. Others
- Form 4 Undertaking to submit one tender

CONTRACT NO. []

INSTRUCTIONS TO APPLICANTS

1. The following documents are issued to the applicants:-
 - (a) One copy of the Instructions to Applicants.
 - (b) One copy of the Prequalification Document comprising:-
 - Part A - Contract Information
 - Part B - Information Required from Applicants
 - Part C - Specific Queries

 - Appendix 1 - Outline Employer's Requirements with List of Specifications
 - Appendix 2 - Outline Drawings Showing Proposals for the Project
 - Appendix 3 - Prequalification Marking Scheme
 - Appendix 4 - Proforma Submissions

2. Applicants should satisfy certain requirements including but not limited to the following:
 - (a) The applicant or any one of the participants/ shareholders in a joint venture applicant is on the List of Approved Contractors for Public Works [Group/class/category/status][not applicable when contractors not on the list are also invited to apply for prequalification], and
 - (b) [The applicant or any one of the participants/ shareholders in a joint venture applicant is on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works [Group/category/status][not applicable when contractors not on the list are also invited to apply for prequalification], and]
 - (c) The applicant or any one of the participants/ shareholders in a joint venture applicant has completed¹ at least one Design and Build contract, in or outside Hong Kong within the past [] years* with an adjusted original contract sum* not less than HK\$[] million.
 - (d) The applicant or any one of the participants/ shareholders in a joint venture applicant has completed¹ at least one [specific type of] construction contract, in or outside Hong Kong within the past [] years with an adjusted original contract sum[†] not less than HK\$[] million.
 - (e) The applicant or any one of participants / shareholders in a joint venture applicant has no more the [%] performance reports in the past [] years rated as adverse.

¹ Adjusted original contract sum refers to the original contract sum adjusted to the current value and other requirements as specified.

3. A joint venture with participation of local and/or non-local contractors not on the Approved List or the Specialist List may apply for prequalification. However, they shall satisfy the requirements as set out in paragraph 31 of the Instructions to Applicants and on page [] (Stage I – Screening) on joint venture applicants.
4. The following documents shall be submitted by the applicants:-
 - (a) A covering letter from the applicant expressing the intention to apply for prequalification. The letter shall be signed and dated by a person authorised to sign contracts on behalf of the applicant.
 - (b) [] copies of the information as required in Part B (including the Proforma Submission as listed in Appendix 4) and Part C of the Pre-qualification Document.
 - (c) [] copies of any other supporting information which the applicant may wish to provide.
5. All submissions shall be enclosed in a sealed envelope or properly wrapped, marked on the face “Prequalification Submission for Contract No. [] – [Contract title]”, and submitted to :-

[Relevant Project Department
Address]
6. Completed prequalification applications shall be submitted on or before 12:00 noon, [Date], or if this has been extended, the extended date. In the event of a tropical cyclone warning signal No. 8 or above or black rainstorm warning being hoisted or in force between 9:00 am and 12:00 noon on [Date], the application closing time will be postponed to 12:00 noon on the following working day. Late applications will not be accepted. (Note. Saturdays, Sundays and General Holidays are not working days.)

The Employer will not consider any clarification or information submitted by the applicant after close of prequalification applications irrespective of whether or not the clarification or information is submitted at the invitation of the Employer if such clarification or information would alter the prequalification submission in substance or give the applicant an advantage over the other applicants.
7. Enquiries concerning the prequalification document may be made to the Employer’s Representative or the Consultant, as appropriate. (For contact details, please refer to Part A2 of the Prequalification Document). Unless otherwise allowed by the Employer’s Representative or Consultant, enquires shall be raised at least 14 days before the closing date for prequalification application as stated in Clause 6 above.
8. This prequalification exercise is intended to create a list of potential tenderers for the Contract. The Government reserves the right to reject any applicant’s application.
9. Tenders will be invited from prequalified contractors only. The Government reserves the right to prequalify any contractor who meets the prequalification requirements in accordance with established procedures.
10. Not used

11. If there is any change to the proposed design team members of the applicant after the pre-qualification application, the Government reserves the right to disqualify the applicant for the tender.
12. The prequalification submission will be evaluated against the basic criteria as listed in Part A of the Prequalification Document and the specific responses required in Part B of the Prequalification Document. Failure to submit any details as required by this Prequalification Document will be reflected in the evaluation.
13. The submitted applications will be marked based on the Prequalification Marking Scheme enclosed in Appendix 3 of this Prequalification Document.
14. The terms “the Employer”, “the Government”, “the Hong Kong Government” or “the Government of Hong Kong” or “ the Hong Kong SAR Government” described / referred hereinbefore or hereinafter in this Prequalification Document or in all other standard Government documents shall be deemed to be a reference to “the Government of the Hong Kong Special Administrative Region”.
15. The prequalification will be conducted in accordance with the Agreement on Government Procurement (GPA) of the World Trade Organisation (WTO). Applicant can refer to DEVB TCW No. 2/2014 entitled "Tender Procedures for Procurement governed by the Agreement on Government Procurement of the World Trade Organization."²
16. All prequalified contractors will be required to make a statement at the time of tender submission to advise whether there has been material change in their qualifications. Any proposed changes in their qualifications shall not be inferior to those submitted in the prequalification stage. Subject to the foregoing, the Government may, at its discretion, permit such changes in the tender stage to any information previously submitted by the prequalified contractors in their prequalification applications. For the avoidance of doubt, the provisions of this paragraph do not apply to changes to the composition of a prequalified applicant which are subject to the provisions of paragraph 20.
17. Applicants who are unable to make a prequalification submission shall return all Prequalification Documents to the project department within two weeks after the date set for receipt of prequalification submission. Unsuccessful applicants shall return all Prequalification Documents within two weeks of the Employer's notice advising them of the results.
18. [Not used].
19. Applicants are advised that their financial capability will be assessed at the tender stage of the Contract in accordance with the financial requirements set out in the Contractor Management Handbook promulgated.
20. Changes to the composition of a prequalified joint applicant will only be allowed on the condition that:
 - (a) In case where change or changes are applied for before the date tenders are invited, there is sufficient time available before the tender invitation to undergo a prequalification exercise for this changed entity; or

² Please delete this paragraph if the prequalification is not subject to WTO GPA.

- (b) In case where change or changes are applied for on or after the date tenders are invited but prior to close of tenders, there is sufficient time available before close of tenders to undergo a prequalification exercise for this changed entity and there is no other contractor (who has met the qualification requirements) outside the prequalified list.³

When the conditions in (a) or (b) above are met, the prequalified joint venture contractor who applies for such a change will need to go through a reassessment of marking and ranking exercise as in the prequalification exercise.

In case (a) above, if the reassessment shows that the contractor could meet the qualification requirements and its rank is still within the range of the top _____ ranking, the prequalified joint venture contractor will remain on the list of prequalified contractors. Otherwise, it will be removed from the prequalified list. In the case of the removal of the prequalified status of a contractor, the first contractor on the lower ranking, if any, who has satisfied the qualification requirements will be admitted to the list of prequalified contractors.⁴

In case (b) above, if re-assessment shows that the contractor could meet the qualification requirements, the prequalified joint venture contractor will remain on the list of prequalified contractors. Otherwise, it will be removed from the prequalified list.

21. (a) Except where the Consultant has, in accordance with the terms of its appointment by the [Employer]⁺, obtained approval of the [Employer]⁺ for itself or its associated companies, associates, associated persons or Sub-consultants to undertake work for the applicant or be otherwise involved in relation to the applicant's submission for this prequalification exercise or, in the case where the Consultant's terms of its appointment by the [Employer]⁺ do not contain an approval mechanism, the applicant has obtained the prior written approval of the [Employer]⁺, the applicant shall not engage or otherwise permit the Consultant to undertake any services, tasks or jobs or do anything whatsoever in relation to the preparation of its submission for this prequalification exercise or to participate or be financially involved in its submission for this prequalification exercise and shall ensure that the Consultant's associated companies, associates, associated persons and Sub-consultants will not be engaged or otherwise permitted to undertake any services, tasks or jobs or do anything whatsoever in relation to the preparation of its submission for this prequalification exercise or to participate or be financially involved in its submission for this prequalification exercise.

³ If, for any reason, restriction on the number of applicants to be prequalified cannot be justified in relation to any particular D&B project and thus the prequalification would become a Type II prequalification, this paragraph should be modified along the lines of paragraph 32 of DEVB TCW No. 5/2014 for a Type II prequalification.

⁴ The procuring department should note that under Article IX.5 of the 2012 WTO GPA, "[a] procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers". Moreover, in accordance with Article X.3 of the 1994 WTO GPA, any limitation on the number of prequalified suppliers should be justified on the basis of "efficient operation of the procurement system". Factors, which may generally be taken into account in determining the limitation on the number of applicants to be prequalified on the basis of "efficient operation of the procurement system", include time (e.g. time needed to conduct evaluation, time available before tender closing, etc.) and resources (e.g. high costs incurred in the evaluation process, efforts spent or to be incurred, etc.). Since the facts and circumstances in each particular case may vary, the procuring department should ensure that there are adequate justifications if this provision is to be included in the prequalification document for any particular case and, if there is any doubt, seek legal advice.

+ [*Note: It is important to ensure that term "Employer" is consistently used and defined in the Prequalification Document.]*

- (b) In the event of breach of or non-compliance with the provisions in (a) above by any applicant, the applicant's prequalification submission shall not be further considered or, in the event that the applicant is prequalified, its prequalification status shall be withdrawn.
- (c) In this paragraph 21

"person" includes individual, corporation, partnership, firm and unincorporated body.

"associated company" or "associated companies" in relation to the Consultants means

any company which is the holding company or subsidiary company or sister company of the Consultants. A "sister company" means a company which belongs to the same holding company as the Consultants'.

"associate" or "associates" in relation to the Consultants means

- (i) any partner of the Consultants; or
- (ii) any company one or more of whose directors is in common with one or more of the directors of the Consultants.

"associated person" or "associated persons" in relation to the Consultant means

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

"Consultant" means the Consultant whose name and address are specified in paragraph [A2(c) of Part A].

[Note: This definition for "Consultant" may need to be modified to suit the particular circumstances of individual project. For example, the definition may need to be expanded to cover another consultant having regard to the nature and extent of its previous involvement in the Project.]

"control" in relation to another person means holding office as a director or the power of a person to secure

- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
- (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other persons;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.

"director" means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director.

"person" includes individual, corporation, partnership, firm and unincorporated body.

"Project" means the scheme described in paragraph [] of Part [].

"Sub-consultant" means any sub-consultant of the Consultant who is or has been involved in the carrying out of any part of the work or services under the Project.

[Guidance Note:

(a) *Subject to (b) below, this clause is to be included in all prequalification documents for consultant-managed contracts.*

(b) *Where the procuring department has obtained a ruling from the relevant consultants' selection board under SPR 193 not to impose a strict ban on future participation of the Consultant in procurement exercises, the procurement department shall observe the requirements of SPR 194 and modify or exclude this clause as appropriate in line with the ruling. Legal advice should be sought if necessary.]*

- 22. The applicants shall note that, Stage I Screening and Stage II Marking in the Prequalification Marking Scheme will be based on the information submitted by the applicants. The information, documents and forms to be submitted are detailed in Part B, Part C and Appendix 4 of this Prequalification Document.
- 23. Not used.
- 24. Not used.

25. All information submitted by the applicants in the prequalification submissions will be kept confidential by the Government.
26. Documents submitted by unsuccessful applicants will be destroyed three years after the date the Contract has been awarded.
27. Applicants shall be responsible for the costs of preparation and submission of their prequalification applications, including the costs of any meetings or discussions with the Employer, Project Team, Consultant, other authorities and utility undertakers, etc whether such applications are successful or not.
28. Applicants are requested to note that a Review Body on Bid Challenges under WTO GPA(the Review Body) has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA and the relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (the Rules) which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties upon request. In the event that an applicant believes that a breach of the WTO GPA has occurred, the applicant may, within 10 working days after he/she knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless, the applicant is encouraged to seek resolution of its complaint in consultation with the procuring department before lodging a complaint to the Review Body.

In such instances, the procuring department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.

Applicants are also to note that the Review Body may receive and consider a late challenge but a challenge shall not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known.

In the event of a bid challenge being lodged with the Review Body on Bid Challenges under the WTO GPA on this prequalification exercise or the tendering of the Contract which is the subject of this prequalification exercise and the Employer is requested by the Panel appointed in accordance with the Rules of Operation of the Review Body on Bid Challenges (the "Panel") to disclose the information submitted in the prequalification submissions, the Employer may disclose the information to the Panel and to such other persons and in such manner as the Panel may require in accordance with the Rules of Operation. This may include disclosing the information to the complainant which has lodged the bid challenge.⁵

29. *(For use where the identities of the successful prequalified contractors will be disclosed in the interest of the public)* The result of the prequalification will be released by **(month and year)**. The result will be published in the Hong Kong SAR Government Gazette and on the Homepage of the [relevant project department] of the Internet website address []. Applicants will be notified separately by the Employer.

⁵ Please delete this clause if the prequalification is not subject to WTO GPA.

(For use where the above clause is not included and where pre- or post-tender meetings may be arranged.) The applicants' attention is drawn to the fact that *a pre-tender meeting (*Note: amend as appropriate – such as “a briefing session”, “a post-tender meeting”, etc.) may be arranged at the tender stage following the completion of the prequalification exercise. All prequalified contractors will be invited to attend this meeting if arranged. The identities of the prequalified contractors may be revealed when attending such a meeting or where public interest so requires. The Employer shall not be liable for any claims, loss or damages arising from the disclosure of the identity of any prequalified contractors during such occasions.

30. Rejection of Application and Disqualification of Tenderers

- (a) Tenders for the Contract will be invited from prequalified contractors only. The Government reserves the right to prequalify any contractor who meets the qualification requirements. In the case of more than _____ applicants meeting the selection criteria, the _____ applicants with the highest marks in the prequalification process shall be selected.⁶
- (b) The Government reserves the right to prequalify any contractors who meets the qualification requirements.
- (c) The Government may permit changes to any prequalified contractor's application at its discretion.
- (d) All prequalified contractors shall be required to make a statement at the time of tender submission to confirm that there has been no material change in their qualifications. If the Government becomes aware that a prequalified contractor has ceased to be able to meet the qualification requirements, then the Government may, at its discretion, disqualify the contractor at any time prior to acceptance of the tender. In such case, the Government may add another prequalified contractor or tenderer for the contract.
- (e) No applicant is permitted to submit more than one application for each prequalification either on his own behalf or as a participant or shareholder of a joint venture. For the purpose of this Clause, a holding company and its subsidiaries are considered as one and the same applicant.
- (f) A holding company and all of its subsidiaries who are included in the [insert the appropriate list] shall be allowed to submit only one application for prequalification from any one of the companies in the group of companies as defined in Section 2(1) of the Companies Ordinance (Cap. 622), either on its own behalf or as a participant or shareholder of a joint venture. The existence

⁶ The procuring department should note that under Article IX.5 of the 2012 WTO GPA, "[a] procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers". Moreover, in accordance with Article X.3 of the 1994 WTO GPA, any limitation on the number of prequalified suppliers should be justified on the basis of "efficient operation of the procurement system". Factors, which may generally be taken into account in determining the limitation on the number of applicants to be prequalified on the basis of "efficient operation of the procurement system", include time (e.g. time needed to conduct evaluation, time available before tender closing, etc.) and resources (e.g. high costs incurred in the evaluation process, efforts spent or to be incurred, etc.). Since the facts and circumstances in each particular case may vary, the procuring department should ensure that there are adequate justifications if this provision is to be included in the prequalification document for any particular case and, if there is any doubt, seek legal advice.

of a holding subsidiary relationship shall be determined as at the date set for the close of prequalification, or if this has been extended, the extended date, and in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap. 622). Applications submitted from an applicant on his own behalf who is found to be in breach of this Clause or from a joint venture or joint ventures in which any participant or shareholder who is found to be in breach of this Clause shall not be considered.

31. Joint Ventures

Joint venture will be considered for the tender and applicants' attention is drawn to the following:

- (a) A joint venture means an entity in the form of:
 - (i) Sole proprietors, firms and / or companies joining together as partners within the meaning of a partnership under the Partnership Ordinance (Cap. 38) or as independent contractors under a purely contractual arrangement; collectively the "unincorporated joint venture", and each individual party in the "unincorporated joint venture" a joint venture participant; or
 - (ii) Sole proprietors, firms and / or companies incorporating as a company pursuant to statute, with each participating party as a shareholder of the company (the "incorporated joint venture"), and each individual party in the "incorporated joint venture" a joint venture shareholder.
- (b) The joint venture participants or joint venture shareholders shall collectively satisfy the prequalification requirements, including the requirements stated in Stage I Screening as detailed in Appendix 3; and each participant or shareholder in the joint venture shall be technically capable for the part of the Contract works or services it undertakes.
- (c) Where an applicant is an unincorporated joint venture, each participant of the joint venture will be jointly and severally liable for the due performance of the Contract.
- (d) Where an applicant is an incorporated joint venture, all the shareholders will be required to provide a joint venture guarantee for the Contract.
- (e) Where the joint venture is unincorporated, the participants therein must nominate a lead participant whose financial and management participation shall be more than that of any other participants in the joint venture. *[The lead participant must be a contractor on the List of Approved Contractors for Public Works in Group [] under [] Category]. Where the joint venture is incorporated, the financial and management participation of the major shareholder shall be more than of any other shareholders in the joint venture *[and the major shareholder must be a contractor on the List of Approved Contractors for Public Works in Group [] under [] Category][* not applicable when contractors not on the list are also invited to apply for prequalification].
- (f) The joint venture shall provide with its application details of the percentage participation of each participant or shareholder in the joint venture. The

percentage participation of each participant or shareholder in a joint venture shall be calculated by its financial and management participation.

32. Selection Criteria

A two-stage evaluation process will be adopted. The first stage is to determine whether the applicants satisfy the basic requirements. The second stage is a detailed assessment of applicants who satisfy the first stage assessment. The criteria for the two-stage evaluation are given in **Appendix 3 – Prequalification Marking Scheme**.

33. Validity

The list of prequalified contractors will normally be valid for one year from the date of the notification of the prequalification result.

34. Applicants shall note that this prequalification invitation is invited before the necessary funds have been approved. [Note: To be adopted if funding has not been approved at the time of prequalification invitation.]

35. Applicants should also note that the Employer reserves the right to cancel this prequalification exercise at any time before or after the deadline for submission of the application and the Employer shall not in any circumstances be liable for any costs and expenses incurred by the applicants in connection with the preparation and submission of their applications if the prequalification exercise is cancelled. In addition, the Employer shall not be liable for any costs and expenses incurred by the applicants in connection with the preparation and submission of their applications, in the event that the Employer decided not to proceed with the project after completion of the prequalification exercise.

36. Binding of prequalification submissions

[Note: Suitable tender and contract provisions by way of SCT and SCC should be adopted in the D&B tender and contract to reflect this binding requirement.]

With regard to resources for the [Design Team, Project Management Team, Site Supervising Team and Building Services Co-ordination Team], applicants' attention is drawn to the condition that they will be bound to their better proposals in terms of qualification, experience and number of personnel concerned as compared to those specified in Clause B3 under Part B: Information Required from Applicant in the Prequalification Document in the event that they become prequalified tenderers and submit tenders for the subsequent Design and Build Contract. Those minimum requirements as stated in B3 will be included as part of the Employer's Requirement in the tender documents for the subsequent Design and Build Contract. The prequalified tenderers shall comply with the Employer's Requirements in the tender documents and their submissions in respect of the aforesaid resources for the Teams shall not be worse than their prequalification submissions in terms of qualification, experience and number of personnel concerned. However, they may provide improved proposals in their tender submissions in terms of qualification, experience and number of personnel concerned which will be binding on them in the event that they become the successful tenderer.

[With regard to resources for the plant and equipment, applicants' attention is drawn to the condition that they will be bound to their better proposals in terms of the

function and quantity of plant and equipment concerned, as compared to those specified in Clause B3 under Part B: Information Required from Applicant in the Prequalification Document in the event that they become prequalified tenderers and submit tenders for the subsequent Design and Build Contract. Those minimum requirements, as stated in B3, if any, will be included as part of the Employer's Requirement in the tender documents for the subsequent Design and Build Contract. The prequalified tenderers shall comply with the Employer's Requirements in the tender documents and their submissions in respect of the aforesaid resources for plant and equipment shall not be worse than their prequalification submissions in terms of function and quantity concerned. However, they may provide improved proposals in their tender submissions in terms of function and quantity of plant and equipment concerned which will be binding on them in the event that they become the successful tenderer. (Note: Works departments should decide whether to bind the plant and equipment proposal on a case by case basis depending on the project nature.)]

37. Applicant's Consent and Authorization on Conviction Records

The applicant shall submit with his prequalification application a duly signed letter in the form set out in **Form 2B** giving consent to the [*name of the project office/procuring department*] to obtain from all relevant government departments/bureaux, authorizing such relevant government departments/bureaux to release and make available to [*name of the project office/procuring department*] and giving further consent to the [*name of the project office/procuring department*] to furnish to the Consultants of this Project, all information relating to his convictions, including the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, for offences under the following ordinances (including all subsidiary legislation made thereunder) and specific subsidiary legislation (if any):

[*set out the relevant ordinances/specific sub-legislation*]⁷;

The letter shall be signed by a person authorized to sign Government contracts on the applicant's behalf.

If the applicant is a partnership or an unincorporated or incorporated joint venture, each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall submit such a duly signed letter. The signatory for such participant or shareholder shall be a person authorized to sign Government contracts on behalf of that participant or, as the case may be, shareholder.

⁷ Project office/procuring department should check the ordinances / specific subsidiary legislation to be listed, taking into account the provisions of the prequalification document as adopted for any particular project (including the prequalification marking scheme).

PREQUALIFICATION DOCUMENT

CONTRACT NO. []

[CONTRACT TITLE]

PWP No. []

A CONTRACT INFORMATION

A1 Description of the Works

- (a) Nature and scope of the Works
- (b) Salient design features, including the fact that the Contract will be executed on a design and build basis.
- (c) Major constraints such as problems of access, restrictions on working etc.

A2 Employer and Project Team

- (a) The Employer of the Contract shall be the Government of the Hong Kong Special Administrative Region.
- (b) The Works are to be carried out for the Employer as represented by the [Director of the relevant department]. The project is being managed by the [project team/ division of relevant department].

Enquiries to the Employer's Representative may be addressed to:

[Project team / division

Address]

Person to contact:

Mr. [] (Title)
(Title)

Tel:(852) –[]

Fax: (852)- []

- (c) All technical enquiries should be addressed to the following Consultant who will be appointed as the Supervising Officer by the Employer for the Contract:

[Name of Consultant

Address]

Person to contact:

Mr. []
(Title)

Tel:(852) -[]

Fax: (852)- []

A3 Tender Documentation

- (a) Law applicable to the Contract

The Contract shall be governed by the Laws of the Hong Kong SAR.

- (b) Articles of Agreement and Conditions of Contract.

The Conditions of Contract will be the Government of the Hong Kong Special Administrative Region "General Conditions of Contract for Design and Build Contracts - 1999 Edition" supplemented by appropriate Special Conditions of Contract (SCC). The SCC applicable to this Contract will be issued with the tender document.

The successful tenderer will be required to execute a formal Articles of Agreement with the Government.

- (c) Type of Contract

The Contract will be let as a lump sum Design and Build contract.

- (d) Outline Employer's Requirements and Drawings

The Outline Employer's Requirements with list of Specifications are listed in **Appendix 1**.

The Outline Drawings are appended in **Appendix 2**.

- (e) Sureties or Security

[To state whether sureties or security is required for the Contract.]

- (f) Payment

[To specify the payment method to be adopted for the Contract.]

- (g) Provision for Price Fluctuations

The Contract will be subject to fluctuation for rise and fall in the costs of labour and materials in accordance with Clause 89 in the General Conditions of Contract.

- (h) Currency

Tenders shall be denominated in Hong Kong Dollars and payments will be made in Hong Kong Dollars. No adjustments will be made for fluctuations between the value of the Hong Kong Dollar and any other currencies.

(i) Guarantees and Undertakings

Parent company guarantees and undertakings may be required from the parent company of the successful tenderer; or from the respective parent company of each participant / shareholder in the joint venture in the case of joint venture.

(j) Environmental Permit

[To state if the Project is a designated project under the Environmental Impact Assessment (EIA) Ordinance (Cap. 499). The conditions, or draft conditions, of the Environmental Permit will be included in the tender documents. The Contractor shall observe the conditions of the Environmental Permit relevant to the Contract.]

A4 Tender Programme (Tentative)

- (a) The expected date for notification of the prequalification results is around the [quarter of year].
- (b) The date for invitation to tender is expected around the [quarter of year].
- (c) The tendering period will be approximately [] days.
- (d) The expected tender validity period will be [] days.

A5 Construction Programme

- (a) The Contract is expected to commence in the [quarter of year] and complete in the [quarter of year].
- (b) Sectional completion dates, if any, will be specified in the Contract.
- (c) Date for possession of site / phased possession is expected to be in the [quarter of year].
- (d) Liquidated damages will be applied to the Contract pursuant to the General Conditions of Contract and the Special Conditions of Contract.
- (e) Extension of time for inclement weather will apply in accordance with Clause 50 of the General Conditions of Contract.

A6 Other Information

- (a) The Contractor shall employ a Designer/ Designers for the design of all permanent works and temporary works in this Contract, and nominate such Designer/ Designers in the application for prequalification. Changes of the Designer/ Designers after the prequalification or at the tender stage will not

be allowed except in the most exceptional circumstances with written approval from the Employer.

- (b) [The Contractor shall appoint a Design Checker, who shall be approved by Employer, to check and certify the design of the permanent and temporary works designed by the Contractor's Designer/Designers.]⁸ The Contractor shall also be responsible for obtaining approvals from relevant government authorities and maintenance departments/ divisions, and shall allow for adequate time in the programme for obtaining the approval for the works designed by the Contractor.
- (c) The Contractor shall employ the staff as listed under Part B3 of this Prequalification Document to undertake the respective items of the Works.
- (d) Systematic Risk Management will be adopted in the Contract to reduce risks and uncertainties and to ensure timely completion of the Project. The Contractor shall perform such risk management in accordance with Development Bureau's circulars and guidelines, and relevant international codes of practice for risk management to identify the risks and uncertainties associated with the Works. The Contractor shall be required to employ a qualified engineer to implement and carry out measures stated in the Risk Management Plan, Risk Registers and Risk Treatment Action Plans to reduce the risks and uncertainties to acceptable level and to ensure completion of the Works in compliance with the Contract requirements. [Note: *This clause is not applicable if the estimated value of contract is not exceeding HK\$200M*]
- (e) This Contract will interface with other works being undertaken by the Government or other parties, requiring a high degree of co-operation between contractors. The interfacing contracts mainly include, but not limited to the following:
 - (i) []
- (f) The following documents are available for inspection at the office of the Consultant:
 - (i) []

[*Note: It is possible that documents within the meaning of "side information" as referred to in DEVB's memo to works departments entitled "Representation at Pre-contract stage" dated 23 April 2008 may be included. Procuring departments should comply with the guidelines given in the aforesaid memo. The procurement departments should seek legal advice from LAD(W) on the drafting of appropriate disclaimer/exemption clause to be included in the prequalification document if a decision is made to include any "side information."]*
- (g) If the Contractor, or in case of joint venture, all the joint venture participants/ shareholders, has/ have no experience in specialist works on, inter alia, the works items listed below under the "List of Approved Supplier or Materials and Specialist Contractors for Public Works", and if the Contract includes permanent or temporary works of such specialist nature, the Contractor shall

⁸ Please delete the sentence if the Contractor shall not be required to employ an Independent Design Checker.

employ an approved supplier or a specialist subcontractor from the Approved List for that specialist area or a contractor from the List of Approved Contractors for Public Works in the relevant category to carry out those specialist works.

Specialist Contractors from “the List of Approved Suppliers of Materials and Specialist Contractors for Public Works” in the following categories (categories are not comprehensive):-

(1) []

Contractors from “the List of Approved Contractors for Public Works” in the following categories (categories are not comprehensive):-

(1) []

A7 Tender Conditions Related to Status of Prequalified Tenderers

(a) Eligibility to tender

At tender stage, a tender will not be considered if the prequalified contractor, or any participant or shareholder in case of a prequalified joint venture contractor, is under suspension from tendering for public works by the date set for the close of tender.

A participant, or a shareholder as the case may be, of a prequalified joint venture contractor will not of itself be considered as prequalified.

(b) Status of prequalified tenderer – change of composition of tenderers

A contractor who has been prequalified individually will not be considered to be a prequalified joint venture contractor in the event of such contractor entering into a joint venture with other contractors whether prequalified or not. A separate application for prequalification as a joint venture contractor is required.

B **INFORMATION REQUIRED FROM APPLICANTS**

Applicant's submission will be assessed on the basis of the information submitted. The applicant should note that the standard forms (proforma) attached in **Appendix 4** shall be used in their submissions.

Failure to submit the information required by this prequalification document will result in no mark being given under the relevant criteria,

Completion of the information submitted must follow the exact order of the topics as listed below. Each topic section will be read as independent information. Marking cross-reference to information submitted under other topic sections in the prequalification submission shall be avoided.

B1 **Details of Applicants**

- (a) The company details of the applicant
 - (i) Name of company
 - (ii) Address
 - (iii) Telephone number
 - (iv) Fax line number
 - (v) E-mail address
 - (vi) Name of person to contact
 - (vii) If the company is a subsidiary, the involvement, if any, of the parent company in the contract
 - (viii) Names and addresses of any associates the company has in the Hong Kong SAR.
 - (ix) Names and addresses of associated companies to be involved in the Project – and whether parent, subsidiary or others
 - (x) Names and addresses of the participants (for an unincorporated joint venture) or shareholders (for an incorporated joint venture) and the percentage of participation based on the financial and management participation of each participant or shareholder including a clear statement on its anticipated responsible portion and nature of works as a part of the joint venture.

- (b) In the case of companies on the List of Approved Contractors for Public Works or the Lists of Approved Suppliers of Materials and Specialist Contractors for Public Works, they shall provide their current details in the relevant Categories and Groups including details of any suspension from tendering currently in force.

- (c) (i) Current numbers of staff employed
 - Managerial
 - Professional
 - Technical
 - Supervisory
- (ii) Names, qualifications and experience of principal staff members in each of the above categories and length of service with the company.

- (d) Details of offices, workshops, stores and factories operated by the applicant, or each participant/ shareholder in case of a joint venture, stating the ownership (i.e. owned or leased)

B2 Experience

- (a) Details of all Design and Build contracts completed in the past [] years (each contract with adjusted original contract sum not less than HK\$[] million as required in Appendix 3 under Stage I Screening)
- (b) Details of [specific type of contracts] completed in the past [] years (each contract with adjusted original contract sum not less than HK\$[] million as required in Appendix 3 under Stage II Marking)
- (c) Details required under (a) to (b) shall be provided in the format as given in Proforma Form 1B and Form 1C in the Appendix 4. In case of joint venture applicant, each participant/shareholder is required to separately complete the Forms.
- (d) The applicant shall categorise the above details separately for:
 - (i) the Hong Kong Government contracts
 - (ii) other contracts within the region of the Hong Kong SAR
 - (iii) contracts outside the Hong Kong SAR.
- (e) For each contract, the applicant shall submit certified true copy of the articles of agreement or letter of acceptance or equivalent certifying the original contract sum of the works; documents showing the scope and duration of the contracts; the substantial completion certificates for the completed contracts; payment certificate showing the completed value of specific work which is considered relevant to the prequalification exercise. If any of the above documents are in languages not in English or Chinese, a translation to either language duly certified by the applicant should also be submitted. The percentage share of the works by value of each participant/ shareholders shall also be provided. The applicant shall also provide contact particulars of the Architect / Engineers / Supervising Officers and the Clients, including the names, addresses, contact telephones and facsimile numbers and e-mail addresses, if available, through the Proforma Forms included in Appendix 4. The applicant's experience in the capacity of a sub-contractor shall not be considered unless otherwise allowed.

The Employer will disregard any contracts which, in his opinion, are not substantiated with adequate and credible evidence or the information as to the contracts' existence, substantial completion, or the values of the works so supplied are conflicting.

- (f) The Employer may approach relevant parties for performance records and reference of the applicant.

B3 Resources

- (a) The proposed key staff for the [Design Team, Project Management Team, Site Supervising Team and Building Services Co-ordination Team] shall comply with the following minimum qualification and construction experience.

Key staff	Minimum qualifications	Minimum experience
Project Manager	Corporate Member of the [HKIE / HKIA/ HKIS etc) in [] discipline or equivalent	[] years post qualification general experience in construction contracts, with at least [] years specific experience in [] works.
Construction Manager	Corporate Member of the [HKIE / HKIA/ HKIS etc) in [] discipline or equivalent	[] years post qualification general experience in construction contracts, with at least [] years specific experience in [] works.
Design Manager	Corporate Member of the [HKIE / HKIA/ HKIS etc) in [] discipline or equivalent	[] years post qualification general experience in construction contracts, with at least [] years specific experience in [] works.
[] Manager	Corporate Member of the [HKIE / HKIA/ HKIS etc) in [] discipline or equivalent	[] years post qualification general experience in construction contracts, with at least [] years specific experience in [] works.

Applicants must show that they have suitably experienced staff, including those to be obtained from in-house designers and external design consultants who are capable of handling complex contracts of comparable magnitude to this Project, and committed to the Project. The following information should be provided for the proposed staff for this Contract:

- (i) Existing and proposed titles, name, years of experience, education and relevant experience of staff in the Hong Kong SAR;
- (ii) Existing and proposed titles, name, years of experience, education and relevant experience of overseas staff.

Specific details shall be provided to demonstrate the applicant's capability in the execution of the Works, as required under the criteria in Section 3 of the Marking Scheme. Where the staff are not currently employed by the applicant or by the design consultant, a letter of association shall be attached confirming that, should the applicant be awarded the Contract, the concerned staff will be employed by the applicant or his design consultant for the Contract.

- (b) [Note: Minimum requirements on plant and equipment should be specified here if the Clause 36 of the “Instructions to Applicants” binding applicants to their proposals on plant and equipment is adopted.] Applicants must show that they have or will have adequate plant and equipment committed to the Project. Details of major holdings in plant required for the contract stating whether the plant is owned by the applicants, their groups or subcontractors, leased or subject to a hire purchase agreement shall be provided.

Details required are: type of plant, make, size or rating, date of manufacture; if it is located in Hong Kong and when it will be available for use on the works.

- (c) Applicants should provide the above information in the formats shown in Appendix 4 – Proforma Submissions

B4 Sub-contracts

Not used.

B5 Project Management

- (a) Applicants shall provide details of the managerial structure, in summary form, proposed for the Contract, with particular reference being given to the means the Contractor will adopt to ensure control of the Works with regard to programming, constructability, quality, safety, environmental protection, timely completion of the Works, co-ordination with other contractors and the like. An organisation chart shall also be submitted.
- (b) Applicants shall submit proposals for programming and coordination of the Works with particular emphasis on the coordinating and programming of the following:
- (1) The design, construction and timely completion of the [Works] .The applicant shall also demonstrate how the [civil and E&M construction activities] are coordinated.
 - (2) Anticipated construction method and resources planning programme for [major element of the Works including interfacing works]

B6 Site Safety

A statement of policy on site safety together with an outline Safety Plan which shall contain information to demonstrate clearly the method of establishing and implementing effective and efficient safety procedures. The outline Safety Plan shall adequately demonstrate the applicants’ ability and/or commitment that all works undertaken by the applicants shall be conducted with full and proper regard for occupational safety and health as per the outline Safety Plan.

B7 Environmental Protection

A statement of policy on environmental protection identifying key environmental issues associated with the design and construction of the Works, together with an outline Environmental Management Plan containing information to demonstrate

clearly the methods and procedures that will be established and implemented to deal with the environmental issues effectively and efficiently, including but not limited to the following.

- (1) [Control of noise]
- (2) [Control of dust]
- (3) [Control of quality of discharging water]
- (4) [Handling and disposal of construction waste]
- (5) [Ecology protection]

B8 Proposal for Undertaking the Project

- (1) Applicants shall present their understanding of the prevailing circumstances such as [] and the implications of those circumstances on the construction of the Works.
- (2) Applicants shall submit outline method statements for carrying out the Works. The method statement shall clearly indicate the intended sequence and method of working, and shall demonstrate that these works would be completed [and commissioned] in accordance with the relevant construction programmes.
- (3) The applicants shall submit an outline Quality Assurance Plan, which shall include a management quality assurance plan and a construction quality assurance plan. This Quality Assurance Plan shall demonstrate clearly the methods of ensuring the quality and the standard of the Works, including any works proposed to be carried out by sub-contractors, and shall include proposals for the control and coordination of the design and construction process with due acknowledgement of the necessary approvals, integrated quality assurance, environmental and safety considerations.
- (4) Applicants shall submit a preliminary Risk Management Plan for the Works. The applicants should identify the key risks, which may affect the safety, cost and programme, and should propose corresponding risk mitigation measures in the preliminary Risk Management Plan.
- (5) Applicants shall submit an outline Constructability Plan for the Works which shall demonstrate clearly the integration between the design and the construction including the practical integration of permanent works and temporary works, cost effective approach or modular, prefabricated and / or mechanised construction to enhance productivity.

B9 Joint Venture

If a contractor proposes to seek prequalification as an unincorporated joint venture or incorporated joint venture, the procedure and details required to be submitted to gain prequalification shall apply to each participant (in the case of an unincorporated joint venture) or shareholder (in the case of an incorporated joint venture). Such details should be submitted under the name of the proposed unincorporated joint venture or incorporated joint venture. Where the joint venture is unincorporated, the participants therein must nominate a lead participant. Where the joint venture is incorporated, the shareholders therein must nominate a major shareholder. The lead participant, or major shareholder as the case may be, shall be responsible for the overall project management and co-ordination in the joint venture. The financial and management participation by the lead participant, or major shareholder as the case may be, shall be more than any other participants, or shareholders as the case

may be, in the joint venture. A draft of the proposed joint venture agreement, stating the name of the lead participant leading the unincorporated joint venture, or of the major shareholder leading the incorporated joint venture and the percentage participation of each of the participants, or shareholders as the case may be, should be included in the submission. Notwithstanding any such percentage participation, each participant (in the case of an unincorporated joint venture) will be jointly and severally liable for the due performance of the contract and all shareholders (in the case of an incorporated joint venture) are required to provide a joint venture guarantee.

B10 Statement of Convictions

- (a) Applicants are required to submit a statement of either all convictions under the following Ordinances for all sites under their control, and the dates of all such convictions during the 12-month period⁹ prior to the date fixed for submission of prequalification applications; or a statement of “no conviction”. The Statement shall be certified by a person authorised to sign Government contracts on the applicant’s behalf. For avoidance of doubt, conviction under appeal or review shall still be counted for the purpose of evaluation until it is quashed by the Court.
- (i) Sections 171 or 38A of the Immigration Ordinance (Cap. 115) for employing illegal immigrants or for having illegal immigrants
 - (ii) Factories and Industrial Undertaking Ordinance (Cap. 59) for site safety convictions
 - (iii) Occupational Safety and Health Ordinance (Cap. 509)
 - (iv) Shipping and Port Control Ordinance (Cap 313)
 - (v) Air Pollution Control Ordinance (Cap. 311)
 - (vi) Noise Control Ordinance (Cap. 400)
 - (vii) Waste Disposal Ordinance (Cap. 354)
 - (viii) Water Pollution Control Ordinance (Cap. 358)
 - (ix) Dumping at Sea Ordinance (Cap. 466)
 - (x) Ozone Layer Protection Ordinance (Cap. 403)
 - (xi) Section 27 of the Public Health and Municipal Services Ordinance (Cap. 132)
 - (xii) Land (Miscellaneous Provisions) Ordinance (Cap. 28)
 - (xiii) Environmental Impact Assessment Ordinance (Cap. 499)
 - (xiv) Employment Ordinance (Cap. 57)
 - (xv) Hazardous Chemical Control Ordinance (Cap. 595)
 - (xvi) Merchant Shipping (Local Vessels) Ordinance (Cap. 548)
- (b) A conviction against a joint venture shall be counted as a conviction against each of the participants or shareholders in the joint venture.
- (c) If the applicant is a joint venture, each participant or shareholder of the joint venture shall submit such a statement separately.

B11 Applicant’s Summary

Not used.

⁹ Works department shall amend the period and the counting method for the 3-year period as appropriate in accordance with item 2(g) on convictions of the Standard Prequalification Marking Scheme if it has been adopted in prequalification.

B12 Authenticity of Documents and Information

- (a) Applicants are required to submit a statement, signed by a person authorized to sign contracts on behalf of the applicants that all documents and information submitted in their prequalification are correct and true at the time of the submission.
- (b) If any document or information submitted is subsequently found by the Employer to be incorrect, untrue or misleading, any decision made by the Employer may be withdrawn and the applicant and all parties connected with their submissions shall be liable for any and all consequences arising out of this action for any loss, damages and claims caused to the Employer or to any other person as a result of or in connection with such action or arising there from.

C SPECIFIC QUERIES

Applicants are invited to comment and express their suggestions on a number of issues as listed below. Applicants shall note that although any comments received will be considered during the preparation of tender documents but there is no guarantee that the suggestions will be adopted in the subsequent tender for the project.

1. []

It is advised that the view sought will be treated as strictly confidential and for the information of the Project Team. The views will not in any way affect the evaluation of the prequalification submissions.¹⁰

¹⁰ Procuring department must ensure that the compilation of the tender/contract documents, by taking into account the comments and suggestions collected, will not give rise to the effect of precluding competition (for example, the tender/contract requirements should not be to the advantage or preference of the firm.) In the event that comments and suggestions of a firm are taken into account and the tender/contract requirements are subject to challenge, it would be for the relevant procuring department to defend its case by providing reasons and justifications.

APPENDIX 1

OUTLINE EMPLOYER'S REQUIREMENTS WITH LIST OF SPECIFICATIONS

	Works Elements	Sub-element	Design and Build (D&B) scope	Outline Employer's Requirements
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

General Notes.

- (1) The outline Employer's Requirements are preliminary information for the purpose of prequalification exercise only. A complete Employer's Requirements will be prepared and included in the tender document.
- (2) The Contractor shall be required to procure Professional Indemnity Insurance for the Design and Independent Checking Engineer. The amounts of insurance coverage shall be calculated based upon the directions given in the related technical circulars and memos issued by DEVB .
- (3) [The Contractor shall be required to complete the Works in accordance with the Contractor's Design Proposals and he shall be required to submit as-built drawings, operation and maintenance manuals etc once the construction works are completed to the satisfaction of the Architect / Engineer / Supervising Officer.]
- (4) [The Contractor shall be required to carry out, where required, pre-commissioning, commissioning and final commissioning of all E&M equipment and plant, including training of the Employer's staff.]

APPENDIX 2

OUTLINE DRAWINGS
SHOWING PROPOSALS FOR THE PROJECT

APPENDIX 3

¹¹ PREQUALIFICATION MARKING SCHEME

CONTRACT NO. []

CONTRACT TITLE

¹¹ This is a Standard Prequalification Marking Scheme comprising Stage I Screening and Stage II Marking which has been approved by PS(Tsy) and the use of it should be expressly stated in the request for approval of prequalified tendering. If departments intend to make any modifications to the Standard Prequalification Marking Scheme to suit the particular nature of individual contracts, they should seek policy support from the Works Policy Section of DEVB before they seek approval from the PS(Tsy).

The Standard Prequalification Marking Scheme for D&B Contracts

General Notes

1. The Standard Prequalification Marking Scheme in ensuing paragraphs below is normally applicable to prequalification of tenderers for D&B contracts, in which prequalification submissions are invited from contractors on the List of Approved Contractors for Public Works and/or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works. For prequalification exercises adopting open invitation, the Standard Prequalification Marking Scheme shall only be adopted when the department has assessed that not less than 80% of potential applicants would have records of contractor's performance kept in the Contractor Management Information System (CMIS) of DEVB. This Standard Prequalification Marking Scheme is not applicable to design, build and operate contracts, but may serve as a reference in preparation of the corresponding marking schemes based on individual circumstances.
2. The use of the Standard Prequalification Marking Scheme has been approved by the PS(Tsy). However, departments are still required to seek the PS(Tsy)'s approval for use of prequalified tendering in accordance with SPR 330(b) and Appendix III(B).

The Standard Prequalification Marking Scheme

3. The Standard Prequalification Marking Scheme is provided hereunder:

Stage I Screening

Stage I Screening is adopted as a mandatory part of the Standard Prequalification Marking Scheme to ensure that the applicants comply with the stipulated minimum requirements before their prequalification submissions are considered further.

Key minimum requirements stipulated in Stage I Screening

Mandatory minimum requirements

It is mandatory to set the minimum experience requirements in Stage I Screening:

- Minimum experience requirements (mandatory). For example, the applicant shall have completed at least [1] [construction contract]¹ of contract value not less than a specified amount (normally between 40% and 50% of the estimated value of the Contract to be tendered, but the percentage may be set lower especially for mega-sized contracts² and term contracts taking into consideration the number of potential applicants and the complexity of the works) in the past [5] years. If necessary, departments may set the value of a particular type of works (e.g. roads and drainage work) in a contract instead of its contract value. In any case, the percentage of the contract/works value as the minimum experience requirements should not be less than 30% of the estimated value of the Contract to be tendered unless DEVB's policy support is obtained.

¹ For contracts governed by the Agreement on Government Procurement of the World Trade Organisation (WTO GPA), limiting the construction contract(s) to those previously awarded by the procuring department shall not be imposed. The type of construction contract shall be stated in broad terms to avoid being overly restrictive. For example, where different piling constructions are anticipated, a particular type of piling like large diameter bored piles should not be specified. Departments should also allow alternative types reasonably anticipated. Where minimum experience of specialist works is set, the construction contract can also be a relevant first-tier specialist subcontract under a non-specialist main contractor when the applicant is a specialist contractor.

² Refer to contracts with estimated sum exceeding \$1 billion.

Optional minimum requirements

The following optional minimum requirements should be considered in Stage I Screening to suit the nature of individual contracts.

- The applicant's status on the Approved List (optional). For example, the applicant or a lead participant / major shareholder of the joint venture must be on the List of Approved Contractors for Public Works under a specified category or specified categories when only contractors on these lists are invited to apply for prequalification.
- Minimum staff/plant resource requirements (optional). For example, Project Manager shall have at least [X] years of post qualification experience in civil engineering contracts.
- Minimum past performance standard (optional). For example, applicants shall have less than [X]% performance reports rated as adverse in the [X]-year period which ends on the last Quarter End Date before the date being 2 months counting back from but exclusive of the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date. There are four Quarter End Dates in a year, namely the last day of February, May, August and November.
[Remark: Departments should avoid setting stringent minimum past performance standard. An applicant who does not have past performance record is considered as having satisfied this requirement.]

Points to Note

- (i) Departments may include additional Stage I Screening requirements in addition to the above key minimum requirements only with the approval of Works Policy Section of DEVB before invitation for prequalification.
- (ii) Each minimum requirement set in Stage I Screening should involve a clear cut "yes/no" answer based on factual information without qualitative evaluation. If an applicant fails to comply with any of the stipulated minimum requirements in Stage I Screening, his prequalification submission shall not be considered further. Departments shall draw the applicants' attention to meeting all the minimum requirements and that any failure of

which shall render the prequalification submission not being considered further.

- (iii) Department should always check to ensure an adequate number of potential applicants satisfying all the minimum requirements so as to maintain sufficient competition.
- (iv) In the case of a joint venture, if the participants/shareholders of the joint venture collectively satisfy the stipulated minimum requirements, this joint venture applicant would be considered as passing Stage I Screening. Thus, the counting method in respect of experience and past performance of a joint venture applicant in Stage I Screening should be set by reference to the method given in **Part D** below.
- (v) The counting method in respect of experience and past performance of a past joint venture contract in Stage I Screening should also be set by reference to the method given in **Part D** below.

Stage II Marking

A full mark shall be assigned to each attribute which must not lie outside the specified range and the total of the full marks must be 100 for all 4 sections below. Departments shall specify the details of a marking scheme and ensure that specific aspects covered in one attribute should not be included in other attributes to avoid double counting.

(A) Weighting Distribution

<u>Attributes</u>	<u>Permitted Full Mark</u>
<p><u>Section (1) – Applicant’s experience</u></p> <p>Relevant construction contracts completed in the past 5 years (or other specified no. of years as appropriate) to demonstrate the applicant’s relevant management and technical experience including capability to manage D&B contracts.</p> <p><i>(Note 1: While full mark for this attribute shall be in the range of 0 to 10, a relatively low full mark (say, 0 to 5) is recommended for most contracts. The key minimum experience requirements should have been considered in Stage I Screening. As such, only where it is desirable to engage a contractor possessing more relevant experience to undertake the Contract, departments may consider</i></p>	<p><u>0 – 10</u></p>

Attributes

Permitted Full Mark

allocating marks to this attribute for the additional relevant experience above the minimum experience requirement in Stage I Screening. Only the additional relevant experience shall be counted and considered in the marking.)

(Note 2: If relevant local experience is to be specifically considered, there must be justifications to support that it is essential for the satisfactory completion of the project and it is not intended to discriminate against contractors based outside Hong Kong. If in doubt, legal advice should be sought, in particular for prequalification exercises subject to WTO GPA.)

Section (2) - Applicant's past performance

20-40^{Note 4}

(Note 3: Full mark for this attribute shall be in the range of 20 to 40 depending on the nature of works, and the higher the quality of service or product required to be delivered under the Contract, the higher maximum full mark should be adopted.)

(Note 4: The permitted full mark shall be 20-38 in case training rating is not adopted. The permitted full mark shall be 21-40 in case training rating is adopted.)

- | | |
|--|-------------------|
| (a) workmanship | 2-4 |
| (b) progress | 2-4 |
| (c) site safety | 2-4 |
| (d) environmental pollution control | 2-4 |
| (e) general obligations | 1-2 |
| (f) attitude to claims | 1-2 |
| (g) record against convictions under the Immigration Ordinance, Employment Ordinance or other site safety, environment related and road opening offences | 2-4 |
| (h) safety rating | 6-10 |
| (i) training rating ³ | 1-2 ^{##} |

³ The "training rating" in this memo shall be incorporated in the Standard Prequalification Marking Scheme for D&B Contracts for evaluating prequalification submissions invited from Group C contractors. In the case of open invitation, or where prequalification submission are invited from contractors other than Group C contractors enlisted in any category of the List of Approved Contractors for Public Works, the "training rating" shall also be incorporated in the Standard Prequalification Marking Scheme for evaluating prequalification submissions if the department has assessed that not less than 80% of potential applicants would be Group C contractors enlisted in any category of the List of Approved Contractors for Public Works so that the past performance assessment criterion in connection with the provision of on-the-job training to workers could be meaningfully adopted and put to use.

<u>Notes for attribute (2)(i)</u>	
## The full mark for attribute (2)(i) shall be determined as follows -	
<i>Estimated contract sum</i>	<i>Full mark</i>
> \$1 billion	1
≤ \$1 billion	2

- (j) overall performance 2-4

(Note 5: If the department considers that there are relevant Hong Kong Housing Authority (HKHA) contracts to be included in the assessment, the statement “overall performance (including relevant Hong Kong Housing Authority (HKHA) contracts)” shall be used instead.)

- (k) other aspects, if any 0-2

(Note 6: This attribute to be added on a need basis where the department considers any additional performance attributes as important. In exceptional circumstances, inclusion of more than one attribute is allowed. For example, a “design” attribute may be added if the Contract calls for demanding management of the design team and process. Other attributes such as “organization”, “industry awareness”, “resources” and “attendance to emergency”, which are items for assessment in DEVB’s appraisal system, may be added depending on the nature of the Contract. However, the attributes added should not overlap with the other performance attributes elsewhere in this Section.)

Section (3) - Applicant’s technical resources

5 – 20^{Note 7}

(Note 7: The permitted full mark shall be 5-17 in case “bonus for joint venture with listed contractor in lower group or with probationary status” is not adopted. The permitted full mark shall be 8-20 in case “bonus for joint venture with listed contractor in lower group or with probationary status” is adopted.)

- (a) (i) Company structure and staff organization; 5 - 15
(ii) Project management team;
(iii) Design management team; and
(iv) Technical staff (e.g. key site supervisory staff)

(Note 8: The qualification or experience requirements for

Attributes

**Permitted
Full Mark**

grading full marks shall be pitched at a reasonable level and the marking scheme shall not be drawn up in a way that would encourage applicants to propose managerial and technical staff with qualification or experience well exceeding the minimum requirements which is not necessary for the Contract and may discourage competition.)

(Note 9: Where minimum requirements are specified, zero mark will be given to any non-compliance and higher marks will be given to proposed addition to or enhancement of the minimum requirements.)

- (b) proposed essential plant and equipment, if any, for certain operations as specified by departments where the plant and equipment will have a bearing on the quality of service. 0 - 5

(Note 10: The requirements for grading full marks shall be pitched at a reasonable level and the marking scheme shall not be drawn up in a way that would encourage applicants to propose plant and equipment with quality or quantity well exceeding the minimum requirements which is not necessary for the Contract and may discourage competition.)

- (c) bonus for joint venture with listed contractor in lower group or with probationary status⁴ 3

Section (4) - Applicant's Proposals for undertaking the Contract **30 – 75**

(Note 11: Except for attribute (4)(f), attributes may be added, expanded, combined and modified to suit the nature of Contract.)

- (a) Outline programme proposal of milestones and other key dates including programming logistics and interface management;

⁴ DEVB will review the applicability of the “bonus for joint venture with listed contractor in lower group or with probationary status” from time to time and promulgate changes to its applicability if necessary for compliance by project offices. Under the prevailing policy, this attribute is applicable for prequalification submissions to be invited from Group C contractors of the List of Approved Contractors for Public Works only and with the Standard Prequalification Marking Scheme adopted for evaluating prequalification submissions. In other words, this attribute is not applicable for open invitation or where prequalification submissions are invited from contractors other than Group C contractors on the List of Approved Contractors for Public Works, as well as prequalification submissions to be invited from both Group B and Group C contractors. Procuring departments should refer to the latest procedural requirements promulgated by the DEVB before invitation of tender.

Attributes

**Permitted
Full Mark**

- (b) Outline schematic design (covering architecture, function, structure, E&M, building services, operation and maintenance aspects, etc.) and schematic construction method;
- (c) Outline plan for reduction of recurrent cost of the life cycle including energy efficiency;
- (d) Preliminary innovative and intelligent design solutions and technology (such as for structural, building services, architectural aspects and the adoption / application of other new data-driven technology) to enhance quality and improve buildability;
- (e) Outline quality plan;
- (f) Outline Safety and health management approach (including smart site safety system, outline safety plan, design for safety, other approaches for enhancing site safety etc.);
- (g) Outline environmental management plan;
- (h) Preliminary method statement with emphasis on solution to overcome the site constraint;
- (i) Preliminary innovative and intelligent construction solutions (such as smart and holistic construction methods) or smart and advance application of other technological means (such as artificial intelligence, virtual reality, augmented reality, 3-D printing, digital / web-based technologies, etc.) to enhance quality, productivity and safety of construction works;
- (j) Preliminary productivity enhancement proposal;
- (k) Preliminary capital cost reduction strategic plan; and
- (l) Preliminary risk management approach and contingency plans.

5-10

(Note 12: This attribute may be applicable to contract with high risk, e.g. mega contract with uncertain underground conditions, or contract which is highly sensitive and has a bearing on public safety and convenience.)

Total

100

[Departments may consider limiting the number of pages of applicant’s proposals and drawing submissions in the form as shown below:

Applicants shall submit applicant’s proposals in no more than [X1] pages A4 and [X2] pages A3 drawings with margin not less than 25mm and character font size not less than 12. [X3] mark shall be deducted from the overall mark for each extra page. [X4] mark should be deducted if the submission does not conform to the font size, margins, paper size and other format requirements. The maximum deduction of marks regarding non-conformance on number of pages and formats shall be [X5]⁵ .]

(B) Marking Standard

General – As a matter of principle, there shall be no negative marks or marks exceeding the full mark given for any attributes. All assessment criteria must be clearly stated and made known to the applicants in the prequalification documents. Departments are reminded to re-visit the marking scheme, including the Marking Standards and the assessment criteria, on the issue of any addendum to the prequalification documents to assess whether adjustments should be made to correspond with the changes brought about by the addendum.

The following table serves only as a reference for departments in drawing up the Marking Standard to be issued with the prequalification documents.

Attribute	Marking
<p>Section (1) - Applicant’s experience</p>	<p>Departments should have specified the minimum requirements in Stage I Screening, e.g. have at least one design and build construction contracts of value not less than \$200 million completed in the past 5 years, counting from the original date set for the close of receipt of prequalification submission. As there is a time limit for the minimum experience requirements, extension of the date set for the close of receipt of prequalification submission will potentially affect the eligibility of applicants. To ensure certainty, the original date set for the close of receipt of prequalification submission should be referred to in the requirements irrespective of any extension. Departments should also spell out in the prequalification documents the types of contract which are considered relevant and the requirements on relevant management and technical experience. For multi-disciplinary contracts, attribute (1) can be divided into sub-attributes to take into account the past experience for different types of contracts.</p> <p>If foreign currencies are involved in assessing the value of the</p>

⁵ Works departments to insert figures in [X1,X2,X3,X4,X5] as appropriate.

Attribute	Marking
	<p>contracts completed, the exchange rate for conversion to Hong Kong currency shall be the average between the buy and sell TT rates sourced from the Hong Kong Association of Banks (HKAB) available from its website's historical data on the date of first notice of invitation for prequalification. For contracts using ex-European currencies, such ex-European currencies shall be converted to the Euro Currency using the exchange rate on 1 January 1999, before conversion to Hong Kong currency.</p> <p>If the exchange rate for a particular currency is not available from the website of HKAB on the date of first notice of invitation for prequalification, departments should determine the exchange rate based on the exchange rate from the monetary authority of that currency. If the exchange rate based on that from the monetary authority is not available on the date of first notice of invitation for prequalification, the date with available exchange rate for such currency immediately before the date of first notice of invitation for prequalification shall be adopted. If the exchange rate is not available from the HKAB and the monetary authority concerned, departments should determine the exchange rate based on the exchange rate from an internationally recognized financial data institution for that currency exchange. If the exchange rate from internationally recognized financial data institution is not available on the date of first notice of invitation for prequalification, the date with available exchange rate for such currency immediately before the date of first notice of invitation for prequalification shall be adopted.</p> <p>Departments may vary the requirements on contract value and the 5-year period to suit the nature of their contracts. However, a minimum of 5 years shall be adopted to avoid excessive limitation on the available applicants. If a counting period of more than 5 years is adopted, it is advisable that the values of contracts completed by the applicants shall be adjusted to current price based on a published index available on the date of first notice of invitation for prequalification, such as Building Works Tender Price Index or other appropriate Index as indicated by the departments, to reasonably reflect the current values of past contracts as compared with the specified values of the minimum requirements. Departments are required to decide on the assessment criteria, such as the marks to be given for each qualified contract, and the criteria must be disclosed at the time of prequalification invitation.</p> <p>As Stage I Screening is mandatory, applicants will be checked against the minimum experience requirements and the applicant must comply with the minimum experience requirements in order to proceed to the Stage II Marking.</p> <p>As the minimum experience requirements are stipulated under</p>

Attribute	Marking
	<p>Stage I Screening, there is no passing mark for this attribute and marks will be given for anything above the minimum. Again departments are required to set criteria to decide on the marks to be given for anything above the minimum. Also departments should require applicants to submit documentary evidence in support of the claimed experience.</p> <p>In setting out the requirements under this attribute, departments should bear in mind the limited time available to applicants within the usually tight prequalification submission period and should avoid complex calculation of contract values.</p> <p>For contracts (including first-tier specialist subcontracts where specified) completed within the past 5 years or another specified period, irrespective of its commencement date, the full value of the works⁶ should be taken into account subject to any adjustment specified above.</p> <p>The original contract sum at the time of contract award will be taken as the full value of the works⁷.</p> <p>Experience gained in the capacity of a sub-contractor will <u>NOT</u> be considered unless specified otherwise. Where specified, a first-tier specialist subcontract under a non-specialist main contractor will be considered when the applicant is a specialist contractor.</p> <p>The experience of any associated company of the applicant will <u>NOT</u> be counted. In the case of a joint venture, the experience of any associated company of any participant or shareholder in the joint venture will <u>NOT</u> be counted. The term "associated company", in relation to the applicant, means: (a) a subsidiary of the applicant; (b) a holding company of the applicant; or (c) a subsidiary of such a holding company. The existence of a holding-subsubsidiary relationship shall be determined in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap. 622).</p> <p>Contracts which are still on-going (except for landscape establishment works), irrespective of the date of commencement of the contract, will <u>NOT</u> be considered.</p> <p>Sectional completions, not being the last section completed excluding establishment works, if any, will <u>NOT</u> be considered.</p> <p>Completion means “certified complete” by the</p>

⁶ To be revised as appropriate (e.g. by using “the full value of a particular type of work”) if attribute (1) refers to construction contracts involving a particular type of work with value of such work being not less than a specified amount.

⁷ To be revised as appropriate (e.g. by using “The original value of a particular type of work at the time of contract award will be taken as full value of that type of work.”) if attribute (1) refers to construction contracts involving a particular type of work with value of such work being not less than a specified amount.

Attribute	Marking
	<p>Engineer/Architect/Surveyor/Supervising Officer/Authorised Person and applies to the contract as a whole, excluding Maintenance Periods.</p> <p>If there is a need to extend the prequalification submission period, departments should ensure that the assessment of the applicants' experience within 5-year period or other specified period would still be based on the original date set for the close of receipt of prequalification submission and would not be affected by the extension. All applicants should be notified of this assessment criterion at the time the notification of the extension is given.</p> <p>For novated contracts, only those contracts novated before the date on which the notice for prequalification of tenderers is first published will be considered. The full value of the novated contract will be considered to be accountable to the new contractor (the novatee) but not the old contractor (the novator).</p>
<p>Section (2) - Applicant's past performance</p> <p>(2)(a) – workmanship</p> <p>(2)(b) – progress</p> <p>(2)(c) – site safety</p> <p>(2)(d) – environmental pollution control</p> <p>(2)(e) – general obligations</p> <p>(2)(f) –attitude to claims</p>	<p>For attributes (2)(a) to (f), marking shall be based on Relevant Reports on Contractor's Performance, and the following provisions shall apply:</p> <p>(i) "Relevant Report on Contractor's Performance" means a report on contractor's performance:</p> <ul style="list-style-type: none"> (a) kept in the Contractor Management Information System (CMIS) of DEVB on the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date; (b) relating to any category of on-going or completed contract; and (c) with the last day of the reporting period as specified in the report falling within the 5-year assessment period (inclusive of the first and the last day of the 5-year assessment period) as defined below. <p>"5-year assessment period" means the 5-year period which ends on the last Quarter End Date before the date being 2 months counting back from but exclusive of the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date. There are four Quarter End Dates in a year, namely the last day of February, May, August and November.</p> <p>(ii) The Quarter End Date applicable shall be determined as follows:</p>

Attribute	Marking	
	<p>The original date set for the close of receipt of prequalification submission, or if this has been extended, the extended date being a date falling within the following period</p>	<p>Applicable Quarter End Date</p>
	<p>1 February to 30 April</p>	<p>Last day of November of the preceding year</p>
	<p>1 May to 31 July</p>	<p>Last day of February of the same year</p>
	<p>1 August to 31 October</p>	<p>Last day of May of the same year</p>
	<p>1 November to 31 December</p>	<p>Last day of August of the same year</p>
	<p>1 January to 31 January</p>	<p>Last day of August of the preceding year</p>
<p>For example:</p> <p>The original date set for the close of receipt of prequalification submission is 1 February 2021 and such date has not been extended.</p> <p>The date being 2 months counting back from but exclusive of the original date set for the close of receipt of prequalification submission is 1 December 2020. The applicable Quarter End Date is 30 November 2020. The 5-year assessment period is the period from 1 December 2015 to 30 November 2020.</p> <p>(iii) Where an attribute was marked as “NA” in a report, such report shall not be counted as a Relevant Report on Contractor’s Performance for the purpose of assessing that particular attribute.</p> <p>(iv) If an applicant does not have any Relevant Report on Contractor’s Performance, or any Relevant Report on Contractor’s Performance for any attribute(s), the marking for each of the attributes or the attribute(s) concerned, as the case may be, shall be based on the average mark attained by the other applicants in the corresponding attribute who have complied with the conditions of participation and passed Stage I Screening.</p> <p>(v) In cases where the only applicant/all the applicants (who has/have complied with the conditions of participation and passed Stage 1 Screening) does not/do not have any Relevant Report on Contractor’s Performance, or any Relevant Report</p>		

Attribute	Marking		
	<p>on Contractor's Performance for any attribute(s) in the 5-year assessment period, the applicant(s) will be given 50% of the full marks for the attribute(s) concerned.</p> <p>(vi) For attributes (2)(a) to (e), the marking for each attribute shall be as follows:-</p>		
	% of Relevant Reports on Contractor's Performance falling		
	Below "satisfactory"	Above "satisfactory"	% of full Mark
	>20%	Any percentages	0
	>10% and ≤20%	Ditto	25
	>2% and ≤10%	Ditto	50
	>0% and ≤2%	Ditto	65
	0	<15%	75
	0	≥15% and <30%	85
	0	≥30%	100
	<p>(vii) For attribute 2(f), the marking shall be as follows:</p>		
	% of Relevant Reports on Contractor's Performance with unreasonable claim attitude		% of full Mark
	< 3%		100
	≥ 3% and < 6%		80
	≥ 6% and < 9%		60
≥ 9% and < 12%		40	
≥ 12% and < 15%		20	
≥ 15%		0	
<p>Section (2) - Applicant's past performance</p> <p>(2)(g) – Record against convictions under the Immigration</p>	<p>For attribute (2)(g), the assessment shall be as follows:</p> <p>(i) References to the Ordinances below shall be deemed to include references to such Ordinances as the same may be amended from time to time. For conviction records under Section 17I or 38A of the Immigration Ordinance, the Factories and Industrial Undertakings Ordinance, Occupational Safety and Health Ordinance, Shipping and Port Control Ordinance, Air Pollution Control Ordinance, Noise Control Ordinance, Waste Disposal Ordinance, Water Pollution Control Ordinance, Dumping at Sea Ordinance, Ozone Layer Protection Ordinance, Section 27 of the Public Health and Municipal Services Ordinance, Section 10 of the</p>		

Attribute	Marking
<p>Ordinance, Employment Ordinance or other site safety, environment related and road opening offences</p>	<p>Land (Miscellaneous Provisions) Ordinance, Environmental Impact Assessment Ordinance, Employment Ordinance, Merchant Shipping (Local Vessels) Ordinance or Hazardous Chemical Control Ordinance, the marks will be allocated according to the formula below.</p> <p>Factor = $\frac{\text{number of convictions in the past 3-year period}}{\text{number of ongoing and completed construction contracts in the same period}} \times \#$</p> <p># The 3-year period shall end on the last day of the month preceding the dates being 2 months counting back from but exclusive of the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date. The number of convictions includes the total number of convictions under all concerned ordinances. Convictions relate only to the convictions of the applicant himself. Convictions of the applicant's sub-contractors should not be counted. However, if the convictions relate to the applicant in the capacity of a sub-contractor, those convictions should be counted. The date of the conviction is taken to be the date of the judgment in which the conviction was pronounced. The date of committing the offence which gave rise to the conviction is not to be considered.</p> <p>* The number of on-going and completed construction contracts is taken to be the sum of the following:</p> <p>(a) the total number of public and private sector contracts of all categories within the above 3-year period in Hong Kong where the applicant is acting in the capacity of a main contractor or is a participant/shareholder of a joint venture acting in the capacity of a main contractor; and</p> <p>(b) Where convictions of the applicant or a participant/ shareholder of a joint venture were recorded in the capacity of a sub-contractor, those sub-contracts within the same 3-year period in which the convictions were recorded.</p>

Attribute	Marking	
	<p style="text-align: center;"><u>Percentage of full mark</u></p> <p style="text-align: center;">0%</p> <p style="text-align: center;">20%</p> <p style="text-align: center;">40%</p> <p style="text-align: center;">60%</p> <p style="text-align: center;">80%</p> <p style="text-align: center;">100%</p>	<p style="text-align: center;"><u>Criteria</u></p> <p>if the factor is > 4</p> <p>if the factor is > 3 and ≤ 4</p> <p>if the factor is > 2 and ≤ 3</p> <p>if the factor is > 1 and ≤ 2</p> <p>if the factor is > 0 and ≤ 1</p> <p>if the factor is $= 0$</p>
	<p>(ii) Applicants shall provide a list of the various contracts together with the contact telephone, facsimile numbers and where applicable, emails of the Engineer/Architect/Surveyor/Supervising Officer/Authorised Person for the contracts.</p> <p>(iii) For an applicant without any construction contracts in Hong Kong in the same 3-year period as defined above, the marking shall be based on the average mark attained by the other applicants for this attribute who have complied with the conditions of participation and passed the Stage I Screening.</p> <p>(iv) In cases where the only applicants/all the applicants (who has/have complied with the conditions of participation and passed the Stage I Screening) does not/do not have any construction contracts in Hong Kong in the same 3-year period as defined above, the applicant(s) will be given 50% of the full mark for this attribute.</p>	
<p>Section (2) Applicant's past performance</p> <p>(2)(h) – Safety rating</p>	<p>For attribute (2)(h), the assessment of “safety rating” shall be as follows:</p> <p>(i) The marking shall be by reference to the past accident rates under public works contracts as per the accident and records of man-hours worked kept in DEVB’s PWP Construction Site Safety & Environmental Statistics (PCSES) for three 12-month periods fixed by reference to the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date according to the method below:</p> <p>The three 12-month periods shall end on the last day of the calendar month immediately preceding the dates being 2 months (1st 12-month period), 14 months (2nd 12-month period) and 26 months (3rd 12-month period) respectively counting back from but excluding the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date. A table showing the three</p>	

Attribute	Marking																																		
	<p>12-month periods and measuring dates for receipt of prequalification submission closing dates in 2021 is given in Enclosure 1 to this marking scheme for illustration purpose.</p> <p>(ii) The following formula shall be used for calculating the accident rates for the concerned 12-month periods:</p> $\text{Accident Rate} = \frac{(\text{No. of non-fatal reportable accidents}^8 + \text{No. of fatal accidents in the period})}{\text{Total no. of man-hours worked in the period} / 100,000 \text{ man-hours}}$ <p>(iii) Assuming the full mark for the safety rating attribute to be X, the marking for an applicant shall be the sum of marks given with respect to the 1st 12-month period, 2nd 12-month period and 3rd 12-month period, each of which by reference to the table below:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">1st 12-month period</th> <th style="text-align: center;">2nd 12-month period</th> <th style="text-align: center;">3rd 12-month period</th> </tr> </thead> <tbody> <tr> <td>Full mark for each 12-month period in the ratio of 5:3:2</td> <td style="text-align: center;">0.5X</td> <td style="text-align: center;">0.3X</td> <td style="text-align: center;">0.2X</td> </tr> <tr> <td>Applicant's Accident Rate*</td> <td></td> <td></td> <td></td> </tr> <tr> <td>accident rate ≤ 25% of the limit#</td> <td style="text-align: center;">0.5X</td> <td style="text-align: center;">0.3X</td> <td style="text-align: center;">0.2X</td> </tr> <tr> <td>25% of the limit < accident rate ≤ 50% of the limit</td> <td style="text-align: center;">0.375X</td> <td style="text-align: center;">0.225X</td> <td style="text-align: center;">0.15X</td> </tr> <tr> <td>50% of the limit < accident rate ≤ 75% of the limit</td> <td style="text-align: center;">0.25X</td> <td style="text-align: center;">0.15X</td> <td style="text-align: center;">0.1X</td> </tr> <tr> <td>75% of the limit < accident rate ≤ 100% of the limit</td> <td style="text-align: center;">0.125X</td> <td style="text-align: center;">0.075X</td> <td style="text-align: center;">0.05X</td> </tr> <tr> <td>accident rate > 100% of the limit</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> </tr> </tbody> </table> <p>* The unit of accident rate is number of accident per 100,000 man-hours worked. # The limit of accident rate currently set by DEVB is 0.6.</p>				1 st 12-month period	2 nd 12-month period	3 rd 12-month period	Full mark for each 12-month period in the ratio of 5:3:2	0.5X	0.3X	0.2X	Applicant's Accident Rate*				accident rate ≤ 25% of the limit#	0.5X	0.3X	0.2X	25% of the limit < accident rate ≤ 50% of the limit	0.375X	0.225X	0.15X	50% of the limit < accident rate ≤ 75% of the limit	0.25X	0.15X	0.1X	75% of the limit < accident rate ≤ 100% of the limit	0.125X	0.075X	0.05X	accident rate > 100% of the limit	0	0	0
	1 st 12-month period	2 nd 12-month period	3 rd 12-month period																																
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50% of the limit < accident rate ≤ 75% of the limit	0.25X	0.15X	0.1X																																
75% of the limit < accident rate ≤ 100% of the limit	0.125X	0.075X	0.05X																																
accident rate > 100% of the limit	0	0	0																																

⁸ Reportable accidents mean those accidents resulting in an injury with incapacity for more than three days and all fatal accidents

Attribute	Marking
	<p>(iv) For prequalification submissions invited from contractors on the Buildings category, the accident rates for completed and on-going contracts in Buildings category only will be used in the calculation of the accident rates, hence the safety ratings for the assessment of prequalification submissions. For prequalification submissions invited from contractors from any category/categories other than the Buildings category, the accident rates for completed and on-going contracts in non-Buildings categories (i.e. all other categories) will be used. For prequalification submissions invited from contractors from more than one category including the Buildings category, the accident rates for all completed and on-going contracts in all categories will be used. For open invitation, departments should decide whether the accidents rates for all completed and on-going contracts in Buildings category, non-Buildings categories or all categories will be used.</p> <p>(v) If an applicant does not have an accident rate for a particular 12-month period (on the ground of no man-hour worked for that period), the accident rate to be used for that period shall be the average of that applicant’s accident rates of the other two periods. If an applicant has an accident rate for one of the three 12-month periods only, that accident rate shall be used for the purpose of marking for the other two 12-month periods.</p> <p>(vi) For an applicant without any accident rate in the past three 12-month periods, the mark to be given shall be the average mark attained by the other applicants for this attribute who have complied with the conditions of participation and passed Stage I Screening.</p> <p>(vii) In cases where the only applicant/all the applicants (who has/have complied with the conditions of participation and passed Stage I Screening) does not/do not have any accident rate in the past three 12-month periods, the applicant(s) will be given 50% of the full mark for this attribute.</p>
<p>Section (2) Applicant’s past performance</p> <p>(2)(i) – Training rating</p> <p><i>(Note:</i></p>	<p>For attribute (2)(i), the assessment of “training rating” shall be as follows:</p> <p>(i) The “training rating” of an applicant is worked out based on its past records of training workers to skilled/semi-skilled levels in public works contracts via joining the collaborative training schemes (including Contractor Collaborative Training Scheme (CCTS), Intermediate Tradesman Collaborative Training Scheme (ITCTS) (formerly called</p>

Attribute	Marking
<p><i>Applicability is given in footnote for training rating in Part (A) of this marking scheme</i></p>	<p>Construction Tradesman Collaborative Training Scheme (CTS)), Advanced Construction Manpower Training Scheme (ACMTS) and Construction Industry Council Approved Technical Talents Training Programme (CICATP)) administered by the Construction Industry Council (CIC) in a stated period, and its manpower deployment in public works contracts in the same period.</p> <p>(ii) Assuming the full mark of “training rating” to be Y, the marking for an applicant shall be calculated using the formula below -</p> $\text{Training rating} = Y \times \frac{\text{Training score in the stated period (B)}}{\text{Total “man-year” worked in the stated period (A) / 20}} \quad (\text{Max} = Y)$ <p>(iii) The training score of an applicant should be worked out using the number of workers trained as detailed below –</p> <ul style="list-style-type: none"> (I) 1 training score for each of his CCTS or ITCTS trainee in public works contracts who: (a) is registered as the registered semi-skilled worker of the trained trade under the Construction Workers Registration Ordinance (Cap. 583) (CWRO); or (b) has passed the end-of-training assessment under CCTS or ITCTS if such trade has no corresponding trade division under CWRO, or if CWRO does not allow registration of registered semi-skilled worker for the corresponding trade division, during the stated period; (II) 2 training scores for each of his ACMTS or CICATP trainees in public works contracts who has passed CIC’s mid-term assessment of ACMTS or CICATP for the trained trade during the stated period; (III) 2 training scores for each of his ACMTS or CICATP trainees in public works contracts who is registered as registered skilled worker of the trained trade under CWRO during the stated period; and (IV) 0 training score if none of the above applies. <p>To cope with the characteristics of the construction industry that most of the skilled workers are employed by sub-contractors, CCTS, ITCTS, ACMTS or CICATP trainees employed and trained by sub-contractors in a public works contract will be counted as the trainees of the main contractor for the purpose of calculating the training rating.</p>

Attribute	Marking
	<p>A trainee will be counted as receiving training under a public works contract so long as such contract is stated, in the trainee’s application form for joining the collaborative training schemes, as the public works contract under which the trainee will mainly receive training. Such information will be duly reflected in CIC’s Collaborative Training Schemes Statistics System (CTSSS).</p> <p>The applicants’ training records under CCTS, ITCTS, ACMTS and CICATP to be used for calculating “training rating” are kept in CIC’s CTSSS accessible via CIC’s website at http://www.cic.hk/ctsss. The training score of an applicant should be worked out based on this sub-clause (iii), using the number of workers trained by the applicant as recorded in the CTSSS.</p> <p>(iv) The total “man-year” worked of an applicant shall be equal to the total “man-day” worked for all public works contracts of the applicant in the stated period kept in the PCSES, divided by 295 work days per year.</p> <p>(v) The stated period shall be 36 months ending on the last day of the calendar month immediately preceding the dates being 2 months counting back from but excluding the original date set for close of receipt of prequalification submission, or if this has been extended, the extended date. Examples to illustrate the stated period are given in Enclosure 2 to this marking scheme.</p> <p>(vi) For an applicant who is not a Group C contractor of any category immediately preceding the start date of the stated period, the stated period for such applicant shall start on the first day of the calendar month immediately following the earliest date on which the applicant becomes a Group C contractor. An example is provided below for illustration purpose.</p>

Attribute	Marking
	<p>worked below 20 and a training score of “0” in the stated period or (iii) is not a Group C contractor ^{Note 1} in the stated period, its training rating shall be the average training rating attained by other applicants with a training rating who have complied with the conditions of participation and passed Stage I Screening.</p> <p>(ix) In cases where the only applicant/each of all applicants (who has/have complied with the conditions of participation and passed Stage I Screening) (i) does not have any total “man-year” worked in the stated period; or (ii) has total “man-year” worked below 20 and a training score of “0” in the stated period; or (iii) is not a Group C contractor in the stated period, the applicant(s) will be given 50% of the full mark for this attribute.</p> <p>Note 1 : In the context of training rating, a Group C contractor means a Group C contractor enlisted in any category of the List of Approved Contractors for Public Works.</p>
<p>Section (2) - Applicant’s past performance</p> <p>(2)(j) – Overall performance</p>	<p>For attribute (2)(j), the assessment shall be as follows:</p> <p>(i) The marking shall be made based on the information available on the contractor’s performance kept by DEVB [and the Hong Kong Housing Authority (HKHA) (Note: to be included when relevant type/category of HKHA contracts are specified)], and the following provisions shall apply:</p> $\text{Factor} = \frac{\text{number of Adverse Reports in the 5-year assessment period}}{\text{number of Relevant Reports in the same period}}$ <p>Where</p> <p>(i) “Relevant Reports” means reports on contractor’s performance:</p> <p>(a) relating to any category of on-going or completed contracts recorded in CMIS of DEVB on the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date;</p> <p>(b) [relating to on-going or completed (type/category of contract to be specified)]</p>

Attribute	Marking	
	<p>HKHA contracts kept by HKHA on the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date (Note: to be included when relevant type/category of HKHA contracts are specified)]; and</p> <p>(c) with the last day of the reporting period as specified in the report falling within the 5-year assessment period (inclusive of the first and the last day of the 5-year assessment period) as defined in paragraph (II) below.</p> <p>(ii) The 5-year assessment period shall be the same as that for attributes 2(a) to (f).</p> <p>(iii) “Adverse Reports” means the Relevant Reports assessed to be adverse.</p>	
	<p><u>Percentage of Full Marks</u></p> <p>0%</p> <p>20%</p> <p>40%</p> <p>60%</p> <p>80%</p> <p>100%</p>	<p><u>Criteria</u></p> <p>if the factor is > 0.02</p> <p>if the factor is > 0.015 and ≤ 0.02</p> <p>if the factor is > 0.01 and ≤ 0.015</p> <p>if the factor is > 0.005 and ≤ 0.01</p> <p>if the factor is > 0 and ≤ 0.005</p> <p>if the factor is $= 0$</p>
	<p>(ii) For an applicant without any Relevant Reports in the same 5-year assessment period as defined above, the marking shall be based on the average mark attained by the other applicants for this attribute who have complied with the conditions of participation and passed the Stage I Screening.</p> <p>(iii) In cases where the only applicant/all the applicants (who has/have complied with the conditions of participation and passed the Stage I Screening) does not/do not have any Relevant Reports in the same 5-year assessment period as defined above, the applicant(s) will be given 50% of the full mark for this attribute.</p>	
<p>Section (2) - Applicant’s past performance</p>	<p>When this attribute is included in the marking scheme, departments are required to clearly specify the marking standard by adopting the same or similar approach to those stated in attributes (2)(a) to (f) above. The criteria must be disclosed at the time of prequalification</p>	

Attribute	Marking
(2)(k) – Other aspects	invitation.
Section (3) - Applicant’s technical resources (3)(a) – (i) Company structure and staff organization; (ii) Project management team; (iii) Design management team; and (iv) Technical staff (e.g. key site supervisory staff) (3)(b) – proposed essential plant and equipment	<p>Number, minimum qualification and experience of key staff shall be clearly listed out in the marking scheme in addition to the contract. Each of the key staff shall be assessed separately. The method of assessment shall be clearly stated.</p> <p>Zero mark will be given to any non-compliance with the minimum requirements of the key staff. Higher marks will be given to proposed addition to or enhancement of the minimum requirements. Counting rule (I)^{Note} If a team of staff is nominated for a key staff post, then the staff who can fulfil both specified minimum qualification and experience requirements and with the longest period of experience will be considered. Counting rule (II)^{Note} If the same person is proposed for more than one key staff post, then mark will only be given to this person once and to the post that this person can obtain the greatest benefit in its assessment.</p> <p>Note: Counting rule (II) will take precedence over the counting rule (I). Notwithstanding the above, in any case, if only one person is proposed for a key staff post, he/she shall fill that first for the purpose of this assessment.</p> <p>Minimum requirements for plant and equipment, if any, shall be clearly stated.</p> <p>Departments are required to decide on the assessment criteria for this attribute to suit specific project needs. The criteria must be disclosed at the time of invitation for prequalification submission. Departments should give examples to explain the operation of proposed method of assessment/counting rules.</p> <p>To ensure certainty, the original date set for the close of receipt of prequalification submission should be referred to in the cut-off date set for counting the relevant experience and qualification of applicant’s proposed key staff irrespective of any extension.</p>
Section (3) - Applicant’s technical resources (3)(c) – Bonus for joint	<p>The mark given to this attribute will be either 0 or 3, and there should be no intermediate mark. The full mark will be given to an applicant which fulfills all the requirements in (i), (ii), (iii), (iv) and (v) below:</p> <p>(i) the applicant is an incorporated or unincorporated joint venture applicant;</p>

Attribute	Marking
<p>venture with listed contractor in lower group or with probationary status</p> <p>(Note: Applicability is given in footnote for “Bonus for joint venture with listed contractor in lower group or with probationary status” in Part (A) of this marking scheme)</p>	<p>(ii) the lead participant / major shareholder is a confirmed Group C [or probationary Group C] ^{Note 1} contractor in the List of Approved Contractors for Public Works under [the Buildings / Port Works / Roads and Drainage / Site Formation / Waterworks] ^{Note 2} Category as at the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date; [OR</p> <p>the lead participant / major shareholder is a contractor who is not enlisted in any service category under the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works as at the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date;] ^{Note 3}</p> <p>(iii) at least one participant / shareholder (other than the lead participant or major shareholder to which requirement (ii) above applies) is enlisted as [confirmed / probationary Group A or confirmed / probationary Group B [or probationary Group C] ^{Note 4}] ^{Note 5} in the List of Approved Contractors for Public Works under [the Buildings / Port Works / Roads and Drainage / Site Formation / Waterworks] ^{Note 2} Category as at the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date;</p> <p>(iv) the percentage participation of at least one participant / shareholder by whom the requirement (iii) is fulfilled shall not be less than 10%; and</p> <p>(v) the participant / shareholder by whom the requirement (iii) and (iv) are fulfilled, or where there is more than one such participant / shareholder, at least one of them shall not have any holding-subsidiary relationship with nor be related parties of the lead participant / major shareholder as at the original date set for the close of receipt of prequalification submission or, if this has been extended, the extended date. The meanings of holding-subsidiary relationship and related parties are stated in sub-clauses (f) of Clause [30] of the “Instructions to Applicants” ^{Note 6}.</p> <p><u>Note:</u></p> <ol style="list-style-type: none"> 1. delete “or probationary Group C” if tenders are only invited from confirmed Group C contractors; 2. insert appropriate category(ies). Where contractors of only one Category are invited to apply for prequalification, that Category shall be inserted in both

Attribute	Marking
	<p>requirements (ii) and (iii). Where contractors of more than one Category are invited to apply for prequalification, categories to be inserted in requirement (ii) shall tally with the conditions for participation for the lead participant / major shareholder and categories to be inserted in requirement (iii) shall ensure that a participant or shareholder in any one of those categories would be sufficient in fulfilling requirement (iii). For example, if the lead participant / major shareholder of a joint venture applicant shall be enlisted under Site Formation or Roads and Drainages Categories, “Site Formation or Roads and Drainage” shall be inserted in requirements (ii) and (iii);</p> <p>3. to be included for contract with estimate contract value equal to or greater than the threshold for allowing the lead participant or major shareholder being a contractor who is not enlisted in any service category under the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works;</p> <p>4. delete “or probationary Group C” if prequalification submissions are invited from both confirmed Group C and probationary Group C contractors;</p> <p>5. delete “confirmed / probationary Group A or” if the estimated contract sum is greater than 10 times the Group Tender Limit for Group A contractors and delete “confirmed / probationary Group A or confirm / probationary Group B or” if the estimated contract sum is greater than 10 times the Group Tender Limit for Group B contractors;</p> <p>6. insert reference to the Instructions to Applicants on “one tender only for holding companies, subsidiaries or related parties”. Also, departments should require tenderers to submit declaration form to confirm the requirement (v) are met.</p>
<p>Section (4) - Applicant’s Proposals for undertaking the Contract</p>	<p>Credits will be given based on the quality of prequalification submissions, including but not limited to the applicant’s proposal demonstrating thorough understanding and meeting the design and other objectives of the contract, clear policy statement and contract-specific plan in respect of quality of works, safety, health, welfare and environmental protection, logical programme and interfacing management, productivity, life cycle cost and reasonable approach for devising method statement, managing risks and other proposal/plan as specified.</p> <p>Departments are required to decide on the assessment criteria for this attribute to suit their specific construction needs. The criteria must be disclosed at the time of prequalification invitation.</p>

(C) Passing Mark

- (i) Except for those stated below, a passing mark for an attribute or a Section normally equal to 50% of the respective full mark shall be set. Applicants failing in any attribute/Section with a passing mark shall be considered as having failed the prequalification assessment and shall not be given any further consideration. If a passing mark for an attribute or a Section is set other than 50% of the respective full mark, DEVB's policy support shall be obtained.
- (ii) There shall be no passing mark for **Section (1)**.
- (iii) There shall be only one passing mark for the whole of **Section (2)**.
- (iv) Where there are minimum requirements on any individual attributes of **Sections (3) and (4)** specified in the prequalification documents, there will be no passing mark for such attribute(s). Except for those stated below, normally, departments should not set a passing mark for any individual attributes unless the requirement of that attribute is considered essential. There shall be no passing mark for the attributes of "bonus for joint venture with listed contractor in lower group or with probationary status" in **attribute (3)(c)**.
- (v) There shall be only one passing mark for the whole of **Section (3)**(excluding **attribute (3)(c)**) if there are no minimum requirements on both **attributes (3)(a) and (3)(b)**. For example, if the full mark for the whole of **Section (3)** is 20 and the full mark for the whole of **Section (3)** (excluding **attribute (3)(c)**) is 17, the passing mark for the whole of **Section (3)** (excluding **attribute (3)(c)**) is 8.5 (i.e. 17 x 50%). For the avoidance of doubt, marks attained by a tenderer under **attributes (3)(c)** shall not be considered in assessing whether this tenderer has attained marks under **Section (3)** meeting the passing mark for the whole of **Section (3)** (excluding **attribute (3)(c)**). **No** passing mark for the whole of **Section (3)** (excluding **attribute (3)(c)**) should be set if there are minimum requirements on either **attribute (3)(a) or (3)(b)**.
- (vi) It is mandatory for departments to set a passing mark for the whole of **Section (4)**.

(D) Joint Ventures

(a) Attributes under Section (1)

All participants or shareholders of a joint venture applicant shall be collectively assessed as one entity. It is not necessary that every participant or shareholder must be individually qualified to apply for prequalification or on the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works when only contractors on these lists are invited to apply for prequalification.

For the **Section (1) attributes**, the experience of a joint venture applicant shall be evaluated as the higher of:

- (i) the weighted average of experience acquired by each participant or shareholder in the joint venture based on their respective percentages of financial participation (the “**Weighted Average Method**”); OR
- (ii) the experience acquired by the lead participant or major shareholder in the joint venture provided that the lead participant or major shareholder has a percentage of financial participation of at least 70%; and that-
 - (I) all the other participants or shareholders are in the same Category of the lead participant or major shareholder and on the confirmed or probationary status of the same Group of the lead participant or major shareholder (where the lead participant or major shareholder is a confirmed contractor); or
 - (II) all the other participants or shareholders are in the same Category of the lead participant or major shareholder and on probationary status of the same Group or on confirmed status of a Group lower than that of the lead participant or major shareholder (where the lead participant or major shareholder is a probationary contractor)⁹.

Where contractors not on the List of Approved Contractors for Public Works or contractors of more than one Category are invited to apply for

⁹ Methods (ii) and (iii) are introduced in this Marking Scheme as an incentive for the joint venture’s lead participant or major shareholder to team up with smaller or less experienced contractors, thus conducive to knowledge/experience transfer in the industry capacity.

prequalification, the method (ii) above shall not be used in evaluation of the experience of a joint venture applicant[./; OR]

- [(iii) the experience acquired by the lead participant or major shareholder in the joint venture provided that the joint venture tenderer attains full mark under **attribute (3)(c)** – bonus for joint venture with listed contractor in lower group or with probationary status.]¹⁰

Weighted Average Method

An example of applying the Weighted Average Method in **Part (D)(a)(i)** above is given below:

Example 1

If Contractor A (having 3 relevant contracts) and Contractor B (having 2 relevant contracts) form a joint venture and their respective percentages of financial participation is 60/40, the joint venture would be considered as having $(3 \times 0.6) + (2 \times 0.4) = 2.6$ relevant contracts.

Past Joint Venture Contracts¹¹

In counting experience acquired by an applicant (i.e. non-joint-venture applicant) or a participant/shareholder of a joint venture applicant in past joint venture contracts, the following RULE 1 shall be applied. Where participants/shareholders of a past joint venture contract form a joint venture again in the current prequalification application, the following RULE 2 shall be applied also if the conditions for RULE 2 are met. Otherwise, only RULE 1 shall be applied for counting experience acquired by each of the participants/shareholders.

RULE 1

The number of relevant contracts that an applicant or a participant/shareholder of a joint venture applicant acquired in a past joint venture contract shall be calculated as the higher of either Rule 1A or Rule 1B, as set out below.

¹⁰ To be included when the “bonus for joint venture with listed contractor in lower group or with probationary status” is adopted, the applicability of which is given in Part (A) of this marking scheme.

¹¹ The counting method in respect of experience of a past joint venture contract in **Stage I Screening** should also be set by reference to this section.

Rule 1A

Adjusting the number of past joint venture contracts based on the share of works by value.

The number of relevant contracts that an applicant or a participant/shareholder of a joint venture applicant acquired shall be adjusted based on their respective share of works by value in the past joint venture contracts.

Rule 1B

Adjusting the number of past joint venture contracts based on the adjusted contract value.

Rule 1B applies only if the share of works by value of the applicant or, as the case may be, the concerned participant/shareholder in the past joint venture contract is equal to or more than 30%.

The value of the past joint venture contract shall be adjusted based on the applicant's or, as the case may be, the participant's/shareholder's share of works by value in the past joint venture contract. If such adjusted value satisfies the value requirement for a relevant contract, the applicant/participant/ shareholder concerned shall be regarded as having acquired one (1) relevant contract.

Example 2

Assumptions:

The value requirement for a relevant contract - contract sum not less than HK\$700M and building services installations (including plumbing and drainage) not less than HK\$140M. [Note: Project offices may use other suitable examples for illustrative purposes in the prequalification documents, where considered appropriate.]

Contractor A and Contractor B have completed one building contract at HK\$2,000M with building services installations (including plumbing and drainage) at HK\$400M in a past joint venture with their respective share of works by value at 60/30 (the remaining 10% was taken by the third participant/shareholder).

Contractor A

Apply Rule 1A: Contractor A would be considered to have completed 0.6 relevant contract (i.e. 1×0.6).

Apply Rule 1B: Contractor A would be considered to have completed a building contract at HK\$1,200M with building services installations (including plumbing and drainage) at HK\$240M* (i.e. 60% value of the past joint venture contract). Contractor A would be considered to have completed one relevant contract (*contract sum \geq HK\$700M and building services installations \geq HK\$140M).*

Apply RULE 1: Contractor A would be considered to have completed one relevant contract for the purpose of prequalification assessment as the number of relevant contracts calculated under Rule 1B is higher.

Contractor B

Apply Rule 1A: Contractor B would be considered to have completed 0.3 relevant contract (i.e. 1×0.3).

Apply Rule 1B: Contractor B would be considered to have completed a building contract at HK\$600M with building services installations (including plumbing and drainage) at HK\$120M* (i.e. 30% value of the past joint venture contract). Contractor B would be considered to have completed no relevant contract. (*contract sum $<$ HK\$700M and building services installations $<$ HK\$140M).*

Apply RULE 1: Contractor B would be considered to have completed 0.3 relevant contract for the purpose of prequalification assessment as the number of relevant contracts calculated under Rule 1A is higher.

RULE 2

In case participants/shareholders of a past joint venture contract form a joint venture again in the current prequalification application, the counting method is set out below.

The experience of the participants/shareholders concerned in the past joint venture contract shall be collectively assessed in determining the number of relevant contracts of each participant/shareholder concerned.

RULE 2 applies only if (a) the share of works by value of each participant/shareholder concerned in the past joint venture contract is equal to or more than 30% and (b) the percentage of financial participation of each participant/shareholder concerned in the current joint venture prequalification is equal to or more than 30%.

Example 3

Assumptions:

Contractor A and Contractor B in Example 2 team up with a new participant, Contractor C (which has completed 2 building contracts at HK\$700M with building services installations (including plumbing and drainage) at HK\$140M in a past joint venture contract with its respective share of works by value each at 80%), to apply for prequalification for the current project and their respective percentages of financial participation in the current joint venture prequalification is 50/30/20.

Contractor C

The experience of Contractor C in each completed building contract is calculated below:

Apply Rule 1A: Contractor C would be considered to have completed 0.8 relevant contract (i.e. 1×0.8).

Apply Rule 1B: Contractor C would be considered to have completed one building contract at HK\$560M with building services installations (including plumbing and drainage) at HK\$112M* (i.e. 80% value of the past joint venture contract). Contractor C would be considered to have completed no relevant contract. (*contract sum*

< HK\$700M and building services installations < HK\$140M).

Apply RULE 1: Contractor C would be considered to have completed 0.8 relevant contract for the purpose of prequalification assessment as the number of relevant contracts calculated under Rule 1A is higher.

As Contractor C has acquired 0.8 relevant contract from each completed building contract, it would be considered to have completed 1.6 relevant contracts (i.e. 2×0.8).

Contractor A and Contractor B

The experience of Contractor A and Contractor B in the past joint venture contract is calculated below:

Apply RULE 2: Since Contractor A and Contractor B team up again and the application criteria under RULE 2 are met, their experience in the past joint venture contract would be collectively assessed in determining the number of relevant contracts for each of Contractor A and Contractor B.

Apply Rule 1A & RULE 2: Each of Contractor A and Contractor B would be considered to have completed 0.9 relevant contract (i.e. $0.6+0.3$).

Apply Rule 1B & RULE 2: Each of Contractor A and Contractor B would be considered to have completed a building contract at HK\$1,800M with building services installations (including plumbing and drainage) at HK\$360M* (i.e. $60\%+30\% = 90\%$ value of the past joint venture contract). Therefore, each of Contractor A and Contractor B would be considered to have completed one relevant contract. (*contract sum \geq HK\$700M and building services installations \geq HK\$140M).*

Apply RULE 1: Each of Contractor A and Contractor B would be considered to have completed one relevant contract for the purpose of prequalification assessment as the number of relevant contracts calculated under Rule 1B and RULE 2 is higher.

Joint Venture of Contractor A, Contractor B and Contractor C

*By applying the **Weighted Average Method** in Part (D)(a)(i), the joint venture formed by Contractor A, Contractor B and Contractor C would be considered to have completed $(1 \times 0.5) + (1 \times 0.3) + (1.6 \times 0.2) = 1.12$ relevant contracts.*

(b) Attributes under Section (2)
[except (2)(h) – safety rating and (2)(i) – training rating]

For **attributes (2)(a) to (g) and (j) to (k)**, the mark attained by a joint venture applicant shall be evaluated as the higher of:

- (i) the weighted average of the marks attained by each participant or shareholder for the respective attributes in the joint venture based on their respective percentages of financial participation; OR
- (ii) the mark attained by the lead participant or major shareholder in the joint venture provided that the lead participant or major shareholder has a percentage of financial participation of at least 70%; and that-

(I) all the other participants or shareholders are in the same Category of the lead participant or major shareholder and on the confirmed or probationary status of the same Group of the lead participant or major shareholder (when the lead participant or major shareholder is a confirmed contractor); or

(II) all the other participants or shareholders are in the same Category of the lead participant or major shareholder and on probationary status of the same Group or on confirmed status of a Group lower than that of lead participant or major shareholder

(where the lead participant or major shareholder is a probationary contractor).

Where contractors not on the Approved List or contractors of more than one Category in the Approved List are invited in a prequalification exercise, the method (ii) above above is not applicable in evaluation of past performance of a joint venture applicant under **attributes (2)(a) to (g) and (j) to (k)**[./; OR]

- [(iii) the mark attained by the lead participant or major shareholder in the joint venture provided that the joint venture tenderer attains full mark under **attribute (3)(c)** – bonus for joint venture with listed contractor in lower group or with probationary status.]¹²

As a worked example for calculation purpose using the method in **Part (D)(b)(i)**, if the full mark allocated to **attribute (2)(g)** is 4 and if contractor A has completed 2 construction contracts and has 2 convictions in the past 3-year period, the calculated factor will be equal to 1 and the corresponding percentage of full mark is 80%. The calculated mark is $4 \times 80\% = 3.2$. If this contractor A teams up with contractor B in a joint venture and their percentage of financial participation are 60/40, contractor A will be considered as having $(0.6 \times 3.2) = 1.92$ marks. If contractor B has no conviction in the past 3-year period, contractor B will be considered as having $0.4 \times 4 = 1.6$ marks. The marks for the joint venture of contractor A and contractor B shall be $1.92 + 1.6 = 3.52$ marks.

Past/Existing Joint Venture Contracts

For ascertaining the past performance and conviction records of each participant/shareholder of a past/existing joint venture contract under **attributes (2)(a) to (g) and (j) to (k)**, the past performance records and conviction records of the whole joint venture contract shall be attributed to the participant/shareholder irrespective of his share of works in the past/existing joint venture contract.

Similarly, for the purpose of counting the number of contracts for the attribute **(2)(g)**, the whole joint venture contract shall be attributed to each

¹² To be included when the “bonus for joint venture with listed contractor in lower group or with probationary status” is adopted, the applicability of which is given in Part (A) of this marking scheme.

participant/shareholder of a past/existing joint venture contract irrespective of his share of works in the past/existing joint venture contract.

Where some of the participants/shareholders have no past records

For the purpose of calculation using the method in **Part (D)(b)(i)**, where there is/are participant(s)/shareholder(s) in a joint venture who has/have no past performance record referred to in **attributes (2)(a) to (f), (j) and (k)** or no contract referred to in **attribute (2)(g)** for the period under assessment and there is one participant/shareholder in this joint venture who has past performance records or contracts referred to in the corresponding attributes, the total mark for this joint venture applicant shall then be the mark attained by the participant/shareholder who has past performance records or contracts referred to in the corresponding attributes. Where there is/are participant(s)/shareholder(s) in a joint venture who has/have no past performance record referred to in **attributes (2)(a) to (f), (j) and (k)** or no contract referred to in **attribute (2)(g)** for the period under assessment and there are more than one participants/shareholders in this joint venture who have past performance records or contracts referred to in the corresponding attributes, the total mark for this joint venture applicant shall be the weighted average of the marks attained by these participants/shareholders who have past performance records or contracts in accordance with their percentages of financial participation for the corresponding attributes. For example, if applicant A is composed of 3 participants X, Y and Z with 30%, 30% and 40% shares respectively. If participant X has scored 4 marks, participant Y has scored 3 marks and participant Z has no past performance record or contract for the attribute in question, the total mark for applicant A shall be $(4 \times 0.3 + 3 \times 0.3)/(0.3 + 0.3) = 3.5$ marks.

If none of the participants/shareholders of a joint venture has any past performance record referred to in **attributes (2)(a) to (f), (j) and (k)** or any contract referred to in **attribute (2)(g)** for the period under assessment, the total mark for this joint venture applicant for the corresponding attributes shall be calculated in accordance with (iv) – (v) of **Section (2)(a) to (f)**, (iii) – (iv) of **Section (2)(g)** and (ii) – (iii) of **Section (2)(j)** under **Part (B)** of this marking scheme, as the case may be, by considering this joint venture applicant being an applicant as described in those paragraphs.

(c) Attribute (2)(h) – Safety Rating

For **attribute (2)(h)**, the **safety rating** for a joint venture applicant shall be the weighted average (in accordance with their percentages of financial participation) of the safety rating of all participants or shareholders based on individual participant/shareholder's accident rates in the past three 12-month periods. If a participant/shareholder of a joint venture does not have an accident rate for a particular 12-month period (on the ground of no man-hour worked for that period), the accident rate to be used for that period shall be the average of that participant/shareholder's accident rates for the other two 12-month periods. If a participant/shareholder of a joint venture has an accident rate for one of the three 12-month periods only, that accident rate shall be used for the purpose of marking for the other two 12-month periods.

Where there is/are participant(s)/shareholder(s) in a joint venture without any accident rate for the past three 12-month periods and there is only one participant/shareholder in this joint venture with accident rate(s) for the past three 12-month periods, the safety rating of this joint venture applicant shall be the safety rating attained by the participant/shareholder of this joint venture with accident rate(s) for the past three 12-month periods. Where there is/are participant(s)/shareholder(s) in a joint venture without any accident rate for the past three 12-month periods and there are more than one participants/shareholders in this joint venture with accident rate(s) for the past three 12-month periods, the safety rating of this joint venture applicant shall be the weighted average of the safety rating of the participants/shareholders in this joint venture with accident rate(s) for the past three 12-month periods in accordance with their percentages of financial participation.

If none of the participants/shareholders of a joint venture has any accident rate for the past three 12-month periods, the safety rating of this joint venture applicant shall be calculated in accordance with (vi) – (vii) of **Section (2)(h)** under **Part (B)** of this marking scheme by considering this joint venture applicant being an applicant as described in those paragraphs.

In calculating the accident rates of each participant/shareholder of a past/existing joint venture contract, the accident rates of the whole joint venture contract shall be used and attributed to the participant/shareholder irrespective of his share of works in the past/existing joint venture contract.

(d) Attribute (2)(i) - Training Rating (applicability is given in footnote for training rating in **Part (A)** of this marking scheme)

For a joint venture applicant:

- (i) A “specified participant/shareholder” in a joint venture means a participant/shareholder who –
 - (a) does not have any total “man-year” worked in the stated period;
 - (b) has total “man-year” worked below 20 and a training score of “0” in the stated period; or
 - (c) is not a Group C contractor of any category in the stated period.
- (ii) Except for situations as described in items (iii), (iv) and (v) below, the training rating shall be the weighted average (in accordance with their percentages of financial participation) of the training ratings of the individual participants or shareholders which shall each be calculated in accordance with **Part (B)** of this marking scheme.
- (iii) Where there is/are specified participant(s)/shareholder(s) in a joint venture, and there is only one participant/shareholder of this joint venture not being a specified participant/shareholder, the training rating of this joint venture applicant shall be the training rating attained by the participant/shareholder of this joint venture not being a specified participant/shareholder.
- (iv) Where there is/are specified participant(s)/shareholder(s) in a joint venture, and there are more than one participants/shareholders not being specified participants/shareholders, the training rating of this joint venture applicant shall be the weighted average of the training ratings of those participants/shareholders not being specified participants/shareholders in accordance with their percentages of financial participation.
- (v) If all the participants/shareholders of a joint venture are specified participants/shareholders, the training rating of this joint venture applicant shall be calculated in accordance with (viii) - (ix) of **Section (2)(i) of Part (B)** of this marking scheme by considering this joint venture applicant being an applicant as described in those paragraphs.

The following table illustrates the calculation of the training rating for joint venture applicant.

Status of JV participant / shareholder (see Note)					Training rating of ABCDE joint venture
A	B	C	D	E	
NS	NS	NS	NS	NS	Weighted average of all participants/shareholders
NS	NS	NS	S	S	Weighted average of A, B and C
NS	S	S	S	S	Training rating of A
S	S	S	S	S	Average training ratings attained by the other applicants with a training rating

Note: S – A specified participant/shareholder
 NS – Not a specified participant/shareholder

In calculating the training rating of each participant/shareholder of a past/existing joint venture contract, the training rating of the whole joint venture contract shall be used and attributed to the participant/shareholder irrespective of his share of works in the past/existing joint venture contract.

Example to illustrate the three 12-month periods and measuring dates for prequalification submission closing dates

The original date set for the close of receipt of prequalification submission, or if this has been extended, the extended date being a date falling within the following period	First 12- Month Period			Second 12- Month Period			Third 12- Month Period		
	From	To	Measuring Date	From	To	Measuring Date	From	To	Measuring Date
1 to 31 Jan-21	1-Nov-19	31-Oct-20	31-Oct-20	1-Nov-18	31-Oct-19	31-Oct-19	1-Nov-17	31-Oct-18	31-Oct-18
1 to 28 Feb-21	1-Dec-19	30-Nov-20	30-Nov-20	1-Dec-18	30-Nov-19	30-Nov-19	1-Dec-17	30-Nov-18	30-Nov-18
1 to 31 Mar-21	1-Jan-20	31-Dec-20	31-Dec-20	1-Jan-19	31-Dec-19	31-Dec-19	1-Jan-18	31-Dec-18	31-Dec-18
1 to 30 Apr-21	1-Feb-20	31-Jan-21	31-Jan-21	1-Feb-19	31-Jan-20	31-Jan-20	1-Feb-18	31-Jan-19	31-Jan-19
1 to 31 May-21	1-Mar-20	28-Feb-21	28-Feb-21	1-Mar-19	29-Feb-20	29-Feb-20	1-Mar-18	28-Feb-19	28-Feb-19
1 to 30 Jun-21	1-Apr-20	31-Mar-21	31-Mar-21	1-Apr-19	31-Mar-20	31-Mar-20	1-Apr-18	31-Mar-19	31-Mar-19
1 to 31 Jul-21	1-May-20	30-Apr-21	30-Apr-21	1-May-19	30-Apr-20	30-Apr-20	1-May-18	30-Apr-19	30-Apr-19
1 to 31 Aug-21	1-Jun-20	31-May-21	31-May-21	1-Jun-19	31-May-20	31-May-20	1-Jun-18	31-May-19	31-May-19
1 to 30 Sep-21	1-Jul-20	30-Jun-21	30-Jun-21	1-Jul-19	30-Jun-20	30-Jun-20	1-Jul-18	30-Jun-19	30-Jun-19
1 to 31 Oct-21	1-Aug-20	31-Jul-21	31-Jul-21	1-Aug-19	31-Jul-20	31-Jul-20	1-Aug-18	31-Jul-19	31-Jul-19
1 to 30 Nov-21	1-Sep-20	31-Aug-21	31-Aug-21	1-Sep-19	31-Aug-20	31-Aug-20	1-Sep-18	31-Aug-19	31-Aug-19
1 to 31 Dec-21	1-Oct-20	30-Sep-21	30-Sep-21	1-Oct-19	30-Sep-20	30-Sep-20	1-Oct-18	30-Sep-19	30-Sep-19

**The stated period for prequalifications with the date set
for close of receipt of prequalification submission
between 1 January 2021 and 31 December 2022**

The original date set for the close of receipt of prequalification submission, or if this has been extended, the extended date being a date falling within the following period	The stated period		Number of calendar months in the stated period
	Start date	End date	
1 to 31 Jan-21	1-Nov-17	31-Oct-20	36
1 to 28 Feb-21	1-Dec-17	30-Nov-20	36
1 to 31 Mar-21	1-Jan-18	31-Dec-20	36
1 to 30 Apr-21	1-Feb-18	31-Jan-21	36
1 to 31 May-21	1-Mar-18	28-Feb-21	36
1 to 30 Jun-21	1-Apr-18	31-Mar-21	36
1 to 31 Jul-21	1-May-18	30-Apr-21	36
1 to 31 Aug-21	1-Jun-18	31-May-21	36
1 to 30 Sep-21	1-Jul-18	30-Jun-21	36
1 to 31 Oct-21	1-Aug-18	31-Jul-21	36
1 to 30 Nov-21	1-Sep-18	31-Aug-21	36
1 to 31 Dec-21	1-Oct-18	30-Sep-21	36
1 to 31 Jan-22	1-Nov-18	31-Oct-21	36
1 to 29 Feb-22	1-Dec-18	30-Nov-21	36
1 to 31 Mar-22	1-Jan-19	31-Dec-21	36
1 to 30 Apr-22	1-Feb-19	31-Jan-22	36
1 to 31 May-22	1-Mar-19	28-Feb-22	36
1 to 30 Jun-22	1-Apr-19	31-Mar-22	36
1 to 31 Jul-22	1-May-19	30-Apr-22	36
1 to 31 Aug-22	1-Jun-19	31-May-22	36
1 to 30 Sep-22	1-July-19	30-Jun-22	36
1 to 31 Oct-22	1-Aug-19	31-Jul-22	36
1 to 30 Nov-22	1-Sep-19	31-Aug-22	36
1 to 31 Dec-22	1-Oct-19	30-Sep-22	36

APPENDIX 4

PROFORMA SUBMISSIONS

1. LIST OF FORMS

A. STAGE I – SCREENING	
•Form 1A	Details of Approved Contractor / Supplier and Specialist Contractor for Public Works
•Form 1B	List of completed contracts of Design and Build projects, in the past [] years with an adjusted original contract sum not less than HK\$[] million

B. STAGE II – MARKING	
•Form 1B	(Same as Form 1B above)
•Form 1C	List of completed contracts of [specific type of projects] in the past [] years with an adjusted original contract sum not less than HK\$[] million
•Form 2A	Information of convictions in current/outstanding contracts in the past three years
•Form 2B	Applicant's Consent and Authorization on Conviction Records
•Form 3A	Details of Applicant
•Form 3B	Joint Venture Details (if applicable)
•Form 3C	Company Structure and Proposed Personnel
•Form 3D	Proposed key staff for this Contract
•Form 3E	Proposed essential plant and equipment

C. Others	
Undertaking to Submit One Tender for the Contract	

2. LIST OF DOCUMENTS

FORM 1A

**DETAILS OF APPROVED CONTRACTOR / SUPPLIER AND SPECIALIST CONTRACTOR
FOR PUBLIC WORKS**

Where specified, the applicant or participant / shareholder of a joint venture applicant shall provide their details in the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, including the Category and Group, together with all supporting documentations.

The applicant or participant / shareholder of a joint venture applicant shall also make a statement whether there are currently in force any suspensions from tendering of government projects.

FORM 1B

LIST OF COMPLETED DESIGN AND BUILD CONTRACTS IN THE PAST [] YEARS WITH AN ADJUSTED ORIGINAL CONTRACT SUM NOT LESS THAN HK\$[] MILLION

Project (with brief description of the project)	Adjusted Original Contract Sum (see Note 2 below)	Contract Commencement Date (mm-yy)	Contract Completion Date (mm-yy) (original)	Contract Completion date (extended)	Actual / Anticipated Completion date	Contract Duration (days)	Client/Main Contractor, Supervising Officer (name, address & tel.) to be contacted for reference	Name and status of the Company (state the % of participation by value of work in case of a JV company) (see Note 1 below)
1.								
2.								
3.								

- Note 1. Please state whether your company was the main contractor, a first-tier subcontractor where specified, or a joint venture (to state the % of participation by value of work in case of a joint venture).
- Note 2. The contract sum shall be adjusted to the current value and other requirements as specified. If the adjusted original contract sum is less than HK\$[]M after the adjustment, the contract will not be taken into account. Documentary evidence must be provided to substantiate the calculations for the adjusted original contract sum;
- Note 3. The applicant shall categorise the above details for Hong Kong Government contracts and other contracts in the Hong Kong and outside Hong Kong separately.
- Note 4. The applicant shall provide certified true copy of following supporting documents to demonstrate that his experiences in construction projects can fulfil the stipulated requirements
- Articles of agreement or Letters of Acceptance for the completed contracts, showing the awarded contract values.
 - copy of the substantial completion certificates for the completed contracts.
 - general layout plans and relevant pages of specifications showing the scope of the completed/[on-going]contracts.
 - state whether the completed/[on-going] project was "Design and Build" type of contract; and to provide relevant supporting documents such as the form of contract.
 - for completed contracts undertaken by joint ventures, the applicant shall provide a copy of the joint venture agreement showing the percentages of participation by value of work of the participants/ shareholders.
 - [for subcontracts, the applicant shall provide relevant supporting documents showing his first-tier subcontracting relationship with that non-specialist main contractor. (Note: If subcontracts are considered.)]
 - If any of the above documents are in languages not in English or Chinese, a translation to either language duly certified by the applicant should also be submitted.

FORM 1C

LIST OF COMPLETED CONTRACTS OF [SPECIFIC TYPE OF PROJECTS] IN THE PAST [] YEARS WITH AN ADJUSTED ORIGINAL CONTRACT SUM NOT LESS THAN HK\$[] MILLION

Project (with brief description of the project)	Adjusted Original Contract Sum (see Note 2 below)	Contract Commencement Date (mm-yy)	Contract Completion Date (mm-yy) (original)	Contract Completion date (extended)	Actual / Anticipated Completion date	Contract Duration (days)	Client/Main Contractor, Supervising Officer / Arch/Eng. (name, address & tel.) to be contacted for reference	Name and status of the Company (state the % of shares by value of work in case of a JV company) (see Note 1 below)
1.								
2.								
3.								

Note 1. Please state whether your company was the main contractor, a first-tier subcontractor where specified, or a joint venture (to state the % of shares by value of work in case of a joint venture).

Note 2. The contract sum shall be adjusted to the current value and other requirements as specified. If the adjusted original contract sum is less than HK\$[] million after the adjustment, the contract will not be taken into account. Documentary evidence must be provided to substantiate the calculations for the adjusted original contract sum.

Note 3. The applicant shall categorise the above details for Hong Kong Government contracts and other contracts in the Hong Kong and outside Hong Kong separately.

Note 4. The applicant shall provide certified true copy of following supporting documents to demonstrate that his experiences in construction projects can fulfil the stipulated requirements

- copy of the Letters of Acceptance for the completed contracts, showing the awarded contract values.
- copy of the substantial completion certificates for the projects.
- general layout plans and relevant pages of specifications showing the scope of the completed contracts and on-going contracts
- state whether the completed/[on-going] project was "Design and Build" type of contract; and to provide relevant supporting documents such as the form of contract.
- for completed contracts undertaken by joint ventures, the applicant shall provide a copy of the joint venture agreement showing the percentages of participation by value of work and the nature of work of the participants/ shareholders.
- [for subcontracts, the applicant shall provide relevant supporting documents showing his first-tier subcontracting relationship with that non-specialist main contractor. (Note: If subcontracts are considered.)]
- If any of the above documents are in languages not in English or Chinese, a translation to either language duly certified by the applicant should also be submitted.

FORM 2A

INFORMATION OF CONVICTIONS IN CURRENT/ OUTSTANDING CONTRACTS IN THE PAST THREE (3) YEARS

Name of Applicant (or Participant/ Shareholder of a joint venture applicant) ^(Note 1) _____

Contract No. <small>(Note 2)</small>	Contract Title	Contract period (Maintenance Period excluded)		No. of convictions <small>(Note 2)</small>	Details of Supervising Officer/ Engineer/Architect/Authorised Person responsible for the contract			
		From	To		Name	Company	Contact telephone no. and facsimile numbers	Email address
Public Works								
Other contracts								

Note 1. A separate form is to be completed for each of the contracts of the applicant or each participant/shareholder in the case of a joint venture. The form shall be certified in accordance with clause B10(a) of the Prequalification Document.

Note 2. The applicant shall provide the information of the contract which is on-going or was completed in the past 3-year period counting from and including the date 2 months before the original date set for the close of prequalification exercise or, if this has been extended, the extended date. In each of these contracts, the applicant shall provide the number of convictions under the Section 171 or 38A of the Immigration Ordinance, the Factories and Industrial Undertakings Ordinance, Occupational Safety and Health Ordinance, Shipping and Port Control Ordinance, Air Pollution Control etc. as specified.

Form 2B

To: [Name of the procuring department]

Dear Sir/Madam,

Contract No. []

[Contract title]

Letter of Consent and Authorization

We hereby give consent to the [name of the project office/procuring department] to obtain from all relevant government departments/bureaux and authorize such relevant government departments/bureaux to release and make available to [*name of the project office/procuring department*] information relating to our conviction records (if any), including the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, for offences under the following ordinances (including all sub-legislation made thereunder) and specific sub-legislation (if any) for the purposes of assessment of [our application]* in this prequalification exercise.

[*set out the legislation referred to in paragraph X(1)*]

We give further consent to the [*name of the project office / procuring department*] to furnish such information to [*name of the Consultants of this Project*], the Consultants of this Project, for the same purposes.

(Signed for and on behalf of the applicant or, where paragraph X(2) applies, the relevant participant or, as the case may be, shareholder)

* Where paragraph X(2) applies, change to "the application of [*name of the applicant*]".

FORM 3A

DETAILS OF APPLICANT

Note : A separate Form 3A shall be completed for each participant/ shareholder in a joint venture.

1. Name of the Applicant or Participant/Shareholder in case of a Joint Venture:

Name of Contact Person: _____

2. Head Office Address: _____

Telephone No. _____ Fax No. _____ Email Address _____

3. Hong Kong Office Address:

Telephone No. _____ Fax No. _____ Email Address _____

4. Type of organisation (e.g. private company, public company, subsidiary, partnership etc):

5. Country and year of incorporation:

6. Status in Hong Kong (head office, branch, subsidiary etc):

7. Main Business Activities

1. _____ Since: _____

2. _____ Since: _____

3. _____ Since: _____

4. _____ Since: _____

FORM 3A

DETAILS OF APPLICANT (CONT'D)

8. If the applicant or participant/shareholder in case of a joint venture is a subsidiary or an affiliated company, what involvement, if any, will the parent or other related companies have in the project?

9. Names and addresses of associated companies to be involved in the Contract and whether parent, subsidiary or others.

FORM 3B

JOINT VENTURE DETAILS (IF APPLICABLE)

Note: To be completed by joint venture applicant

1. Name of Lead Participant (in case of an unincorporated Joint Venture) / Major Shareholder (in the case of an incorporated Joint Venture) _____

2. JV Name _____

3. Head Office Address _____

Telephone No. _____ Fax No. _____ Email Address _____

4. Local Address _____

Telephone No. _____ Fax No. _____ Email Address _____

5. Contact Name _____

6. Names of Participants/Shareholders

	<u>Financial Participation</u>	<u>Management Participation</u>
a. _____	_____ %	_____ %
b. _____	_____ %	_____ %
c. _____	_____ %	_____ %
Total =	<u>100%</u>	<u>100%</u>

Percentage Participation = (Financial Participation + Management Participation)/2

7. Type of proposed Joint Venture agreement - incorporated/unincorporated (give details):

8. Proposed distribution of management, financial and contractual responsibilities including responsible position and nature of works between joint venture participants/shareholders. (A draft of the proposed joint venture agreement shall be attached).

FORM 3C

COMPANY STRUCTURE AND PRINCIPAL STAFF

1. Applicants shall provide organisation charts showing the company structure
2. Applicants shall provide current total number of staff (by function and location):

Type of Staff	Number of Staff			Total
	Head Office (Hong Kong)	Site (Hong Kong)	Outside Hong Kong	
Managerial				
Professional				
Technical				
Supervisory				
Total				

3. Senior Management Personnel of the Applicant

Provide C.V. of all directors and principal personnel of the applicant. (Use photocopies of this sheet as required.)

(1) Name :

Qualifications :

Experience :

Length of Service :

(2) Name :

Qualifications :

Experience :

Length of Service :

(3) Name :

Qualifications :

Experience :

Length of Service :

FORM 3D

PROPOSED KEY STAFF FOR THIS CONTRACT

Item	Position	Name	Staff I.D. No.	Age	Working Experience (Year) (see Note 1 below)	Existing Engagement	Qualifications (see Note 2 below)	
							Degree in	Corporate member of professional institution
a	Project Manager							
b	Construction Manager							
c	Design Manager							
d	[Testing and Commissioning Manager]							
e	[Key staff of the Design Team]							

Note 1. Please provide staff's C.V. and length of service with the company. The experience of the staff shall be stated in details. (Separate sheets can be supplemented for the staff's design experience).

Note 2. The qualifications obtained should be relevant to the works and recognised by the Government of the Hong Kong Special Administrative Region.

FORM 3E
SECTION 3(B) - PROPOSED ESSENTIAL PLANT AND EQUIPMENT

Key tasks and quantity of Works A	Main resources (type of plant / equipment and quantities) B	Anticipated working rate C	Minimum duration required A / (B x C)	Ownership # (Self-owned / hire / owned by others)

The Contractor is required to state whether he owns the plant and equipment and provide evidence if self-owned.

Form 4

To: [Name of the procuring department]

Dear Sir/Madam,

Contract No. []

[Contract title]

²⁰Letter of Undertaking to Submit One Tender for the Contract

I undertake that if I am prequalified individually or as part of a joint venture that I shall only submit one tender for the contract either as a holding company on its own behalf or as a subsidiary company on its own behalf or as a participant or shareholder of a joint venture. I understand and accept that if I fail to observe this condition that this will render all related tenders null and void and such tenders shall not be considered by the Government.

²⁰ Each prequalified contractor, either as a holding company or its subsidiary companies on its own behalf or as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture shall each give an undertaking.

APPENDIX C GUIDANCE NOTES ON THE PREPARATION OF THE EMPLOYER'S REQUIREMENTS

1.0 Preamble

The Employer's Requirements must incorporate all the elements and requirements that the end user or the client wants to include in the project.

The Employer's Requirements shall include all relevant information related to the project.

Should the Employer's Requirements not be precise enough and the client's needs not be properly defined, difficulties will arise during tendering, tender assessment, design and construction. Also, if important information is missing tenderers are likely to increase their prices to cover grey areas perceived as potential risks. Careful re-consideration should be given to whether the project is suitable for design and build if there are doubts regarding the comprehensiveness of the Employer's Requirements.

The Employer's Requirements form part of the tender documentation described in Section 3 of the Administrative Procedures and shall contain the items listed therein as well as any other requirements for the project. The Employer's Requirements shall be prepared and written in terms of performance. (See SPR 350 Appendix III(F) - Guidelines for Drawing Up Tender Specifications). Pre-tender meetings should not be held if existing procedures for communication are sufficient to obtain competitive tenders.

In preparing the Employer's Requirements, works departments shall use functional and performance specifications, i.e. rather than design or descriptive characteristics, supplementing these with material or technical specifications only if absolutely necessary and shall be based on international standards where such exist. Where dimensions or other measurable characteristics are critical to performance, a permitted range rather than a fixed dimension shall be used wherever possible. There shall be no requirement for or reference to a particular trademark or trade name or patent or origin unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that "similar or equivalent" shall always be permitted and indicated in the Employer's Requirements.

Tenderers shall be asked to develop solutions capable of satisfying the Employer's Requirements in sufficient detail to enable tenders to be adequately assessed. Post tender meetings shall be held only when there is a positive need. The tender document should be self-explanatory.

The following items shall be considered in preparing the Employer's Requirements and shall be read in conjunction with Section 3.

2.0 Specimen Employer's Requirements

Information to be provided to tenderers shall include:-

2.1 Introduction

- 2.1.1 Preamble
- 2.1.2 General Obligations
- 2.1.3 Location and Description

2.2 General site data

2.2.1 Site survey

The site survey plan shall indicate project boundaries for both Temporary Works and permanent Works, ground levels, existing features and utility services including utility reserves in sufficient detail so that tenderers can make realistic assumptions. The interpretation of this data is the tenderer's responsibility.

2.2.2 Ground investigation

Ground investigation and topographic/marine survey works undertaken at feasibility study stage are normally only sufficient for a prequalification exercise. Further site investigation and survey works are normally necessary for the tender stage to enable the tenderer to make design assumptions. The successful tenderer may carry out more detailed ground investigation and survey works to suit his particular design once the Contract is awarded. The latter is a requirement if the method statement approach is adopted (D&B GCC Clause 13, Alternative I). (See **Appendix F**).

The ground investigation data provided to tenderers shall include factual data of boreholes, trial pits and the like, together with factual data resulting from monitoring, insitu and laboratory testing and shall be in sufficient detail to allow tenderers to make reasonable design assumptions. Subject to D&B GCC Clause 13, Alternative 1, the interpretation of this data is the tenderer's responsibility.

for example:-

“Sub-surface Assessment
[See SCT16 Annex G5 and Appendix C]

GCC Clause 13 Alternative I

- (i) The Contractor is required to provide in the Contractor's Proposals the following information (which in the event of award of Contract will become the “Method Statement”) for that part of the permanent Works and Temporary Works stated in Clause [] of the Employer's Requirements :-

- (a) the Contractor's planned method of working and resources, as quantified and supported by rates and prices submitted with the pricing part of the Contractor's Proposals, i.e. the breakdown of the Contractor's rates and prices as required in Clause [] of the Employer's Requirements.
 - (b) the Contractor's design assumptions and assessment of sub-surface conditions (which in the event of award of Contract will become the "Sub-surface Assessment").
- (ii) The Contractor should note that the acceptance of his Tender does not mean that the Employer accepts or agrees with the Contractor's Method Statement or that it will be suitable or adequate for the sub-surface conditions anticipated in the Sub-surface Assessment. The Method Statement (including the Sub-surface Assessment) is required to be submitted solely for the purposes of the General Conditions of Contract Clause 13".

2.2.3 Land to be made available

2.2.3.1 Permanent Works

2.2.3.2 Temporary Works

2.2.4 Existing utilities and reserves for utilities

2.2.5 Site engineering conditions

2.3 Statutory compliance requirements

The Buildings Ordinance and the Building Regulations do not apply to Government works. When required for the Works, it is therefore essential to include reference to such Ordinances and Regulations in order to ensure compliance on structural safety, means of escape, etc. Included in such compliances may be others necessary from Fire Services Department, Water Supplies Department, Drainage Services Department, Highways Department Environmental Protection Department and Utility Companies such as Gas, Electricity and Telephone.

2.4 Design brief

Development of the design brief will follow on from feasibility studies. A design brief in outline will be needed at the time prequalification is undertaken. The design brief should be fully detailed when tenders are sought.

The design brief shall be an exhaustive description of the minimum requirements of the Employer as to the performance and standard of the completed works.

2.4.1 Scope of work

- (a) Brief overview of the Contractor's scope of work
- (b) Limits of scope (Interface with the Employer, direct contractors, Utility Companies)

2.4.2 Design specification

- (a) Applicable standards and regulations
- (b) Design expectations beyond functional suitability should be stated. If NONE then this should be stated.
- (c) Tenderers should not be requested to address non measurable elements e.g. design style, classical or modern.

2.4.3 Performance specification

For example, for building projects:-

- “ (a) Architectural performance specification (where applicable):
- floor areas, volumes and required functions;
 - standard of materials and workmanship;
 - any imposed design options or material selections (imposed layouts, proprietary products ...).
- (b) Structural performance specification:
- general performances required (loads, fire resistance, durability ...);
 - imposed design options (use of steel or concrete ...).
- (c) Building services performance specification:
- performances of each system (required room temperatures, air humidity, power supply, lighting levels ...);
 - imposed design options (equipment type, proprietary products).
 - requirements for spare components.

- requirements for special test instruments.
 - utility company connections.
- (d) Electrical and Mechanical services performance specifications
- (e) Electronic services performance specifications
- (f) Landscaping performance specifications

The description of the required performances must be detailed enough to precisely reflect the expectations of the Employer, with the understanding that the design of areas left out of the brief will be up to the Contractor. The architectural brief for a building, for example, should contain a finishing schedule covering all the rooms and external surfaces. It should also provide required performances not listed in the applicable standards e.g. noise reduction factor of partitions. ”.

The design brief on the other hand, should not contain such design details which are not specifically required by the Employer e.g.

- brand names, other than to describe a standard;
- structural member sizes, other than imposed minima;
- size or power of equipment (which will result from design calculations based on performances) other than imposed minima;
- subjective descriptions e.g. “good quality tiling”;
- architectural layouts or structural drawings “for information”.

The Employer’s Requirements for quality must be clearly stated. However, sufficient information must be included to prevent argument over the level of quality of what has to be delivered by the Contractor.

Consideration of using benchmarking standard in the ER should be given if there is no sufficiently precise or intelligible way in stating the requirement in the performance specification.

2.4.4 Other requirements

- (a) As-built Drawings and O&M Manuals
- (b) Guarantees and maintenance requirements

2.5 Programme requirements and restrictions

- 2.5.1 General requirements
- 2.5.2 Commencement date and period for completion
- 2.5.3 Possession of temporary and permanent work areas

- 2.5.4 Interface with other contracts
- 2.5.5 Design checking
- 2.5.6 Project control group and meetings

The membership of the project control group as well as with the aims of the group meetings and the frequency of meetings shall be stated.

[Note : See SCT1 “Programme of Works” at Appendix G Annex G5 where the SCC - Programme and Progress Reports is adopted replacing D&B GCC Clause 16.]

2.6 Quality assurance

- 2.6.1 Introductions
- 2.6.2 References
- 2.6.3 Quality system requirements

[Note : ISO 9001 Certification is not a requirement for design and build contracts. However, as integrated quality assurance shall have been a consideration for pre-qualification (see Proposals for undertaking the project – Clause B8(3) of the Prequalification Document at Appendix B) the quality system requirements should reflect the quality management systems proposed by the pre-qualified tenderers.]

2.7 Safety aspects

The requirement for tenderers to provide an Outline Safety Plan shall be stated in the Special Conditions of Tender. **(See Appendix G - Annex G5.)** The provision of a Safety Plan under the Contract is incorporated by means of Special Condition of Contract. **(See Appendix H.)** The requirement for the Contractor to comply with the provisions in the Construction Site Safety Manual Chapter 3 shall be referred to here. Any additional/specific requirements shall also be set out here e.g. to give proper consideration during the planning and design stages of the project to avoid undue construction safety problems.

2.8 Environmental protection aspects

If the contract is for a designated project under Schedule 2 of the Environmental Impact Assessment (EIA) Ordinance the procedures in prevailing TCW on EIAO should be followed. State in the Employer's Requirements the contract is for a designated project under Schedule 2 of EIA Ordinance and state whether or not the project is exempted under Sections 9(2) or 9(3) of the Ordinance.

Designated projects under Schedule 2 of the Ordinance which are not exempted require an environmental permit (EP) to be granted by the Director of Environmental Protection before construction or operation or decommissioning could commence. Under Section 9(4) of the

Ordinance, a material change to an exempted project requires an environmental permit under the Ordinance unless subsequently exempted. Material change means a physical addition or alteration to a designated project which results in an adverse environmental impact as defined in Section 6.1 of The Technical Memorandum on EIA Process (the Technical Memorandum).

If the project is not exempted and the proponent department has obtained an environmental permit (EP) under the Ordinance, the proponent department shall include a copy of the EP in the Employer's Requirements to notify the tenderers of the details of the EP in particular the conditions therein. If the need arises for variation of the conditions of the EP or if a material change is proposed through a Variation under the terms of the contract (the Variation) the proponent department shall apply for variation of the EP under Section 13 of the Ordinance. After obtaining the variation of the EP, the Supervising Officer shall order the Variation and shall include the variation of the EP in the Variation for the Contractor's compliance.

If the project is not exempted and the proponent department has decided that the successful tenderer has to apply and obtain the EP (for construction and, if applicable, for operation) under the Ordinance, the proponent department shall include in the Employer's Requirements such a requirement.

If the contract is for a non-designated project under Section 2 of the Ordinance the mitigation and pollution control measures stated in the Preliminary Environment Review (PER) for the project shall be included in the Employer's Requirements.

2.9 Design checking procedures

It will be necessary to specify in the Employer's Requirement how and if design checking is to be carried out the extent of same. The requirement of Designer's and Design Checker's report in addition to their certificates shall also be included. Works Departments should consult other Departments/Offices who may require to have an input in the checking process, e.g. the Geotechnical Engineering Office (GEO) shall be consulted where any geotechnical works are involved. It will also be necessary to specify those aspects of Temporary Works which are to be checked. Please refer to **Appendix D**.

2.10 Price breakdown

2.10.1 *Breakdown of the Contractor's rates and prices*

D&B contracts shall normally be lump sum contracts. The method of interim payment shall be stipulated in the Form of Tender and may be :-

- (a) staged payments including milestone achievements; or
- (b) sums based on a system of periodic measurement/valuation.

To assist in the valuation of such interim payments, to assist in the valuation of any Provisional Sums listed in the Employer's Requirements and possibly to assist in the valuation of Variations, a breakdown of the Contractor's rates and prices shall be required to show how the Contract Sum is built up. A breakdown of the Contractor's Tender Price for cash flow purposes for present day costs is also required. Such requirements shall be stated in the Employer's Requirements and in the Conditions of Tender including the level of detail required. A breakdown of rates and prices for certain aspects of the work shall also be necessary when D&B GCC clause 13 Alternative I is used (See **Appendix F**). The breakdown of rates and prices shall only be to such detail as is necessary to meet the above requirements. Breakdown shall be related to cost centres and elements of work. The detail required shall not be to the extent of fully priced Bills of Quantities.

2.10.2 *Dayworks rates*

Set out the conditions under which and schedules of rates to be paid for labour, goods, materials, Plant and Constructional Plant used in works ordered to be executed on a daywork basis. (See Appendix H SCC 74 Dayworks).

2.11 **Employer's construction and site safety supervision**

2.11.1 *Construction checking*

The watching and inspection of the Works by the Supervising Officer or his delegate shall be compliance checking concurrent with the Contractor's construction checking to ensure that standards are met. The construction supervision to be carried out by the Contractor shall be stipulated in the Employer's Requirements. (See Section 4, paragraph 4.4 of the Administrative Procedures).

2.11.2 *Site safety*

The responsibilities of the Supervising Officer in ensuring/promoting construction safety and health shall be the same as for a traditional Architect's/Engineer's design contract. The responsibilities of the Supervising Officer under the Construction Site Safety Manual Chapter 3 Sections 4 to 11 shall be referred to here.

2.12 **Facilities for the Supervising Officer**

As the Supervising Officer provides a monitoring role, because the Contractor provides the necessary construction checking, consideration

shall be given to specifying a lesser requirement for site personnel accommodation than that for a similar traditional contract.

2.13 Assessment of tenders

2.13.1 The criteria for assessing tenders shall be listed and the weighted marking scheme explained. Normally tender assessment will be a two-stage approach (two envelopes system) whereby the tenderers technical proposals are assessed and marked before the tender sums are considered. The relative weightings shall be set for each selection criterion and sub-criterion with an indication of the minimum level of acceptance for each criterion and sub-criterion.

2.14 Other requirements

2.14.1 Such information may include DEVB TC(W)s which provide specific technical guidance not included in the design brief and which should be taken into account in the Contractor's Proposals. Examples include but not limiting to the following TC(W)s on :-

- Mass Transit Railway Protection
- Greenhouse Effect - Allowance in Design
- Checking of Foundation Works in the Designated Area/Ma On Shan
- Use of PFA in Structural Concrete
- Permanent Reinforced Fill Structures

2.14.2 Specified experience of persons or firms such as designer, Design Checker(s), project team, sub-contractors required to be named in the Contractor's Proposals :-

For example, the following shall be provided in the Contractor's Proposals :-

“(a) The name(s) and experience of the person(s) to be employed to fulfil the obligations to carry out the design of the Works such person(s) shall be to the Supervising Officer's approval. The Contractor and his sub-contractors shall provide and employ in connection with the design, construction and maintenance of the Works appropriately skilled and qualified designers :-

- (i) Structural design; the designer shall either be a Registered Structural Engineer or a Corporate Member of the Institution of Civil Engineers or a Corporate Member of the Institution of Structural Engineers or a Corporate Member of the Hong Kong Institution of Engineers (Civil or Structural Division).

- (ii) Building services design; the designer shall have been previously employed in Government projects as Building Services Consultant for all installations and systems in the Works.

Designers employed by the Contractor, or his sub-contractors shall be able to demonstrate competence and experience in the design of (.....Insert building type.....).” .

The specific requirements referred to in (a) above would vary depending on the needs of the particular project and should be expressed in terms of qualifications, training and experience, etc.

2.14.3 Preliminary design drawings and technical documentation to be provided as part of the Contractor's Proposals. For example :-

(i) Architectural:-

- A model with suitable scale enabling the appreciation of aesthetic appearance.
- Concept drawings and signed statutory compliance checklist.
- Indicative colour schemes
- List of proposed finishing materials including country of origin, manufacturer and supporting technical literature.
- Floor plans, sections and elevations, including alignments and levels.
- Interior and exterior design drawings of the theme spaces.
- Preliminary methodology for avoiding or minimising adverse impact of the proposed works on the heritage site.
- Type and technical specification of waterproofing material including
- Type and technical specification of drainage work.
- Type and technical specification of metal cladding.
- Drawings showing the schematic layouts of drainage, sewerage and water supply pipework, other utility services etc.

(ii) Structural :-

- A general description of structural scheme and how load transfer from superstructure to foundation.
- The general layout of beams, columns, walls and slabs.
- The sizes of major structural members with typical details.
- Superstructure design proposal.
- Underground structure design proposal.
- Major connection details (for structural steel).
- Specification of reinforced concrete works and structural steel for the construction of the (specific) works.
- Design method, assumptions, codes used and limitations of stresses.
- Estimation of deformation and other services requirements.

(iii) Foundation:-

- Foundation plan showing piling and pile cap arrangements..
- Justification on the selection of pile type.
- Design calculation of pile, caps and ground beams etc.
- Estimated pile length and capacity.
- Specifications of pile proposed.

(iv) Other specified requirements, e.g.:-

- Blasting assessment report.
- C&D materials disposal strategy.
- Geotechnical design report.

(v) Building services :-

Drawings, particular specifications and schedules of major items of Plant and equipment including :-

- Schematic diagrams for the system design and services.
- Layout plans of main switch room, transformer and plant rooms, chillers, etc.

- Schematic layout of hydrants.
- Particular specifications for the installations described above.
- Schedules of major items of Plant and equipment for the installations described above.
- Design report on building services and electrical & mechanical installations.
- BS design report for special function room.
- An outline list of drawings and details which the Contractor will provide for the Works in fulfilment of the design obligations stating the scale at which these will be produced.
- Catalogues, manufacturers' technical literature for all products, equipment and materials to be utilized in the Contract.

[Note: Requirements for spare components and testing instruments shall be included in the design brief].

(vi) Electrical and Mechanical

- Design and planning of E&M systems.
- Phasing of E&M works completion including testing and commissioning proposal.

(vii) Electronic

- Design and planning of electronic systems.
- Testing and commissioning proposal.
- Schematic diagrams for the system design and services.

(viii) Landscaping:-

- Master landscape layout plan and external works layouts.
- Tree removal / planting proposal.

(ix) Risk management:-

- Risk assessment and management report for the project.

(x) Operation and Maintenance:-

- Operation and maintenance proposal.
- (xi) Safety Plan / Environmental Management Plan:-
- Green measures.
 - Environmental planning proposal.
 - Safety management and implementation plan.
- (xii) Life cycle and energy efficiency:-
- Life cycle plan and Whole-life-costing report.
 - Proposal on energy consumption effectiveness (such as Overall Thermal Transmission Value).
 - Durability report.
- (xiii) Project management:-
- Project management plan.
 - Design team management plan.
 - Outline public relationship/stakeholder management plan.
 - Interface management plan.
 - Programme showing the critical path, interdependence among activities and floats.
 - Resources plan supporting the programme with the required productivity.
- [Note: including organisation chart, qualification and experience of major team members.]
- (xiv) Constructability
- Constructability plan integrating the design and the construction and enhancing productivity.
- (xv) Quality assurance and construction quality:-
- Outline quality plan.
- (xvi) Utilities Information
- Identification of general utilities layout.

- Utilities diversion proposal.

(xvii) Submission to relevant government departments and authorities:-

- Schematic design. “

2.14.4 Sketches or drawings, and a brief method statement:-

- (i) Identification of site constraint.
- (ii) Temporary traffic management.
- (iii) Construction method and sequences.
- (iv) E&M installations process.
- (v) Proposal for temporary works and monitoring construction impact.
- (vi) Safety, health and environmental protection.

2.14.5 An outline programme with significant activities broken down for each Section and part of the Works giving each major trade and installation with the key milestone dates (including those for which statutory/administrative approvals are required such as approval from Town Planning Board) together with the timing of submissions of drawings to the Employer. Due allowance shall be made for lead time for all sub-contracts. The outline programme will be the basis from which the critical path network for the Works shall be developed in accordance with General Conditions of Contract Clause 16. **[Note: See SCT1 “Programme of Works” at Appendix G Annex G4 where the SCC - Programme and Progress Reports is adopted replacing D&B GCC Clause 16].**

2.14.6 All Temporary Works that require design checking should be stated. This would include Temporary Works where there is risk to the public or the adjoining property. Requirements for the independent design checking of Temporary Works are set out in the prevailing TC(W) on “Independent checking of the design, erection, use and removal of Temporary Works”.

For example :-

“Submission of Temporary Works Design

A method statement of proposals for (which shall include proposals for the foundations and support of) the following Temporary Works :

1. **[List the items of**) Particular attention
2. **work for which this**) shall be paid to the
3. **requirement applies]**) lateral stability of the Temporary Works.”.

2.14.7 The format and presentation required for the Contractor's Proposals should be stated as they may be submitted in all shapes and sizes and yet are part of the Contract. This makes the creation of the contract documents and distribution copies difficult as copying facilities Printing Department may not be able to cope with the divergence of type, size, colour and materials. Also, the number of sets should be stated. A copy of the contract documents must be provided to the Design Checker(s).

2.14.8 The requirements for the Contractor/designer who is an independent consultant/Design Checker to take out and maintain professional indemnity insurance shall be stated as well as the respective amounts. The requirements are stipulated in the prevailing TC(W) on “PII for Consultancy Services, Works Contracts involving Contractor's Design or ICE's Services including D&B Contracts”.

[Note : See Appendix G Annex G6 and G7.]

2.14.9 Works departments should include appropriate footnotes indicating that (as against the Contingency Sum as stated in the Employer's Requirements) the Employer has power to reduce the amount of the Contingency Sum by giving notification in writing to the tenderer in accordance with sub-clause (1) of GCT 34 whose tender is going to be recommended for contract award and that (as against any Provisional Sum(s) specified in the Employer's Requirements), in accordance with sub-clause (2)(c) of GCT 34, the provisional sum(s) shall not be affected by a reduction in the amount of the Contingency Sum by the Employer under sub-clause (2)(a) of GCT 34.

APPENDIX D GUIDANCE NOTES ON SPECIFYING THE DESIGN CHECKING PROCEDURES

1.0 Preamble

The Employer's Requirements shall stipulate the requirements for design checking. If stated in the Employer's Requirements the Contractor shall appoint a Design Checker, independent of the Contractor and his designer. Alternatively, if the Employer's Requirements do not require a Contractor to appoint a Design Checker, the design check shall be carried out by the Supervising Officer (or his representative) as part of the consent procedure. The extent of the design check shall be specified in the Employer's Requirements. The obligations for the Contractor or Design Checker(s) to seek approvals from Government Departments/Offices prior to any certification by the Design Checker(s) shall be stated in the Employer's Requirements. The procedures for dealing with proposed changes to checked drawings shall also be stipulated (see Clause 62 of the D&B GCC).

The flow charts at **Figures D1** and **D2**, outline the normal design checking procedures where a Design Checker is appointed by the Contractor and include procedures where Statutory Authorities and/or Government departments are required to check particular aspects of the design. The general principles are applicable to any design and build project. The flow chart at **Figure D3** outlines a streamlined approval process where previously approved detailed design drawings are resubmitted to incorporate minor changes. If there is no Contractor appointed Design Checker under the Contract, the Supervising Officer shall carry out his own design check prior to giving his consent.

Where checking or approvals by Statutory Authorities/Government departments are required for the permanent Works, the concerned Authorities and departments should be listed and relevant scope specified. Previous agreements or rejections should also be specified.

2.0 Design Checking Procedures

2.1. Objective

The basic objective of the design checking procedures is to encourage the progressive processes of submissions, discussion and endorsements to avoid delays to the project.

Specimen design checking clauses for the Employer's Requirements are shown at **Annex D1**.

The design checking procedures normally comprise two main stages :-

- Approval in Principle (AIP).
- Detailed Design Approval (DDA).

Employer's Requirements shall include time limits for the design checking. It is important to establish time frames for the overall processes of submission through checking and giving consent. Time limits set for approval of various packages and stages should be commensurate with the requirements of the programme and the quantity of information to be checked. Generally AIP stages require a shorter approval time than DDA stages.

Proforma check certificates to be used by the Contractor for seeking design approval i.e. AIP and DDA are at **Annexes D2/1 and D2/4** respectively.

The nature of the project would dictate whether two-stage design checking should be adopted and the extent of checking overall. Some aspects of the design of the project may only require AIP whilst other aspects of the design may require both AIP and DDA. The Employer's Requirements should state which aspects of the design require one or two-stage design checking. Normally, one-stage Design Checking Procedures should follow DDA submission procedures.

2.2. Project Design Plan

The Contractor shall be required to submit a Project Design Plan after award of the Contract. The purpose of the document is to show how the Contractor intends to implement the Design Checking Procedures. The Contractor's Project Design Plan should address the following matters:-

- (a) Identification of various design stages and trade packages.
- (b) Organisation chart of the Contractor's design team with allocation of responsibilities for design packages and interfaces.
- (c) Document flow chart and approval plan, including statutory submissions.
- (d) Design changes management procedure.
- (e) Design and submission programme, in line with the construction programme.
- (f) Proposed title block layout and document numbering system.
- (g) Proposed standard forms.

The Project Design Plan shall be reviewed with the Contractor and approved prior to the start of the bulk of the design checking process.

2.3. Approval in Principle

Figure D1 indicates the sequence for AIP submissions where an independent Design Checker is appointed by the Contractor. Time

allowed for certain activities shall be stipulated in the Employer's Requirements. If there is no Contractor appointed Design Checker, time should be allowed in the activity for the Supervising Officer to give his consent for his design check.

Normally, before commencing the detailed design of any element of the Works the Contractor shall seek the AIP from the Supervising Officer. The specific purpose of AIP is to check that all aspects of the Works, including Temporary Works which could affect the integrity or performance of the structure, stated in the Employer's Requirements, are identified and have been taken into account before detailed design and construction commence. The requirements for the independent checking of Temporary Works is contained in prevailing DEVB TCW. The sanctioned AIP document serves as a yardstick for subsequent approval of the detailed design.

AIP submission shall include :-

- (a) General arrangement drawings.
- (b) List of design codes.
- (c) List of design parameters.
- (d) Description of analysis methods to be used.
- (e) Aspects requiring further clarification in the Employer's Requirements.
- (f) Evidence of consultation with the relevant Statutory Authorities/Government departments (other than the Works Department).

In considering the Contractor's AIP submission the Supervising Officer must be satisfied that, where required the design has been independently checked and return the document endorsed according to one of the following categories :-

- (a) Consent to proceed to detailed design.
- (b) Consent as above but with conditions.
- (c) Consent not granted for reasons to be listed.

The design checking procedures should specify the time limit under which the Supervising Officer should give his reply.

Once having received AIP for a design package or for the whole of the Works, the Contractor shall not vary any of the design criteria used in the AIP submission without seeking the consent of the Supervising Officer. A revised AIP document must be submitted if the Contractor wishes to vary the design criteria used in the AIP. Procedures for this have to be specified in the Employer's Requirements, (See D&B GCC Clause 62).

The AIP submission must contain the proposed methods of design analysis. Computer programmes must be based on established design

principles and evidence must be provided that such programmes have been validated and calibrated. If any part of the design is to be done by in-house computer programmes developed by the Contractor these shall be verified also but by an alternative independent method.

2.4. Detailed Design Approval

Figure D2 indicates the sequence for DDA submissions i.e. checking of detailed design drawings and calculations where an independent Design Checker is appointed by the Contractor. Time allowed for certain activities shall be stipulated in the Employer's Requirements. If there is no Contractor appointed Design Checker, time should be allowed in the activity for the Supervising Officer to give his consent for his design check.

The scope of the design check shall be to :-

- (a) Ensure compliance of the design with the terms and conditions of the Contract.
- (b) Ensure compliance with any relevant AIP documents.
- (c) Ensure that any computer programmes used have been properly validated, calibrated or verified as appropriate.
- (d) Check input data to computer programmes and carry out a separate check of critical elements using the output data.
- (e) Carry out an analytically separate design check of critical elements without reference to the calculations if hand calculations are submitted.
- (f) Review in detail the general arrangement and other drawings and to ensure that the design is accurately translated to the drawings.
- (g) Assessment in detail of any required Temporary Works proposals as listed in the Employer's Requirements and influence of construction methods and sequence on design of the permanent works and safety of the permanent Works and of adjacent property.

In considering the Contractor's detailed design submission the Supervising Officer should return the document sanctioned according to one of the following categories :-

- (a) Consent for construction to proceed.
- (b) Consent as above subject to certain conditions.
- (c) Consent not granted due to reasons to be listed.

The Design Checking Procedures shall specify the time limits under which the Supervising Officer shall make his reply.

2.5. Design changes

Previously approved DDA documents resubmitted to incorporate minor changes resulting from corrections of errors or Variations may be allowed to follow a streamlined approval process. However, where the Supervising Officer considers that the changes are not minor then the General Condition of Contract for Design and Build Clause 62 would require the approval process to be repeated.

The corresponding flow chart is at **Figure D3**.

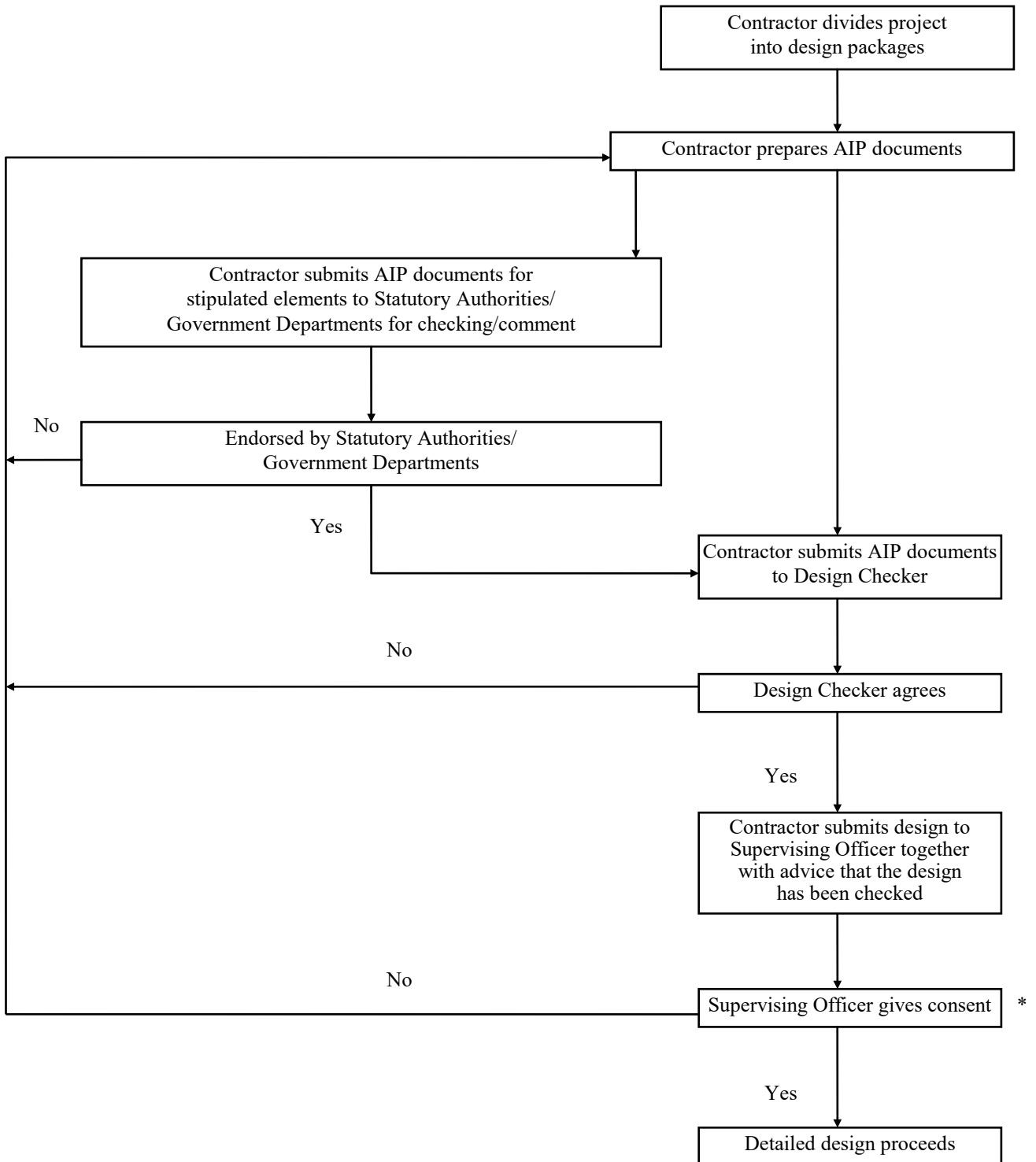
The scope permitted to be modified should be agreed with the Contractor at the outset of the Contract.

2.6. Shop drawings and co-ordination drawings

In addition to AIP and DDA documents generally prepared by the Contractor's designer, the Contractor usually prepares shop drawings and co-ordination drawings reflecting the fabrication or installation details of the permanent Works. Such documents, as long as they do not deviate from the approved design, generally do not require the formal approval of the Design Checker, if appointed, or the Supervising Officer. The documents should be vetted by the Contractor's designer as complying with the approved design and submitted for information to the Design Checker, if appointed, and/or to the Supervising Officer.

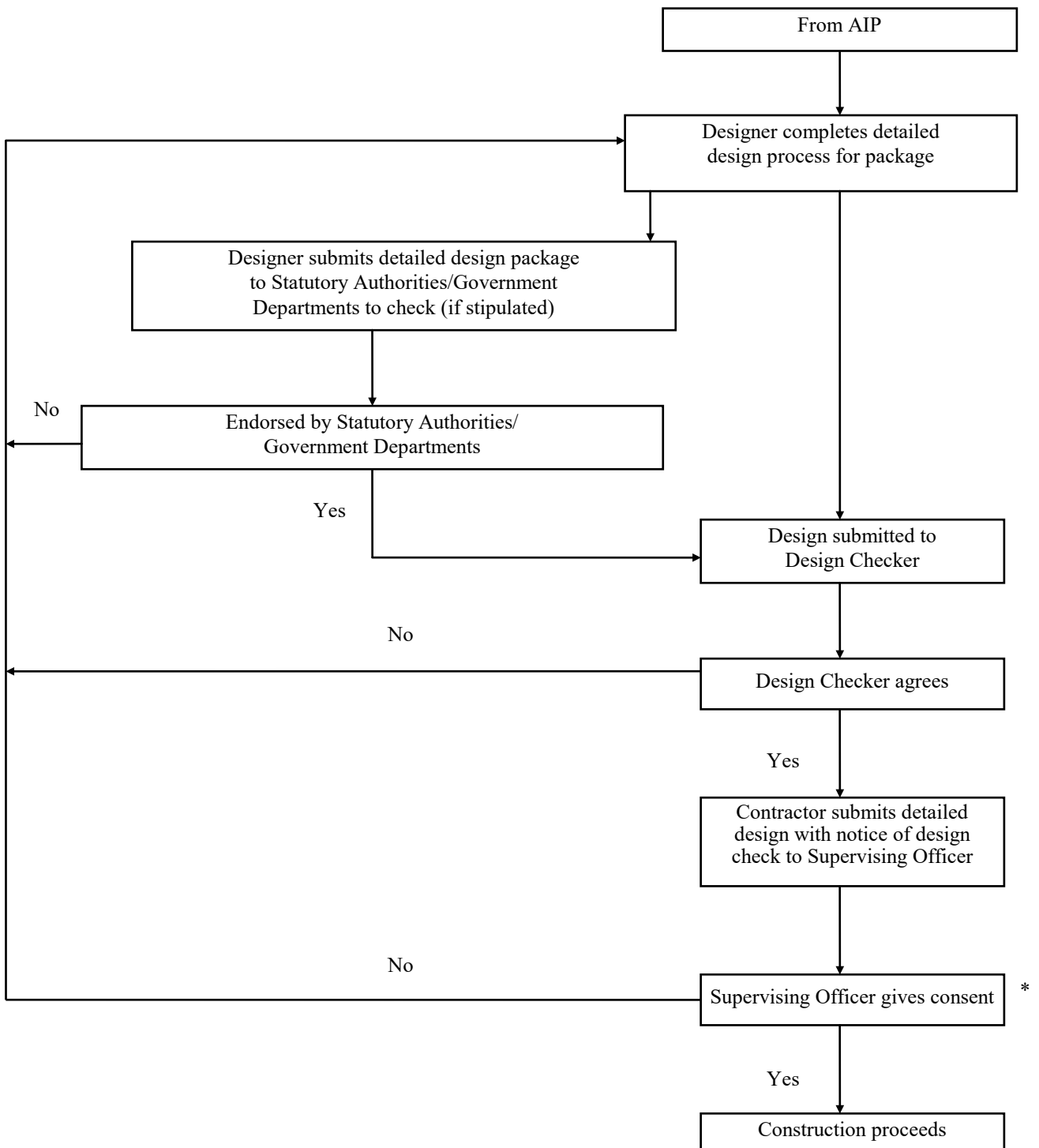
FIGURE D1

APPROVAL IN PRINCIPLE (AIP) DESIGN CHECKING PROCEDURES



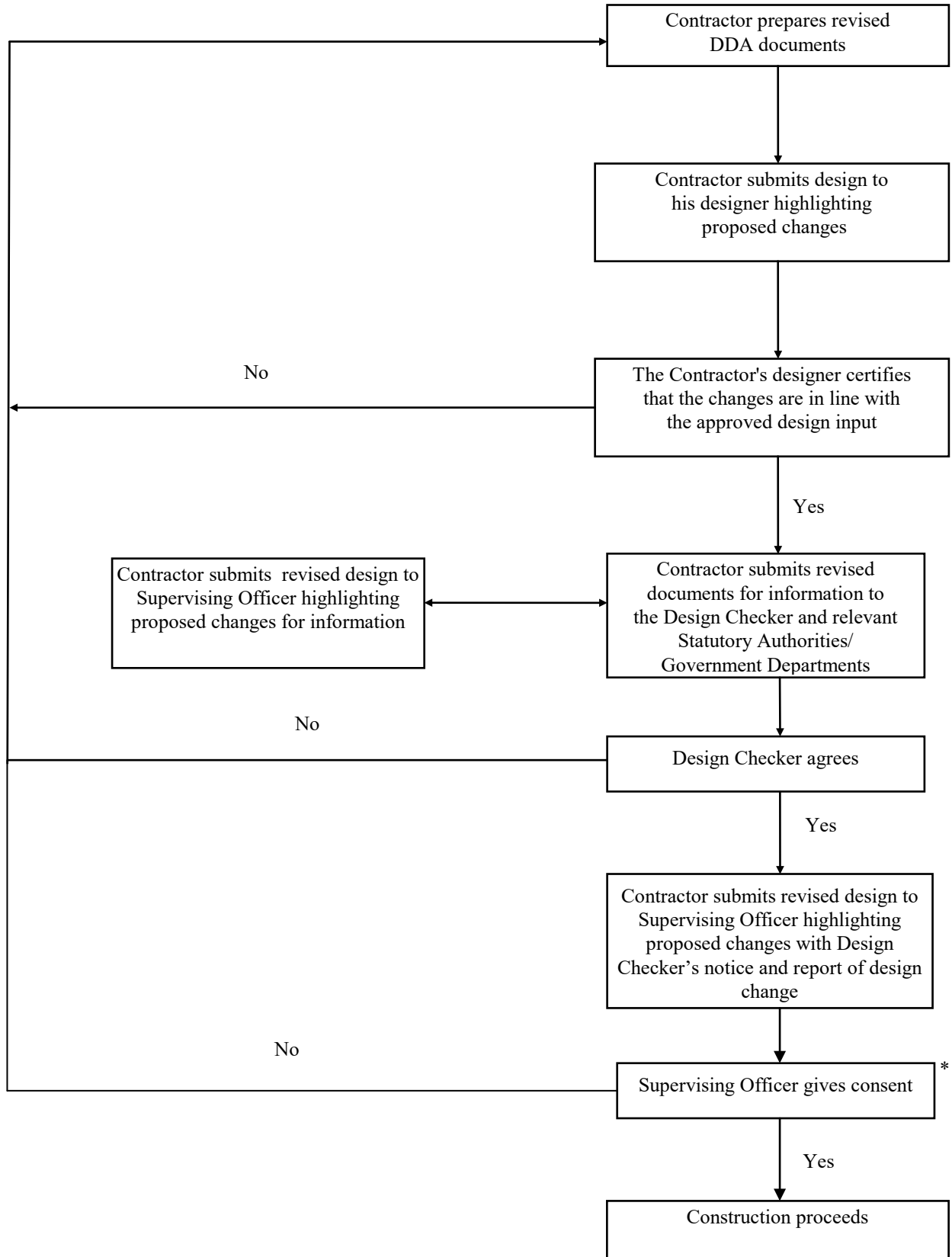
* Time limit for giving consent should be stipulated for this process. See introduction to Appendix D

FIGURE D2 DETAILED DESIGN APPROVAL (DDA) DESIGN CHECKING PROCEDURES



* Time limit for giving consent should be stipulated for this process. See introduction to Appendix D

FIGURE D3 AMENDED DOCUMENTS - DETAILED DESIGN APPROVAL (DDA) DESIGN CHECKING PROCEDURES



* Time limit for giving consent should be stipulated for this process. See introduction to Appendix D

SPECIMEN DESIGN CHECKING CLAUSES FOR THE EMPLOYER'S REQUIREMENTS

The following sample clauses shall be amended to suit the requirements of the particular project. Paragraph numbers follow those of Appendix C - Preparation of Employer's Requirements.

9.1. Objective

9.1.1 The objective of the Design Checking Procedures set-out hereafter is to encourage the progressive processes of submissions, discussion and endorsements to avoid delays to the project. The Design Checking Procedures shall comprise a two-stage approval process :-

- Approval in Principle (AIP)
- Detailed Design Approval (DDA)

The Contractor shall prepare and submit for the approval of the Supervising Officer a Project Design Plan to show how he shall implement the two-stage approval process. **[State here the Employer's Requirements for design stages and packages, programme, numbering, scale of drawings, level of detail, etc. for both AIP and DDA submissions.]**

9.1.2 Definitions

The following expressions shall have the meaning assigned to them except when the context otherwise requires:-

"Approval in Principle" means the consent given by the Supervising Officer in respect of the Contractor's design submitted for Approval in Principle after the endorsement of appropriate government departments and statutory authorities and, when required, the submission of a Check Certificate by the Design Checker as being in conformity with the Employer's Requirements.

"Check Certificate" for design approval means a certificate for Approval in Principle or for Detailed Design Approval as the case may be, in the form specified in Appendix [*] to the Employer's Requirements, issued by the Design Checker certifying that the Contractor's design has been independently checked and complies in all respects with the terms and conditions of the Contract.

"Certified Working Drawing" means a drawing, Plant and equipment schedule and/or document prepared by the Contractor's designer and endorsed as being checked and approved by the Design Checker.

"Detailed Design Approval" means the consent given by the Supervising Officer in respect of the Contractor's design submitted for Detailed Design Approval after the endorsement of appropriate government departments and statutory authorities and when required, the submission of a Check Certificate by the Design Checker as being in conformity with the Employer's Requirements.

"Project Design Plan" means the document to be submitted by the Contractor in accordance with the Employer's Requirements showing how the Contractor intends to implement the Design Checking Procedures.

9.1.3 The Contractor shall within [] days of the acceptance of the Contractor's Tender submit for the Supervising Officer's approval the Contractor's Project Design Plan. The Supervising Officer shall within 14 days of receipt of the Project Design Plan submitted pursuant to this sub-clause, notify the Contractor in writing :-

- (a) that the Project Design Plan is approved; or
- (b) that the Project Design Plan is rejected, in which case reasons for such rejection shall be given; or
- (c) that further information is required to clarify or substantiate the Project Design Plan or to satisfy the Supervising Officer as to its reasonableness.

* **The standard forms shown in Appendix D, Annexes D2/1 and D2/4 shall be used.**

Provided that if none of the above actions is taken within the said period of 14 days, the Supervising Officer shall be deemed to have approved the Project Design Plan submitted.

- 9.1.4 The Contractor shall within 7 days of receiving notification under Sub-clause 9.1.3(c) or within such further period as the Supervising Officer may allow in writing, provide the further information requested failing which the Project Design Plan shall be deemed to have been rejected. The Supervising Officer shall within 7 days of receipt of such further information approve or reject the Project Design Plan in accordance with Sub-clause 9.1.3.
- 9.1.5 In the event of the Project Design Plan being rejected under sub-clause 9.1.3(b) or deemed to have been rejected under sub-clause 9.1.4, the Contractor shall within 7 days thereafter submit a revised Project Design Plan taking account of the reasons given for the rejection or incorporating the further information requested by the Supervising Officer, as the case may be.
- 9.1.6 (a) The Contractor may at any time following approval of the Project Design Plan submit to the Supervising Officer an amended or varied version thereof.
(b) The Contractor shall review the Project Design Plan in the event that :-
 - (i) the Supervising Officer grants an extension of time in accordance with Clause 50 of the General Conditions of Contract; or
 - (ii) the Supervising Officer instructs a Variation under Clause 60 of the General Conditions of Contract; or
 - (iii) the Contractor considers for any reason that there is or may be a significant deviation between the actual or anticipated progress of the Works and the Project Design Plan; or
 - (iv) the Supervising Officer requests the Contractor in writing to reflect or incorporate any other matter in the Project Design Plan.

Provided that the Contractor shall within 14 days of such event either submit an amended or varied Project Design Plan to the Supervising Officer for approval under Sub-clause 9.1.3 or inform the Supervising Officer in writing of the reasons why the Contractor considers that such a submission is inappropriate.

- 9.1.7 Should it appear to the Supervising Officer at any time that there is or may be a significant deviation between the actual or anticipated progress of the Works and the Project Design Plan, the Supervising Officer shall be entitled by written instruction to require the Contractor to produce a revised version showing such modifications to the Project Design Plan as may be necessary to ensure or to be consistent with substantial completion of the Works or Section of the Works by the time or times for the completion of the Works or Section thereof. The Contractor shall submit such revised Project Design Plan within 14 days of the Supervising Officer's instruction or within such other time as the Supervising Officer shall allow in writing.
- 9.1.8 (a) Unless and until an amended version is approved by the Supervising Officer in accordance with under Sub-clause 9.1.3, the Project Design Plan previously approved by the Supervising Officer shall remain as the Project Design Plan for all purposes of the Contract.

- (b) Approval by the Supervising Officer of the Project Design Plan in accordance with Sub-clause 9.1.3 shall not relieve the Contractor of any of his duties or responsibilities under the Contract nor bind or create any obligation or liability on the part of the Employer nor, in any event that a Works Programme indicates that a Key Date has not or will not be met, constitutes any form of acknowledgement that the Contractor is or may be entitled to any extension of time in relation to such Key Date.

9.1.9 The Contractor shall submit to the Supervising Officer by the end of each calendar month a monthly progress report which shall, amongst other things, highlight actual or potential departures from the Project Design Plan and state the measures which the Contractor proposes to take in order to make good or reduce any delays.

9.2. Approval in Principle

9.2.1 Subject to the Supervising Officer's approval of the Project Design Plan, the Contractor shall proceed with his design and prepare and submit the same in accordance with the Project Design Plan to the Supervising Officer for Approval in Principle. The Supervising Officer shall, either give his approval in writing or refuse to give such approval and notify the Contractor in writing of his refusal giving particulars within the time (or times) and in such manner as stated in Sub-clause 9.2.2 hereafter.

The Contractor shall submit to the Supervising Officer in accordance with the Project Design Plan :-

- (a) two certified copies of the Contractor's design; and
- (b) the relevant Check Certificate(s) (if any).

9.2.2 The Supervising Officer shall within [] days of receipt of the Contractor's design, part or parts thereof submitted in accordance with the Project Design Plan, notify the Contractor in writing :-

- (a) that the Approval in Principle is granted; or
- (b) that Approval in Principle is not given in which case reasons for not granting approval shall be given; or
- (c) that further information is required to be submitted, in which case the information required shall be stated.

Provided that if none of the above actions is taken within the said period of [] days, the Supervising Officer's Approval in Principle shall be deemed to have been given.

9.2.3 The Contractor shall within 7 days of receiving notification under Sub-clause 9.2.2(c) or within such further period as the Supervising Officer may allow in writing, provide the further information requested failing which Approval in Principle shall be deemed to have been not granted. The Supervising Officer shall within 7 days of receipt of such further information grant or not grant Approval in Principle in accordance with Sub-clause 9.2.2.

9.2.4 In the event of Approval in Principle not being granted under Sub-clause 9.2.2(b) or deemed to have been not granted under Sub-clause 9.2.3, the Contractor shall within 7 days thereafter resubmit his design, part or parts thereof taking account of the reasons given for the rejection or incorporating the further information requested by the Supervising Officer, as the case may be.

9.3. Detailed Design Approval

9.3.1 Upon Approval in Principle being given by the Supervising Officer, the Contractor shall proceed with the detail of the Contractor's design and submit the same in accordance with the Project Design Plan to the Supervising Officer for Detailed Design Approval.

The Supervising Officer shall, either give his approval in writing or refuse to give such approval and notify the Contractor in writing of his refusal giving particulars within the time (or times) and in such manner as stated in Sub-clause 9.3.2 hereafter. The Contractor shall submit to the Supervising Officer in accordance with the Project Design Plan :-

- (a) two copies of the Certified Working Drawings; and
- (b) the relevant Check Certificate(s) (if any).

9.3.2 The Supervising Officer shall within [] days of receipt of the detail of the Contractor's design, part or parts thereof submitted in accordance with the Project Design Plan, notify the Contractor in writing :-

- (a) that the Detailed Design Approval is given; or
- (b) that Detailed Design Approval is not given, in which case reasons for not granting approval shall be given; or
- (c) that further information is required to be submitted, in which case the information to be submitted shall be stated.

Provided that if none of the above actions is taken within the said period of [] days, the Supervising Officer's Detailed Design Approval shall be deemed to have been given.

9.3.3 The Contractor shall within 7 days of receiving notification under Sub-clause 9.3.2(c) or within such further period as the Supervising Officer may allow in writing, provide the further information requested failing which Detailed Design Approval shall be deemed to have been rejected. The Supervising Officer shall within 7 days of receipt of such further information grant or not grant Detailed Design Approval in accordance with Sub-clause 9.3.2.

9.3.4 In the event of Detailed Design Approval being not granted under Sub-clause 9.3.3 or deemed to have been not granted under Sub-clause 9.3.3, the Contractor shall within 7 days thereafter resubmit his detailed design, part or parts thereof taking account of the reasons given for the rejection or incorporating the further information requested by the Supervising Officer, as the case may be.

9.3.5 If at any time it becomes apparent to the Contractor that an amendment to the Contractor's design is required for the proper completion of that part of the Works involved in such design, then he shall :-

- (a) immediately advise the Supervising Officer of the proposed amendment,
- (b) resubmit drawings, Plant and equipment schedules and/or documents to the Supervising Officer in accordance with Sub-clause 9.3.2 hereof, provided that the finished appearance of the Works shall remain substantially unaltered.”.

The Government of the Hong Kong Special Administrative Region

Contract No. _____

Title : _____

To : The Supervising Officer pursuant to Clause [] of the Employer's Requirements.

Check Certificate for Approval In Principle

(NOTE : Form of Certificate to be used by the Contractor for seeking Approval In Principle from the Supervising Officer. To be included in the Employer's Requirements.)

1. This Check Certificate refers to submission No. _____ which comprises

(a) Works covered by this Certificate
(nature and description of the submission)

in respect of :
(description of Works to which the submission refers)

(b) The contents of this submission are scheduled in Schedule A below and are attached to this Check Certificate.

2. I/We certify that

*Designer's certification

(a) the design of the Works, as illustrated and described in the documents scheduled in Schedule A below, complies with the Contract requirements including without limitation the Employer's Requirements and the Contractor's Proposals.

(b) an in-house check has been undertaken and completed to confirm the completeness, adequacy and validity of the design of the Works as illustrated and described in documents scheduled in Schedule A below, and

(c) all necessary and required approvals relating to the design of the Works, as illustrated and described in the documents scheduled in Schedule A below, have been obtained and copies of such approvals are annexed at Schedule B below.

Signed : _____
for _____

(name of designer)
(name)
(position/designation)
(date)

3. I/We certify that

Contractor's certification

(a) the above Check Certificate is issued by the designer on the basis that it has exercised all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as the Works in the performance of its duties relating to the preparation, review, checking and certification of design of the Works.

(b) I/We endorse the content of the above Check Certificate.

Signed : _____
for _____ (name of Contractor)
_____ (name)
_____ (position/designation)
_____ (date)

4. I/We certify that

Design Checker's certification

(a) I/We certify that the design has been independently checked using all reasonable skill and care and that I/we am/are satisfied that the design checked complies in all respects with the terms and conditions of the Contract.

(b) I/We am/are satisfied that the detailed design of
(Name of structure or works)

_____ can commence.

I/We further certify that I am/we are satisfied that the checking of the above design is completed.

Signed : _____
for _____ (name of Design Checker)
_____ (name)
_____ (position/designation)
_____ (date)

* Where the Contractor is the designer the Contractor shall complete both the declaration for the Contractor and for the designer.

Schedule A

Submission No. _____ comprises the following

Documents : *(Title, reference number and revision)*

Drawings : *(Title, drawing number and revision)*

Others : _____

Schedule B

Approvals from: *(List of Government Departments or Statutory Authorities)*

(Contractor to bind and attach all documents, drawings and copies of necessary and required approvals associated with this Check Certificate)

The Government of the Hong Kong Special Administrative Region

Contract No. _____

Title : _____

To : The Supervising Officer pursuant to Clause [] of the Employer's Requirements.

Check Certificate for Detailed Design Approval

(NOTE : Form of Certificate to be used by the Contractor for seeking Detailed Design Approval from the Supervising Officer. To be included in the Employer's Requirements.)

1. This Check Certificate refers to submission No. _____ which comprises

(a) Works covered by this Certificate
(nature and description of the submission)

in respect of :
(description of Works to which the submission refers)

(b) Contents of this submission are scheduled in Schedule A below and are attached to this Check Certificate.

(c) This submission is made in accordance with the provisions stated in Clause [] of the Employer's Requirements.

(and with special reference to

[any Variation]

_____)*

**(delete if not required)*

2. I/We certify that

*Designer's certification

(a) the design of the Works, as illustrated and described in the documents scheduled in Schedule A below, complies with the Contract requirements including without limitation, the Employer's Requirements, the Contractor's Proposals, the submission no(s). _____ for which an Approval in Principle that has been issued together with any conditions and comments pertaining thereto.

(b) an in-house check has been undertaken and completed to confirm the completeness, adequacy and validity of the design of the Works as illustrated and described in documents scheduled in Schedule A below, and

(c) all necessary and required approvals relating to the design of the Works, as illustrated and described in the documents scheduled in Schedule A below, have been obtained and copies of such approvals are annexed at Schedule B below.

Signed : _____
 for _____ (name of designer)
 _____ (name)
 _____ (position/designation)
 _____ (date)

3. I/We certify that

Contractor's certification

(a) the above Check Certificate is issued by the designer on the basis that it has exercised all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as the Works in the performance of its duties relating to the preparation, review, checking and certification of design of the Works.

(b) I/We endorse the content of the above Check Certificate.

Signed : _____
 for _____ (name of Contractor)
 _____ (name)
 _____ (position/designation)
 _____ (date)

4. I/We certify that

Design Checker's certification

(a) I/We certify that the design has been independently checked using all reasonable skill and care that that I/we am/are satisfied that the design checked complies in all respects with the terms and conditions of the Contract.

(b) I/We am/are satisfied that the construction of

_____ (Name of structure or works) can commence.

(c) I/We further certify that I am/we are satisfied that the checking of the Contractor's design is completed.

Signed : _____
 for _____ (name of Design Checker)
 _____ (name)
 _____ (position/designation)
 _____ (date)

* Where the Contractor is the designer the Contractor shall complete both the declaration for the Contractor and for the designer.

Schedule A

Submission No. _____ comprises the following

Documents: *(Title, reference number and revision)*

Drawings : *(Title, drawing number and revision)*

Others : _____

Schedule B

Approvals from : *(List of Government Departments or Statutory Authorities)*

(Contractor to bind and attach all documents, drawings and copies of necessary and required approvals associated with this Check Certificate)

APPENDIX E DUTIES OF THE SUPERVISING OFFICER (SO)

1.0 Introduction

- 1.1 In accordance with Clause 1(1) of the Design and Build General Conditions of Contract (D&B GCC) the Supervising Officer (SO) means the person, company or firm appointed from time to time by the Employer and notified in writing to the Contractor to act as the SO for the purposes of the Contract. The term replaces the Engineer, the Surveyor, and the Architect used in other Government standard forms of contract. The duties of the SO are different from those in other Government standard forms of contract particularly in the aspect of construction supervision.
- 1.2 The Annex to this Appendix provides a full list of all D&B GCC clauses where the duties or powers of the SO are given and compares with the General Conditions of Contract (1999 Edition) for non D&B contracts. The clauses where the duties or powers of SO are significantly different from those of non-D&B contracts and the role of SO in construction supervision are discussed in the following sections.

2.0 Clauses in the D&B GCC dealing with duties and powers of the SO

- 2.1 These are to be found at **Annex E1** to this Appendix.

3.0 Duties of the SO in the checking of the Contractor's design

- 3.1 Clause 2, Duties and powers of the SO, etc.
- 3.1.1 The SO has a particular role under D&B GCC Clause 2(2)(a) and (b).
- 3.1.2 If stipulated in the Employer's Requirements, in accordance with D&B GCC Clause 2(2)(a), the Contractor shall appoint a Design Checker to check that the design of the permanent Works and/or Temporary Works prepared by the Contractor complies in all respects with the Contract. Where the Employer's Requirements do not require a Contractor appointed Design Checker under the Contract, the Supervising Officer shall carry-out the design checking requirements set out in the Employer's Requirements as part of his consent procedure.
- 3.1.3 The Employer's Requirements will set out the design checking procedures (**See Appendix D**). In giving his consent to the design, the SO may be required to provide consent for either one stage or two stage design approval or both:-
- (1) Approval in Principle (AIP)
i.e. consent to proceed to detailed design.

- (2) Detailed Design Approval (DDA)
i.e. consent to proceed with construction.

3.1.4 In both one or two stage design approval the Employer's Requirements may require a check certificate from the Design Checker (when appointed) and, in which case, the granting of consent by the SO is essentially a technical audit that the design check has been properly carried out.

3.1.5 The SO shall ensure that the Design Checker is properly appointed by the Contractor and approved by the Employer. Provisions are made in D&B GCC Clause 2(2)(b) for the SO to deal with unsatisfactory performance of the Design Checker (when appointed).

3.1.6 For two stage design approval, any conditional approval of the design which may have been imposed by the Design Checker or any Government departments which are to be undertaken in each stage i.e. AIP or DDA, should be repeated in the granting of consent.

3.1.7 It should be noted that the consent process is not intended as an opportunity for the SO to impose his personal interpretation of the Employer's Requirements or to add to or change them, as this may result in a Variation. The SO should only withhold his consent in circumstances where he considers the Employer's Requirements have not been met or there is evidence to cast doubt on the certification given by the Design Checker.

3.2 Clause 13, Inspection of the Site Alternative I
(Method Statement Approach)

3.2.1 The D&B GCC provide two versions for Clause 13. Alternative I is the Method Statement Approach which requires a Sub-Surface Assessment and Method Statement from the Contractor and imposes duties on the SO. Alternative II is the same as Clause 13 of the GCC (1999 Edition).

3.2.2 Under the Method Statement Approach, the Contractor will have provided with the Tender a Sub-surface Assessment and Method Statement and, to verify them, is required to commence ground investigation within 7 days of being given possession of the Site. There are three courses of action which can eventuate from this :

- (a) the Contractor may verify the Sub-surface Assessment;
- (b) conditions may be shown to be significantly worse than the Sub-surface Assessment requiring a revised Method Statement and consequential adjustments to the Contract Sum and/or time for completion of the Works, or

- (c) as (b), but conditions may be shown to be significantly better than the Sub-surface Assessment providing opportunity for a revised Method Statement and consequential adjustments to the Contract Sum and/or time for completion of the Works.

3.2.3 In the situation outlined at item 3.2.2(b), the initiative will come from the Contractor. The SO should only consider such Contractor's submissions where the conditions encountered require significant change in :

- (i) the selected construction method, and/or
- (ii) the design, and/or
- (iii) resources, and/or
- (iv) Temporary Works.

3.2.4 As an example, a significant change would be the need to change from pad footings to piles over a substantial part of the foundations.

3.2.5 In situation outlined at item 3.2.2(c), the initiative would be from the SO who would have decided that the conditions encountered, provided opportunity for a significant change to one or all the changes listed in item 3.2.3(i) to (iv) above such that a saving in cost and or time could be reasonably achieved. The SO is required to determine such cost and/or time implications using the Method Statement and the Sub-surface Assessment as the basis for such determination.

3.2.6 The Geotechnical Engineering Office (GEO) will normally provide technical advice on geotechnical matters to other Works Departments (**see Appendix F item 2.1.1**) . The SO should consult Chief Geotechnical Engineer/Advisory of GEO where such advice is needed.

4.0 Duties of the SO in the supervision of construction and site safety

4.1 The D&B GCC requires the Contractor to provide supervision to undertake testing etc. Conditions of approval of the design may have imposed additional supervision and/or testing requirements.

4.2 The SO's construction supervision duties under a D&B contract with a QA system are essentially those of a compliance check. The SO should satisfy himself that appropriate levels of supervision are being provided by the Contractor, that tests are being carried out according to relevant standards, and that they are sufficiently timely and sufficiently frequent. In general, the SO will be carrying out ad-hoc monitoring and verification of the QA System. See Section 4, paragraph 4.4 of the Administrative Procedures.

- 4.4 The responsibilities of the SO site safety supervision duties are the same as a conventional Architect's/Engineer's design contract incorporating the provisions of prevailing TC(W) - Construction Site Safety Manual.
- 4.5 The D&B GCC provides as an alternative, a form of payment to the Contractor which will not be based on measure and value. Accordingly, if used, there will be much less involvement for the SO's staff in verifying quantities.

**LIST OF CLAUSES IN THE D&B GCC DEALING WITH
DUTIES, POWERS &/OR FUNCTIONS OF THE
SUPERVISING OFFICER (SO)**

ANNEX E1

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
Definitions	"Employer's Requirements" (ER) and "Contractor's Proposals" (CP)	Both documents form part of the Contract. But by D&B GCC Clause 5 the ER takes precedence over the CP (if found to be in conflict). The effect of this is the Contractor provides all that is required in the Contract which includes, inter alia, the ER and the CP. (See Note 3).
Definitions	"breakdown of the Contractor's rates and prices"	The amount of detail required is set out in the ER. It can range from a simple list of lump sum cost centres to a fairly detailed schedule of rates, though the latter should not be necessary except where measurement e.g. fitting-out, or Variations are expected.
Definitions	"Variation"	Generally, a Variation only arises when there is a change in the ER, which in turn changes the agreed deliverables as described by, and the terms and conditions of, the Contractor's Proposals. (See Note 4).
Definitions	"Design Checker" and "Design Checking Procedures"	These are discretionary requirements. They are for the protection of the Employer so that the Employer has a way of being satisfied that he is getting what he is paying for, that the required quality is being achieved and that the Contractor's design development is safe. How far the Employer requires design checking in any contract is left to those in charge of the contract, but the involvement of a Design Checker must be specified at the tender stage because he is employed by the Contractor. Under these circumstances, the SO should receive check certificates and, if satisfied, issue the consent to contractor. If required, more than one Design Checker may be appointed, each responsible for the design checking of distinctly separate parts of the Works. (See Note 5).
Definitions	"Supervising Officer"	The SO replaces the Architect/Engineer/Surveyor. The SO is appointed by the Employer as his representative on Site. (See Note 6).
Definitions	"Plant"	No GCC (1999 Edition) equivalent.
Definitions	"Commissioning Tests"	No GCC (1999 Edition) equivalent

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
Definitions	"Works"	Analogous to GCC (1999 Edition) but extended to include design.
2	Duties and powers of the SO etc.	Analogous to Clause 2 of GCC (1999 Edition) but Clause 2 of D&B GCC is extended to include provisions relating to the Design Checker.
4	Sub-contracting	Analogous to Clause 4 of GCC (1999 Edition) in respect of the sub-contracting of the construction element of the Works. It should, however, be noted that the SO has additional roles to play under D&B GCC Clauses 4(4) and 4(5) in respect of the design.
5	Order of precedence of contract documents	Provides for the order of precedence of the contract documents. By this Clause, the ER takes precedence over the CP.
6	Treatment of ambiguities or discrepancies	Analogous to Clause 5(2) of GCC 1999 except that the SO has to deal with ambiguities or discrepancies in the Contractor's Proposals in accordance with D&B GCC which has no equivalent in GCC (1999 Edition).
7	Copyright	Deals with copyright, leaving it with the Contractor except for the purposes of the Works and its maintenance. It covers the Employer's right to use the design to complete the Works should the Contract be terminated. (See Note 7).
10	Contractor's obligations	Analogous to Clause 10 of GCC (1999 Edition) but has been amended to reflect the fact that the Contractor is also responsible for the design.
13	Inspection of the Site Alternative I Method Statement Approach	Clause 13 Alternative I has no equivalent in GCC (1999 Edition). The SO is given a number of powers and functions under Clause 13 Alternative I e.g. valuation and revision of time for completion. (See Note 8).
15	Works to be to the satisfaction of the SO	Analogous to Clause 15 of GCC (1999 Edition) except that physical impossibility arising from the Contractor's design of the Works is excluded.
16	Programme to be furnished	Analogous to Clause 16 of GCC (1999 Edition).
17	Contractor's superintendence	Analogous to Clause 17 of GCC (1999 Edition) except that the SO's authority under Clause 17(3) of D&B GCC is subject to the qualification that it cannot be unreasonably exercised.
18	Contractor's employees	Analogous to Clause 18 of GCC (1999

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
		Edition) except that the SO's power of removal under Clause 18(2) of D&B GCC is subject to the qualification that it shall not be unreasonably exercised.
19	Setting-out	Analogous to Clause 19 of GCC (1999 Edition).
20	Safety and security of the Works	Analogous to Clause 20 of GCC (1999 Edition).
21	Care of the Works	Analogous to Clause 21 of GCC (1999 Edition).
23	Design responsibility	Very different from Clause 23 of GCC (1999 Edition). D&B GCC Clause 23 limits the design responsibility to reasonable skill and care i.e. the same standard as for consultants, rather than fit for the purpose. If a higher than average level of care is required, then this needs to be described in the tender, but on no account shall fit for the purpose be used without DEVB's approval which will not normally be given because of its high cost implications and the difficulty in clearly stating "the purpose". Where the design is required to be fit for the purpose, a Special Condition of Contract is required.
27	Contractor to give notice of injury	Analogous to Clause 27 of GCC (1999 Edition).
28	Patent rights and royalties	Analogous to Clause 28 of GCC (1999 Edition), except that the proviso has been amended to cover also the situation where a patented article, process, design or invention is incorporated into the permanent work by reason of compliance with the Employer's Requirements.
30	Compliances with enactments and regulations	Analogous to Clause 30 of GCC 1999 except than Sub-clause (2) requires the SO to order a Variation in accordance with Clause 60 in the event a "change of law" occurs after the date of submission of Tender where in the opinion of the SO such "change of law" makes necessary the alteration or modification of the design of the permanent work to ensure conformity with the "change of law". No additional payment or extension of time would be made if the "change of law" could reasonably have been foreseen by the Contractor at the date of submission of the Tender.
32	Site diary and labour returns	Analogous to Clause 32 of GCC (1999 Edition).

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
33	Fossils	Analogous to Clause 33 of GCC (1999 Edition).
34	Facilities for other persons	Analogous to Clause 34 of GCC (1999 Edition).
41	Passes	Unlike Clause 41 of GCC (1999 Edition), the SO is not involved in the issue of passes. (See optional D&B SCC).
42	Quality of Plant, materials, workmanship and tests	Analogous to Clause 42 of GCC (1999 Edition).
43	Access to the Site and places of manufacture	Analogous to Clause 43 of GCC (1999 Edition).
44	Examination of work before covering up	Analogous to Clause 44 of GCC (1999 Edition) except that, in practice, the level of examination should be less than for a traditional contract.
45	Uncovering and making openings	Analogous to Clause 45 of GCC (1999 Edition). (See Clause 44 above).
46	Removal of unsatisfactory Plant, material and work	Analogous to Clause 46 of GCC (1999 Edition).
47	Commencement of the Works	Analogous to Clause 47 of GCC (1999 Edition) except that under Clause 47(2) of D&B GCC the SO also has a function in dealing with the Contractor's application for consent for construction to proceed under the Design Checking Procedures.
48	Possession of the Site	Analogous to Clause 48 of GCC 1999.
50	Extension of time for completion	Analogous to Clause 50 of GCC (1999 Edition) except that the causes of delay to be considered/not to be considered by the SO under Clause 50 of D&B GCC are not entirely the same as the corresponding items in Clause 50 of GCC (1999 Edition). Clause 50(1)(c)(iii), (1)(c)(iv) of D&B GCC and (1)(c)(v) have no equivalent in Clause 50 of GCC (1999 Edition). D&B GCC Clause 50 expressly disallows extension of time for defective or late design or failure by the Contractor to interpret the ER correctly.
51	Rate of progress	Analogous to Clause 51 of GCC (1999 Edition), but the SO should note that the time for completion may be reduced under D&B GCC.
52	Liquidated damages for delay	Analogous to Clause 52 of GCC (1999 Edition), but the SO should note that the time for completion may be reduced under D&B GCC Clause 60(5)(a)(i).
53	Completion of the Works	Analogous to Clause 53 of GCC (1999 Edition) but the SO should note that in

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
		Clauses (1) and (2) of D&B GCC any final test includes Commissioning Tests.
54	Suspension of the Works	Analogous to Clause 54 of GCC (1999 Edition).
55	Suspension lasting more than 90 days	Analogous to Clause 55 of GCC (1999 Edition).
56	Execution of work of repair	Analogous to Clause 56 of GCC (1999 Edition).
58	Investigating defects	Analogous to Clause 58 of GCC (1999 Edition).
60	Variations	Very different from Clause 60 of GCC (1999 Edition) e.g. definition of Variation, consent of the Contractor required in respect of a Variation ordered by the SO affecting design already checked, SO's power to require/request lump sum quotation, SO's power to agree to Contractor's proposed Variation. (See Note 9).
61	Valuing Variations	Very different from Clause 61 of GCC (1999 Edition) e.g. the SO is required to follow valuation principles which are not the same as those stipulated in Clause 61 of GCC (1999 Edition), the SO is given power to accept a lump sum quotation and the SO is required to follow certain time-limits. (See Note 10).
63	Disturbance to the progress of the Works	Analogous to Clause 63 of GCC (1999 Edition), except that the matters set out in D&B GCC Clause 63 (a) and (b) are not exactly the same as those set out in Clause 63 (a), (b) and (c) of GCC (1999 Edition) e.g. Clause 63(a) of GCC (1999 Edition) has no relevance to a D&B contract and D&B GCC Clause 63(b) includes testing of Plant.
64	Notice of Claims	Analogous to Clause 64 of GCC (1999 Edition).
65	Use of Provisional and Contingency Sums	Analogous to Clause 65 of GCC (1999 Edition), except that under a D&B contract there is no provision for Prime Cost Sums.
66	Accounting of Provisional and Contingency Sums	Analogous to Clause 68 of GCC (1999 Edition), except that under a D&B contract there is no provision for Nominated Sub-contractors.
67	Commissioning Tests	D&B GCC Clause 67 has no equivalent in GCC (1999 Edition). The SO is given various powers and functions in relation to the Commissioning Tests e.g. power to appoint time for the tests and power to

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
		require any part of the Works be re-tested. (See Note 11).
68	Partial Possession	D&B GCC Clause 68 has no equivalent in GCC (1999 Edition). A notice is required to be given by the SO under D&B GCC Clause 68(3) to confirm the making good of any defect etc. in the relevant part. (See Note 12).
69	As-built drawings	D&B GCC Clause 69 has no equivalent in GCC (1999 Edition). The Contractor is required to provide as-built drawings within 90 days of completion of the Works.
70	Access to drawings on the Site	D&B GCC Clause 70 has no equivalent in GCC (1999 Edition). The SO and his authorised representatives have right to access to drawings etc. on Site.
71	Vesting of Constructional Plant and temporary buildings	Analogous to Clause 71 of GCC (1999 Edition).
72	Vesting of Plant and materials	Analogous to Clause 72 of GCC (1999 Edition).
73	Removal of Constructional Plant, Plant, temporary buildings and materials	Analogous to Clause 73 of GCC (1999 Edition).
74	Hire and hire-purchase Construction Plant	Analogous to Clause 74 of GCC (1999 Edition).
78	Contractor's interim statements	Very different from Clause 78 of GCC (1999 Edition) e.g. Alternative A (milestone payments which has no equivalent in GCC (1999 Edition) and the matters required to be shown in the Contractor's statement to the SO under Alternative B (periodic payments) are not exactly the same as those required under Clause 78 of GCC (1999 Edition). The Employer is required to specify the payment method in the Form of Tender.
79	Interim and final payments, Retention Money and interest	D&B GCC Clause 79(1) is different from Clause 79(1) of GCC (1999 Edition) in that :- (a) there are two payment options - milestone payments and periodic payments. The tender documents must state which, (b) the SO is required to certify payment within 7 days (not 21 days) of the date of delivery to the SO of the Contractor's statement under Alternative A (milestone payments) and (c) the matters required to be considered

<u>Clause No.</u>	<u>Clause Heading</u>	<u>Remarks</u>
		by the SO under Alternative B (periodic payments) are not exactly the same as those required under Clause 79(1) of GCC (1999 Edition).
80	Maintenance certificate	Analogous to Clause 80 of GCC (1999 Edition).
81	Determination of the Contractor's employment	Analogous to Clause 81 of GCC (1999 Edition) but the SO should note the reference to "unfixed Plant" in D&B GCC Clause 81 (2)(b) and Clause 81(3) has no equivalent in GCC (1999 Edition).
82	Work by person other than the Contractor	Analogous to Clause 82 of GCC (1999 Edition).
84	Special risks	Analogous to Clause 84 of GCC (1999 Edition).
86	Settlement of disputes	Analogous to Clause 86 of GCC (1999 Edition).
87	Service of notices	Analogous to Clause 87 of GCC (1999 Edition).
89	Contract price fluctuations	Analogous to Clause 88 of GCC (1999 Edition) but the SO should note that :- (a) the definition of "Current Index Figure" in D&B GCC Clause 89(2)(c) of has been slightly amended to provide for the possibility of D&B GCC Clause 79 Alternative A (milestone payments) being adopted; and (b) D&B GCC Clause 89(2)(d)(i) makes no reference to sums in respect of Nominated Sub-contractors.

NOTES

- Note 1 It should also be noted that the SO may have other duties, powers and/or functions under the SCCs and the Employer's Requirements, e.g. SCC re: passes and Employer's Requirements re: construction checking. The SO may also be required to attend the Project Control Group meetings.
- Note 2 It should be noted that the word analogous used in this Annex should not be taken as meaning synonymous, and that the duties, powers, and/or functions of the SO need to be considered in the light of the wording in the relevant clause and in the wider context of the Design and Build Conditions of Contract.
- Note 3 If the CP includes a schematic or pictorial representation of any part of the offer (which goes further than can be reasonably implied by the ER), the Contractor, depending on the wording in the CP (which may highlight certain items in the CP as not deliverable) may not have to deliver some of the illustrated items as part of the contractual obligation to execute the Works in accordance with the Contract.

Example (a) The ER simply calls for a car park for X cars. The Contractor would have to provide a car park that not only had the necessary parking spaces, but also reasonable access to and from the spaces and appropriate drainage in so far as it is necessary for the proper functioning of the car park. The Contractor can choose the material used, but would not have to provide, markings or directions, though these may be covered by other regulations with which the Contractor must comply without the ER expressly referring to them e.g. codes of practice. If the ER calls for a covered car park, then sufficient, safe headroom for cars and their users must be provided, but not for lorries etc. The structure would have to be designed to be safe but not in accordance with the BOO Building Regulations unless the ER required it.

Example (b) The CP include a perspective of the inside of an airport terminal building, including soft furnishings like planters and hard ones like chairs and tables, with people standing/sitting and an aircraft taking off in the background. It is obvious from common sense that the people and the aircraft (and the like) are not contractually deliverable, but the furnishings will have to be expressly explained.

If it is the general setting out of the area being depicted e.g. column spaces, commercial outlet arrangements and not the detail that is required, then this should be made clear at the tender assessment stage before finalising the contract documents.

Example (c) The CP provides outline details in response to the generality of the ER. For the purpose of award of contract these outline details are accepted as complying with the ER. After award, in developing the design and firming-up his outline details, the Contractor proposes specific details or materials. Such proposal would not be a Variation if it still complies with the ER and is compatible with the outline details provided in the CP. The position would not be the same if specific details or materials have been included in the CP or specific details or materials are identified pre-contract and the Employer particularly likes it and thereby incorporate it in the ER. In such a situation, any post-award proposal involving specific details or material different from those included in the CP or incorporated in the ER could trigger the need for a Variation order.

After the date for submission of tenders the SO may write to a tenderer and request that a particular proposal or proposals in the Contractor's Proposals be incorporated into and form part of the Employer's Requirements (See Special Conditions of Tender - Appendix G).

Note 4 If substantial Variations are likely, D&B should not be used. Variations open the way to cost and time increases and disputes.

Establishing the difference between a Variation and design development is vital to understand. Anything that changes the agreed deliverables as described by the ER is a Variation. Any change that remains within the ER is design development. **See also Note 3 - Example (c).**

Only if the detail of the CP is of vital importance to the Employer should a tenderer be required to develop design proposals prior to contract award. If some prudent investigation of the tenderer's intention is deemed necessary in order to be satisfied that the tenderer understands the problem and what is required, then once satisfied, it is less confusing to leave the detail out of the CP. The non-inclusion of such detail in the CP would leave the Contractor free to submit his original solution or an alternative one after work has started, either being subject to checking against the ER and under any specific checking procedures included in the Contract. Under such circumstances if the alternative solution differs from the ER it is a Variation and needs the SO's sanction; if it complies with the ER it is design development.

- Note 5 When the Design Checker is required, the ER must state by when the Design Checker shall be nominated for approval and/or be appointed by the Contractor. The Design Checking Procedures must state whether a single consent to construct is required or several. It will depend upon the nature of the Works. The Procedures also need to make clear the basis upon which consent will be granted or withheld. Alternatively, the SO could do the checking as part of his consent procedure.
- Note 6 Amongst the SO's "duties" are :-
- (i) to trigger the consent to move from schematic to detailed design and from detailed design to construction but the SO may not impose his personal preference in giving or withholding consent;
 - (ii) to be active in the Sub-surface Assessment and Method Statement;
 - (iii) the duty to value Variations or to delegate to the SO's representative valuation duties for Variations;
 - (iv) to detail time for Commissioning Tests and require any part of the Works to be retested;
 - (v) to certify, if appropriate, interim statements, interim and final payments, retention money and interest within fixed time frames and in accordance with the agreed method i.e. milestone or periodic payments;
 - (vi) to satisfy himself that appropriate levels of on-site construction and site safety supervision are being provided by the Contractor, that tests are being carried out and to relevant standards and verifying the Quality Assurance System (if any).
- Note 7 If the CP provides for a patented article, process, design or invention then the Tender Price should include for any royalty payable in respect thereof and a statement from the owner of the patent that the patented article, process, design or invention may be used for the Works.
- Note 8 The preferred use is for a Method Statement instead of the customary placing of all the sub-surface risk on the Contractor. The new wording calls for submission of a Method Statement by the Contractor dealing with, inter alia, the Contractor's assumption of the sub-surface conditions. Any difference between the assumption and the actual that has a substantial impact on the design may have cost and/or time implications.
- For the SO to be able to value the change and assess the effect upon time, the ER must state that the Contractor shall deliver a copy of the site investigation made under D&B GCC Clause 13(4) to the SO. A time for delivery must also be stated, but this will depend upon the size of the Works etc.
- The ER must also state that the SO's valuation of any change shall be based on the Contractor's rates and prices included with the Method Statement and Sub-surface Assessment.
- It is recognised that the Method Statement approach may be made complicated by highly variable sub-surface conditions. The Contractor will have to make a case and the SO a decision based on the information available.
- Note 9 Variations are defined in Clause 1(1). Under D&B GCC Clause 60(4), the SO may request the Contractor to submit a lump sum quotation in writing within 14 days of receipt of such request. If the Variation is ordered, the SO may accept the lump sum quotation as the value of the Variation. If the SO does not accept the lump sum quotation, he shall have to value it in accordance with D&B GCC Clause 61(4). If a lump sum quotation is requested but a Variation is not ordered, the Contractor shall be paid for the Cost of the preparing the lump sum quotation **(see D&B GCC Clause 60(4))**.

Apart from Variations ordered by the SO, the Contractor may propose a Variation by submitting the proposal in writing to the SO under D&B GCC Clause 60(5). The SO shall within 14 days of the receipt of the Contractor's proposed Variation confirm whether he agrees to the proposed Variation or not. Under Clause D&B GCC 60(5)(c), the Contractor is not entitled to any adjustment to the Contract Sum except an adjustment to effect a reduction offer to the Employer (if any).

- Note 10 Provides for both the traditional way of valuing Variations and also by the approach of lump sum quotations, either asked for by the SO or offered by the Contractor. If the SO does not like the quote, the traditional way is used. If the Contractor is subsequently not instructed to execute the Variation then he is entitled to be paid the Cost incurred in preparing the quotation. The SO will not have priced bills of quantities on which to value Variations but instead a breakdown of the Contractor's rates and prices in such detail as prescribed in the ER. D&B GCC Clause 61(2) provides that the valuation of any Variation ordered by the SO shall include the Cost (if any) of any disturbance to, or prolongation of both varied and unvaried work.
- Note 11 The ER must make it clear what must be commissioned before the certificate of completion. It must also clarify the effect of having to re-test. Does it affect the completion certificate? Thought must be given on the need to also re-test satisfactory Plant following a failure elsewhere in the system.
- Note 12 D&B GCC Clause 68 makes it clear that the Employer may, but only with the Contractor's consent, take-over any part of the Works early. For example, if in the construction of an office block the Employer requires possession in order to occupy the premises earlier for moving-in and/or commissioning purposes. Early take-over results in a certificate of completion being deemed to be issued for the part taken over. If early take-over is essential, make it a Section with a specific completion date.

APPENDIX F FINALISING DESIGN AND BUILD GENERAL CONDITIONS OF CONTRACT

1.0 Introduction

1.1 The Design and Build General Conditions of Contract (D&B GCC) contain :

- Alternative D&B Contract Clauses
- Optional D&B Contract Clauses
- Clauses Requiring Specification - Employer's Requirements

2.0 Alternative D&B Contract Clauses

2.1 Inspection of the Site

2.1.1 D&B GCC Clause 13 - Inspection of the Site requires the choice of one of two alternatives.

2.1.1.1 Clause 13 - Inspection of the Site (Alternative I)

The use of D&B GCC Clause 13 Alternative I, Method Statement Approach, is encouraged. However, in order to use this approach the Works Department will need to have its own Sub-surface Assessment. To assist the Works Department, the Geotechnical Engineering Office (GEO) can provide advice at respective stages as follows :-

(a) At Technical Feasibility Statement stage

Advice to ensure that appropriate factual geotechnical information is gathered and that geotechnical constraints are identified. This advice will also facilitate the subsequent review of Sub-surface Assessment.

(b) At tender document preparation

Advice on the geotechnical aspects of the Employer's Requirements, and on the constituents of the Sub-surface Assessment and Method Statement. Advice may also be necessary on the extent and nature of the ground investigation data to be made available to tenderers.

(c) At prequalification

For projects that necessitate specialist geotechnical expertise, GEO advice at this stage will be useful in developing the short list of potential tenderers.

(d) At tender assessment

Advice on the validity of the tenderer's Sub-surface Assessment and Method Statement. The effects of differences between the tenderers' and the Employer's Sub-surface Assessment will need to be considered.

(e) Upon award of Contract

Advice on the Contractor's interpretation of site investigation carried out under D&B GCC Clause 13(4) and the validity of the Sub-surface Assessment under D&B GCC Clause 13(5) and (6).

2.1.1.2 Clause 13 - Inspection of the Site (Alternative II)

(a) D&B GCC Clause 13 Alternative II requires the tenderer to satisfy himself regarding existing ground conditions before submitting his tender.

(b) GEO can also provide geotechnical advice for 2.1.1(a) and (c) above when Alternative II is to be used.

2.2 Contractor's Interim Statements

2.2.1 D&B GCC Clause 78 - Contractor's interim statements requires the Employer to specify in the Form of Tender the payment method appropriate to the project. See **Appendix C** of these Procedures, D&B GCC Clause 78 and the Library of Special Conditions of Contract for D&B Contracts.

3.0 Performance Bonds

3.1 It is DEVB's policy that in tenders for contracts (except tenders where special bonding rules apply), performance bonds are no longer to be included unless the following circumstances exist :

(a) where the project is funded in whole or in part by an outside body (e.g. Hospital Authority), performance bonds shall only be

deleted with the express written agreement of the outside body who must have been made aware of the implications, on a contract by contract basis. Vote Controllers or their delegates shall make their own detailed arrangements with their clients;

- (b) for special contracts such as those where, due to prequalification, pre-selection or any other appropriate reason, at least one of the tenderers is not on the list of Approved Contractors for Public Works. The performance bond may be deleted in these circumstances at the discretion of the Vote Controller or his delegate where there is no particular need for it i.e. where Government has no higher risk than for general works contracts which no longer require the bond; or
- (c) where for any special reason, the Vote Controller or his delegate considers the risk particularly high compared to other general works contracts not including a bond e.g. contracts that are very large and/or time critical, and where the contract conditions impose a substantially higher degree of risk than normal on the Contractor.

3.2 In accordance with the requirement above, a performance bond would be a consideration for tenders for a D&B contract. See the prevailing TC(W) on Use of Performance Bonds Security and Retention Moneys and Standard Form of Bond, **Appendix G** for the Standard Form of Bond and **Annex G12** for the Specimen Special Conditions of Contract as appropriate.

4.0 D&B Special Conditions of Contract Clauses

4.1 A Library of Special Conditions of Contract for D&B Contracts is at **Annex G12**.

5.0 Clauses requiring specification - Employer's Requirements

5.1 D&B GCC Clause 2(2)(a) - Appointment of the Design Checker(s), who is independent of the Contractor and of the Contractor's designer. The requirement for design checking shall be stated in the Employer's Requirements. In certain cases works departments may consider that design checking should be carried out by the Supervising Officer (or his representative), or is not necessary in which case this should be stated in the Employer's Requirements (see **Appendix C**).

6.0 Vetting of Tender documents

6.1 The final tender documents should be reviewed by the departmental Contract Adviser, and if the estimated contract sum is in excess of the limits stipulated in the prevailing Project Administration Handbook of the Architectural Services Department or Project Administration Handbook for Civil Engineering Works, the tender documents should be referred to Legal Advisory Division of DEVB for legal vetting.

Appendix G – Specimen Tender / Contract Provisions - Cover Page

1.0 Vetting of Draft Tender Documents

- 1.1 All tender documents with project estimates exceeding \$300M in value must be submitted through the appropriate Contract Adviser to the Legal Advisory Division (Works) of DEVB (LAD(Works)/DEVB) for legal vetting prior to the invitation for tenders. It is advisable to request the relevant Contract Adviser to comment on the documents before submitting the same to LAD(Works)/DEVB. Comments made by the relevant Contract Adviser on the draft should be attached for LAD(Works)/DEVB's information. At least three weeks should be allowed for the vetting of documents by LAD(Works)/DEVB. The memo accompanying the tender documents should, among other things, focus on the following:
- (a) Special Conditions of Tender clauses and SCC clauses together with reasons for their incorporation;
 - (b) Alterations, if any, to the standard versions of the Articles of Agreement and the Form of Tender and Appendix thereto; and
 - (c) Any clause in Employer's Requirements and Particular Specification, any item in the Bills of Quantities, or any other matter relating to the tender documents or to the Contract which may have significant contractual or financial implications.

2.0 Use of Proposed Tender / Contract Provisions not Shown in the Specimen

- 2.1 Any proposed provisions not shown in the specimen may be drafted and used as required subject to the approval of the Head of Department/Office or his delegate and advice of LAD(W) as appropriate. This delegation should not be given below the rank of D1 level.
- 2.2 Should the Head of Department/Office or the delegated officer have any doubt as to the wording of the proposed tender / contract provisions, then the proposed provisions should be forwarded to the Legal Adviser of the Legal Advisory Division of Works Bureau for advice, through the relevant Contract Adviser, without reference elsewhere.
- 2.3 Contentious cases involving a major point of principle or change in policy should, at the discretion of Head of Department/Office, be referred to the Works Group Directors' Meeting for consideration.

3.0 Additions or Deletions of Specimen Tender / Contract Provisions

- 3.1 Any changes to the specimen tender / contract provisions shall be vetted by the Conditions of Contract Committee (CCC) prior to the seeking of Permanent Secretary for Works' approval as appropriate.

{Internal Remark: For Design and Build Contracts using NEC form}

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[INSERT PROCURING DEPARTMENT]

CONTRACT NO. [INSERT CONTRACT NO.]

[INSERT CONTRACT TITLE]

FORM OF TENDER

NOTES :

- (1) If the tenderer is a limited company (including incorporated joint venture), insert the information in the spaces provided at Form of Tender – P.3.
- (2) If the tenderer is an unincorporated joint venture, insert the information in the spaces provided at Form of Tender – P.4 to P.5.
- (3) If the tenderer is a sole proprietorship or a partnership, insert the information in the spaces provided at Form of Tender – P.6.
- (4) In all cases, insert the number(s) and the expiry date(s) of the business registration certificate(s) here¹:

Name:	_____	Name:	_____
Business Registration Number:	_____	Business Registration Number:	_____
Expiry Date:	_____	Expiry Date:	_____
Name:	_____	Name:	_____
Business Registration Number:	_____	Business Registration Number:	_____
Expiry Date:	_____	Expiry Date:	_____

{Internal Remark: Please update the following for submission to a tender board other than the Central Tender Board}

To : The Chairman,
Central Tender Board,
Lobby of the Public Entrance on the Ground Floor,
East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

¹ If the tenderer is a partnership or an unincorporated joint venture, provide the required information of all partners or all participants of the unincorporated joint venture.

FORM OF TENDER – P.2

1. Having inspected the Site, the Articles of Agreement and all documents referred to in the Articles of Agreement, I/we offer to Provide the Works as may from time to time be instructed and in conformity with the *conditions of contract*, *additional conditions of contract*, **Scope/Works Information*², **bill of quantities/activity schedule* [and the technical resources and technical proposals submitted in accordance with Clause GCT 4(1)(d) of the General Conditions of Tender]³. The tendered total of the Prices as defined in this contract is Hong Kong dollars

_____ [HK\$ _____].

2. I/We agree to abide by this Tender for the period of [90 days]⁴ from the date, or the extended date if this has been extended, of expiry fixed for receiving the same and it shall remain binding upon me/us and may be accepted at any time before the expiration of that period.
3. Unless and until the Articles of Agreement is prepared and executed, this Tender together with the written acceptance thereof by the **Client's/Employer's*⁵ subject to the provisions of clause 2 hereof shall constitute a binding contract between us.
4. I/We understand that the **Client/Employer*⁵ reserves the right to negotiate with any tenderer about the term of the offer and is not bound to accept any tender irrespective of whether the tender is the lowest offer or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender is with the highest overall score.

* Delete as appropriate

² Use "Works Information" for NEC3 form or use "Scope" for NEC4 form.

³ Delete the text in square brackets when Formula Approach is adopted for tender evaluation.

⁴ Information to be inserted by the Project Office (normally 90 days).

⁵ Use "Employer" for NEC3 form or use "Client" for NEC4 form.

FORM OF TENDER – P.3

NOTE: To be inserted in case the tenderer is a limited company

Name _____

Signature _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of (name of the limited company)

Registered address of the limited company

Name of Witness _____

Signature of Witness _____

Occupation of Witness _____

Address of Witness _____

Date _____

FORM OF TENDER – P.4

NOTE: To be inserted in case the tenderer is an unincorporated joint venture⁶

Name _____

Name _____

Signature _____

Signature _____

in the capacity of _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

Registered address of the participant of the
unincorporated joint venture

Registered address of the participant of the
unincorporated joint venture

Name _____

Name _____

Signature _____

Signature _____

in the capacity of _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

Registered address of the participant of the
unincorporated joint venture

Registered address of the participant of the
unincorporated joint venture

⁶ Insert the information of all participants of the unincorporated joint venture in the spaces provided. In case of more than four participants, insert an additional page following the above format.

FORM OF TENDER – P.5

Trading in Hong Kong with a business name of (the name of the unincorporated joint venture)

Correspondence address of the unincorporated joint venture

Name(s)⁷
of Witness(es) _____

Signature(s)
of Witness(es) _____

Occupation(s)
of Witness(es) _____

Address(es)
of Witness(es) _____

Date _____

⁷ In case more space is required for the information of the witness(es), insert an additional page following the above format.

FORM OF TENDER – P.6

NOTE: To be inserted if the tenderer is a sole proprietorship or a partnership⁸

Name _____ Name _____

Signature _____ Signature _____

Residential address⁹ _____ Residential address⁹ _____

Name _____ Name _____

Signature _____ Signature _____

Residential address⁹ _____ Residential address⁹ _____

Trading in Hong Kong with a business name of (the name of the sole proprietorship or the partnership)

Correspondence address of the sole proprietorship or the partnership

Name(s)¹⁰
of Witness(es) _____

Signature(s)
of Witness(es) _____

Occupation(s)
of Witness(es) _____

Address(es)
of Witness(es) _____

Date _____

⁸ Insert the information of the sole proprietor or all partners of the partnership in the spaces provided. In case of more than four partners, insert an additional page following the above format.

⁹ In case a partner of the partnership is a body corporate, its registered address shall be provided instead.

¹⁰ In case more space is required for the information of the witness(es), insert an additional page following the above format.

{Internal Remarks: For Design and Build Contracts using GCC form}

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[INSERT PROCURING DEPARTMENT]

CONTRACT NO. [INSERT CONTRACT NO.]

[INSERT CONTRACT TITLE]

FORM OF TENDER

NOTES :

- (1) The Appendix forms part of the Contract.
- (2) If the tenderer is a limited company (including incorporated joint venture), insert the information in the spaces provided at Form of Tender – P.3.
- (3) If the tenderer is an unincorporated joint venture, insert the information in the spaces provided at Form of Tender – P.4 to P.5.
- (4) If the tenderer is a sole proprietorship or a partnership, insert the information in the spaces provided at Form of Tender – P.6.
- (5) In all cases, insert the number(s) and the expiry date(s) of the business registration certificate(s) here¹:

Name:	_____	Name:	_____
Business Registration Number:	_____	Business Registration Number:	_____
Expiry Date:	_____	Expiry Date:	_____
Name:	_____	Name:	_____
Business Registration Number:	_____	Business Registration Number:	_____
Expiry Date:	_____	Expiry Date:	_____

{Internal Remark: Please update the following for submission to a tender board other than the Central Tender Board}

To : The Chairman,
Central Tender Board,
Lobby of the Public Entrance on the Ground Floor,
East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

¹ If the tenderer is a partnership or an unincorporated joint venture, provide the required information of all partners or all participants of the unincorporated joint venture.

FORM OF TENDER – P.2

1. Having inspected the Site, examined the Employer's Requirements, General and Special Conditions of Contract and addenda thereto (if any) issued by you for the execution of the above-named Works, completed (where appropriate) the Appendix hereto and prepared the Contractor's Proposals forming part of this Tender, I/we offer to execute the Works in conformity with the said Employer's Requirements, General and Special Conditions of Contract, addenda (if any), the Appendix hereto and the Contractor's Proposals for the sum of Dollars

[HK\$ _____] or such sum as may be ascertained in accordance with the General and Special Conditions of Contract (hereinafter referred to as "the said Conditions").

{Internal Remark: Paragraph 2 may be deleted if the General Condition of Tender on Reduction of Contingency Sum is not required}

2. I/We agree that, upon receipt by me/us of a notification in writing referred to in sub-clause (1) of General Condition of Tender Clause []² (a copy of which is at the Appendix hereto) concerning reduction in the amount of the contingency sums, my/our Tender shall be taken to be amended as follows:
- (a) the amount of the Contingency Sum as stated in the [Employer's Requirements]³ shall be taken to be reduced accordingly; and
 - (b) the amount of the tender sum as stated in clause 1 of this Form of Tender and the [Contractor's Proposals]³ shall be taken to be reduced accordingly to reflect the reduction in the amount of the Contingency Sum under paragraph (a) above,

and I/we further agree that the reduction in the amount of the Contingency Sum under paragraph (a) above shall not affect any Provisional Sum specified in the [Employer's Requirement]³ [or the amount of the Adjustment Item. For the purposes of this clause 2, "Adjustment Item" shall have the same meaning as given in Special Conditions of Tender Clause []⁴ (a copy of which is at the Appendix hereto) and Special Conditions of Contract Clause []⁴, and the amount of which may (where applicable) be revised in accordance with General Conditions of Tender Clause []⁵ (a copy of which is at the Appendix hereto)]⁶.

² Insert the clause number of the General Condition of Tender (GCT) dealing with reduction of Contingency Sum. If a tender addendum is issued to amend this GCT clause prior to tender closing, the copy of this GCT clause at the Appendix hereto should also be amended in the same manner by the same tender addendum.

³ The Project Office shall determine the appropriate wording to suit the contract/tender documentation arrangements of the contract being tendered. See also D&B GCC65 on Instructions on Provisional and Contingency Sums.

⁴ Insert the respective clause numbers of the SCT and Special Condition of Contract (SCC) on Adjustment Item. If a tender addendum is issued to amend this SCT clause prior to tender closing, the copy of this SCT clause at the Appendix hereto should also be amended in the same manner by the same tender addendum.

⁵ Insert the clause number of the General Condition of Tender (GCT) dealing with correction rules for tender errors. If a tender addendum is issued to amend this GCT clause prior to tender closing, the copy of this GCT clause at the Appendix hereto should also be amended in the same manner by the same tender addendum.

⁶ The part in square brackets should be deleted if "Adjustment Item" is not allowed in relation to the contract being tendered.

3. I/We undertake if my/our Tender is accepted to complete the Works within the time stated in the Appendix hereto.

{Internal Remarks: Paragraph 4 may be deleted if a security is not required}

4. If my/our Tender is accepted I/we will when required

#(a) deposit with the Director of Accounting Services, the Government of the Hong Kong Special Administrative Region, as security for the due and faithful performance of the Contract, a sum of \$_____, such deposited sum to be returned to me/us in accordance with the said Conditions.

#(b) with the approval of the Employer obtain the guarantee of a Bank or Insurance Company [to be approved by the Employer] to be jointly and severally bound with me/us in a sum of \$_____ for the due and faithful performance of the Contract under the terms of a Bond in accordance with the said Conditions.

NOTE: Tenderer to delete either clause 4(a) or 4(b).

5. I/We agree to abide by this Tender for the period of [90 days]⁷ from the date, or the extended date if this has been extended, of expiry fixed for receiving the same and it shall remain binding upon me/us and may be accepted at any time before the expiration of that period.
6. Unless and until the Articles of Agreement is prepared and executed, this Tender together with the written acceptance thereof by the Employer subject to the provisions of [clause 5]⁸ hereof shall constitute a binding contract between us.
7. I/We understand that the Employer reserves the right to negotiate with any tenderer about the term of the offer and is not bound to accept any tender irrespective of whether the tender is the lowest offer or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender is with the highest overall score.

⁷ Information to be inserted by Project Office (normally 90 days).

⁸ Modify as appropriate.

FORM OF TENDER – P.3

NOTE: To be inserted in case the tenderer is a limited company

Name _____

Signature _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of (name of the limited company)

Registered address of the limited company

Name of Witness _____

Signature of Witness _____

Occupation of Witness _____

Address of Witness _____

Date _____

FORM OF TENDER – P.4

NOTE: To be inserted in case the tenderer is an unincorporated joint venture⁹

Name _____

Name _____

Signature _____

Signature _____

in the capacity of _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

Registered address of the participant of the
unincorporated joint venture

Registered address of the participant of the
unincorporated joint venture

Name _____

Name _____

Signature _____

Signature _____

in the capacity of _____

in the capacity of _____

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

duly authorised to sign tenders for and on behalf of
(name of the participant of the unincorporated joint
venture)

Registered address of the participant of the
unincorporated joint venture

Registered address of the participant of the
unincorporated joint venture

⁹ Insert the information of all participants of the unincorporated joint venture in the spaces provided. In case of more than four participants, insert an additional page following the above format.

FORM OF TENDER – P.5

Trading in Hong Kong with a business name of (the name of the unincorporated joint venture)

Correspondence address of the unincorporated joint venture

Name(s)¹⁰
of Witness(es) _____

Signature(s)
of Witness(es) _____

Occupation(s)
of Witness(es) _____

Address(es)
of Witness(es) _____

Date _____

¹⁰ In case more space is required for the information of the witness(es), insert an additional page following the above format.

FORM OF TENDER – P.6

NOTE: To be inserted if the tenderer is a sole proprietorship or a partnership¹¹

Name _____ Name _____

Signature _____ Signature _____

Residential address¹² _____ Residential address¹² _____

Name _____ Name _____

Signature _____ Signature _____

Residential address¹² _____ Residential address¹² _____

Trading in Hong Kong with a business name of (the name of the sole proprietorship or the partnership)

Correspondence address of the sole proprietorship or the partnership

Name(s)¹³
of Witness(es) _____

Signature(s)
of Witness(es) _____

Occupation(s)
of Witness(es) _____

Address(es)
of Witness(es) _____

Date _____

¹¹ Insert the information of the sole proprietor or all partners of the partnership in the spaces provided. In case more than four partners, insert an additional page following the above format.

¹² In case a partner of the partnership is a body corporate, its registered address shall be provided instead.

¹³ In case more space is required for the information of the witness(es), insert an additional page following the above format.

FORM OF TENDER – P.7

{Internal Remarks: This “Form of Tender – P.7” may be deleted if a security is not required.}

To be inserted by the Supervising Officer before the signing of the Articles of Agreement :

Security Deposit (if any) Receipt No. _____

Amount _____

Date _____

FORM OF TENDER – APPENDIX

General Conditions of Contract for Design and Build Contract, 1999 Edition

Clause No.

1(1) Maintenance Periodmonths
*Maintenance Period for Section xx [Section on preservation and protection of existing trees (where there are no Old and Valuable Trees)]month(s)
[To be determined by the project office; usually 1 month]

2(1)(b) Actions of the Supervising Officer subject to the Employer’s right of objection and direction are set out in the Annex.

*12 Amount of Bond or cash security \$.....

13 Inspection of the Site
*Alternative I
*Alternative II

@47 Period of time after acceptance of Tender within which the date for commencement of construction of the Works shall occurdays

49 Time for completiondays
{ Where the Works are divided into Sections which together comprise the Works, this part of the Appendix should be re-written as follows :-

Time for completion for Section _____ of the Worksdays

Time for completion for Section _____ of the Worksdays
and so on

*Time for completion of Section xx of the Worksdays
[Section on preservation and protection of existing trees (where there are no Old and Valuable Trees)] [From the date for commencement of the Works to the date for completion of the last Section of the Works, except Establishment Works] }

52 [For use where the Works are not divided into Sections]
*Liquidated damages for the Works \$@@[.... x (Y₁ + Y_n) +] per day

[For use where the Works are divided into Sections]
*Liquidated damages
Section A \$@@[.... x Y₁ + x Y_n + x Y₂ +] per day
Section B \$@@[.... x Y₁ + x Y_n + x Y₃ +] per day

In the above summary statement of liquidated damages:
Y₁ = Total sum of # [state the respective part of the Works]
Y₂ = Total sum of #
Y₃ = Total sum of #
Y_n = The value of the Adjustment Item

[Guidance Notes:
Adopt appropriate indeterminate items and formula for the above summary statements of liquidated damages.

Items which do not attract LD’s, such as the safety related items, should be taken out.]

General Conditions of Contract for Design and Build Contract, 1999 Edition (Cont'd)

Clause No.

***[If there is no minimum LD, insert the following note.]**

@@Note: The value of the formula within the square brackets shall be taken as zero for the purpose of computation of the daily rate of liquidated damages if and when the sum is worked out to be a negative value by substituting each of Y_1, \dots, Y_n [**specify those indeterminate items**] *as appropriate, [**Insert "as appropriate," if this Note is used in relation to two or more Sections with no minimum LD.**] with its corresponding value in the priced breakdown of the Contractor's rates and prices.

[or]

***[If there is minimum LD, insert the following note.]**

@@Note: The value of the formula within the square brackets shall be taken as \$[**the minimum amount of LD for the Works or, as the case may be, the relevant Section**] per day for the purpose of computation of the daily rate of liquidated damages if and when the sum is worked out to be less than \$[**the minimum amount of LD for the Works or, as the case may be, the relevant Section**] by substituting each of Y_1, \dots, Y_n [**specify related indeterminate items**] *as appropriate, [**Insert "as appropriate," if this Note is used in relation to two or more Sections with minimum LD.**] with its corresponding value in the priced breakdown of the Contractor's rates and prices.

[and]

***[If the works involve excavation requiring the application of excavation permits, insert the following note.]** In computing the above liquidated damages, the Employer has not taken into account the Employer's liability for fees including Economic Cost under the Land (Miscellaneous Provisions) Ordinance, Cap. 28 ("the Ordinance") for any extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance.

#78	Method of payment	*Alternative A (milestone payments) - see the milestones schedule hereunder
		*Alternative B (periodic payments)
	Period of interim certificate .....	.....
	[Delete when Alternative A (milestone payment) is used.]	
∅ 79(1)	Percentage of certified value retained .....	.....per cent
∅ 79(1)	Limit of Retention Money	\$.....
∅ 79(2)	Minimum payment for interim certificates	\$.....
	*(There shall be no minimum amount of interim certificates for Establishment Works.)	

Special Conditions of Contract

Clause No. [Check SCC referencing as necessary.]

- *SCC28(2) Minimum amount of third party insurance \$.....
- *SCC40(3) Time, commencing from and including the date for commencement of the Works notified by the Supervising Officer in accordance with GCC Clause 47(2), within which the Section Subject to Excision may be ordereddays
- *SCC45 Minimum amount of liquidated damages for *the Works/Section \$.....per day
- *SCC47(3) Period of Establishment Worksmonths
- *SCC56 Period of interim certificate
Percentage of certified value retainedper cent
Limit of Retention Money \$.....
Minimum payment for interim certificates \$.....
*(There shall be no minimum amount of interim certificates for Establishment Works.)

[Notes: SCC90(2) and SCC91 shall be added where the existing trees which are to be preserved and protected include Old and Valuable Trees from the register at the website: <http://www.greening.gov.hk/ovt/default.aspx>.]

- *SCC90(2) Sum¹⁰ payable to the Employer in the event that Old and Valuable Tree No. ___ dies or becomes moribund \$.....
- *SCC91 Period for Aftercare to Old and Valuable Trees (*Tree/Trees No. ___)¹¹ months
Maintenance Period for Aftercare to Old and Valuable Trees¹¹ months
- *SCC104 Minimum amount of Contractor’s Bond in respect of Off-site Payment for Major Prefabrication Item(s) \$.....

[¹⁰ Separate sum shall be applied to each tree if more than one Old and Valuable Tree is involved. The sum for each Old and Valuable Tree shall be the genuine pre-tender estimate of the cost that the Employer has expended in nurturing, preservation, protection and maintenance of that particular tree.

¹¹ The Period for Aftercare to Old and Valuable Trees together with its subsequent Maintenance Period should preferably end on the same date as the Maintenance Period for the Works, or if there is more than one Maintenance Period, on the same date as the last Maintenance Period.]

[any other references required to be inserted here].

- @ The date for commencement of construction is the date of possession of the Site.
- ¶ If the time for completion is not stated, the tenderer is to insert it.

- * Delete or modify as necessary.
- # Delete when SCC56 "Milestone Payment" is used. If SCC56 is not used, delete either Alternative A (milestone payments) or Alternative B (periodic payments) as appropriate
- Ø Delete and include under Special Conditions of Contract when SCC56 is used.

***ALTERNATIVE A : MILESTONE PAYMENTS**

The milestones referred to in Clause 78(1) of the General Conditions of Contract are as follows/set out on a separate sheet attached :-

<u>Milestones (insert brief description)</u>	<u>Cumulative value</u> as a % of the Contract Sum
.....	
.....	%
.....	%
.....	%
.....	%
.....	%
.....	** %

NOTE: If Special Conditions of Contract Clause SCC56 replaces Alternative A : Milestone Payments, the above schedule should be deleted and provisions for Cost Centres, Payment Schedule and Schedule of Milestones, etc., included in the Employer's Requirements.

- * Delete whichever is inappropriate
- ** Cumulative value of the final milestone must be equal to Contract Sum after deducting the Contingency Sum and all Provisional Sums.

ANNEX TO FORM OF TENDER

General Conditions of Contract Clause 2(1)(b)

Actions of the Supervising Officer subject to the Employer's right of objection and direction

The Supervising Officer is required under the terms of his appointment by the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer's direction before ordering any Variation to the Works or taking any other action (including without limitation making an order under General Conditions of Contract Clause 54) which may commit the Employer to additional expenditure under the Contract, other than in respect of claims, of a value estimated to exceed HK\$800,000. This requirement shall not be applicable where the variation order or other action is considered by the Supervising Officer to be essential on grounds of safety or other emergency in circumstances when it is impracticable to refer the matter to the Employer beforehand.

The Supervising Officer may, subject to any prior contrary instructions given by the Employer to the Supervising Officer, order Variation to the Works in accordance with the provisions of the Contract or take any other action (including without limitation making an order under General Conditions of Contract Clause 54) which may commit the Employer to additional expenditure under the Contract, other than in respect of claims, without the need to obtain confirmation of no objection from the Employer if the value of such order or commitment is estimated not to exceed HK\$800,000.

[Insert the following paragraph if the SCC clause on "Limiting the Tiers of Sub-contracting" is used in this contract.]

*The Supervising Officer is required under the terms of his appointment by the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer's direction before permitting the Contractor to introduce an extra tier of sub-contracting in accordance with sub-clause (5) of Special Conditions of Contract Clause SCC # **[insert relevant clause number for the above mentioned SCC clause.]**

[Insert the following paragraph if the SCC clause on "Section Subject to Excision" is used in this contract.]

*The Supervising Officer is required under the terms of his appointment by the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer's direction before issuing instruction on implementation of the Section Subject to Excision as defined in sub-clause (1) of Special Conditions of Contract Clause SCC # **[insert relevant clause number for the above mentioned SCC clause.]**

The Supervising Officer is required under the terms of his appointment by the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer's direction before approving alternative disposal grounds proposed by the Contractor in accordance with Clause (3) of Particular Specification for Trip Ticket System contained in Appendix B to Particular Specification # **[insert relevant reference number for Particular Specification for Environmental Control, Site Aspect Schedule and Trip Ticket System].**

[Guidance Notes: The above shall be amended to include any other actions of the Supervising Officer which are subject to the Employer's right of objection and direction. In each case the relevant Conditions of Contract clause number and the particulars shall be given.]

OPTION A - SINGLE CONTRACTOR OR INCORPORATED JOINT VENTURE

(see GCC Clause 11)

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

CONTRACT NO. _____

TITLE _____

ARTICLES OF AGREEMENT made and entered into this _____ day

of _____ [] _____

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (hereinafter referred to as "the Employer") and

of _____

(hereinafter referred to as "the Contractor").

WHEREAS:

- A. The Employer is desirous of having the Works executed in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Employer's Requirements and the Contractor's Proposals.

- B. The Contractor has agreed to execute the Works subject to the following terms and conditions.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. In these Articles of Agreement the words and expressions shall have the same meaning as are respectively assigned to them in the General Conditions of Contract and the Special Conditions of Contract (if any) referred to in the tender submitted by the Contractor for Contract No. [] and accepted by the Employer.
2. For the consideration hereinafter contained, the Contractor shall execute the Works to the satisfaction of the Supervising Officer in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Employer's Requirements and the Contractor's Proposals.
3. The Contractor shall execute the Works within the period stipulated in the Contract or within such further time as may be determined by the Supervising Officer in accordance with the provisions of the Contract.
4. The Employer's Requirements and the Contractor's Proposals have been signed by the parties and are annexed hereto.
5. The Employer shall pay to the Contractor the Final Contract Sum at the times and in the manner specified in the Contract.

IN WITNESS WHEREOF these Articles of Agreement have been executed as a deed by the parties hereto on the date first above written :

**Works departments shall select and insert the appropriate attestation clauses for the Contractor and the Employer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

OPTION B – AN UNINCORPORATED JOING VENTURE

(see GCC Clause 11 and SCC Clause 45)

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

CONTRACT NO. _____

TITLE _____

ARTICLES OF AGREEMENT made and entered into this _____ day

of _____ [] _____

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (hereinafter referred to as "the Employer") and

_____ of _____

and

_____ of _____

(a) trading as [name of the unincorporated joint venture] at _____
(hereinafter referred to collectively as "the Contractor")

WHEREAS :

- A. The Employer is desirous of having the Works executed in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Employer's Requirements and the Contractor's Proposals.
- B. The Contractor has agreed to execute the Works subject to the following terms and conditions.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. In these Articles of Agreement the words and expressions shall have the same meaning as are respectively assigned to them in the General Conditions of Contract and the Special Conditions of Contract (if any) referred to in the tender submitted by the Contractor for Contract No. [] and accepted by the Employer.
2. For the consideration hereinafter contained, the Contractor shall execute the Works to the satisfaction of the Supervising Officer in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Employer's Requirements and the Contractor's Proposals.
3. The Contractor shall execute the Works within the period stipulated in the Contract or within such further time as may be determined by the Supervising Officer in accordance with the provisions of the Contract.
4. The Employer's Requirements and the Contractor's Proposals have been signed by the parties and are annexed hereto.
5. The Employer shall pay to the Contractor the Final Contract Sum at the times and in the manner specified in the Contract.
6. _____ and _____ (a) each agrees to be jointly and severally bound by the terms of the Contract.

IN WITNESS WHEREOF these Articles of Agreement have been executed as a deed by the parties hereto on the date first above written

**Works departments shall select and insert the appropriate attestation clauses for the Contractor and the Employer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

STANDARD GENERAL CONDITIONS OF TENDER
(FOR DESIGN & BUILD CONTRACTS)

Index

GCT 1	Definitions
GCT 2	Documents issued
GCT 3	Relevant documents not issued
GCT 4*	Submission of tender (Formula Approach)
GCT 4*	Submission of tender (Marking Scheme)
GCT 5	Financial information
GCT 6	Unauthorised alterations
GCT 7	Discrepancies in the documents
GCT 8	Clarification of documents
GCT 9	Qualification of tender
GCT 10	Errors in tender submission
GCT 11	Correction rules for tender errors
GCT 12	Tenders in HK dollars
GCT 13	Tender negotiation
GCT 14	Erratic pricing
GCT 15	Tender addenda
GCT 16	Tender clarifications
GCT 17	Unreasonably low bids
GCT 18	Site investigation information
GCT 19	Copyright
GCT 20	Management of sub-contractors
GCT 21	Submission of essential requirements
GCT 22	Contractors under suspension
GCT 23	(Not Used)
GCT 24	Offering Gratuities
GCT 25	Submission of further information
GCT 26	Anti-collusion
GCT 27	Statement of convictions under the Immigration Ordinance (Cap. 115)
GCT 28	Statement of convictions under the Employment Ordinance (Cap. 57)
GCT 29	One tender only for holding companies or subsidiaries
GCT 30	Admission, Promotion and Confirmation to the List of Approved Contractors for Public Works/ the List of Approved Suppliers of Materials and Specialist Contractors for Public Works
GCT 30A	Eligibility of Probationary Contractors to Tender and for the Award of Contracts

- GCT 31 Ethical Commitment
- GCT 32 Tender Cost
- GCT 33 Tenderer's Consent and Authorization on Conviction Records
- GCT 34 Reduction of Contingency Sum

Note: Works Departments should incorporate all subsequent changes as promulgated which affect the GCTs when preparing tender documents.

* alternatives

General Conditions of Tender

Clause	Remarks/Guidelines
GCT 1 Definitions	
<p>(1) For the purpose of these General Conditions of Tender (GCT) and Special Conditions of Tender (SCT), words and expressions used throughout shall, except when the context otherwise requires, have the same meaning assigned to them under Clause 1(1) of the General Conditions of Contract. In addition, the following words and expressions shall have the meaning hereby assigned to them:</p> <p>(a) “Supervising Officer designate” means ____#</p> <p>(b) “unincorporated joint venture”, “participant”, “incorporated joint venture” and “shareholder” shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.</p> <p>(c) "person" includes individual, corporation, partnership, firm and unincorporated body.</p> <p>(2) In these General Conditions of Tender and Special Conditions of Tender, except where the context otherwise requires, the singular shall include the plural and vice versa and any gender shall include all genders.</p>	<p>DEVB memo ref. (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.</p> <p># Full description of the “Supervising Officer designate” (including full name or, as the case may be, full description of the post and name of the current holder of the post, address, telephone number and fax number) should be given in the definition.</p>
GCT 2 Documents issued	
<p>(1) The following documents are issued to tenderers:</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(a) One copy of booklet containing:</p> <p>(i) These Conditions of Tender comprising the General Conditions of Tender and the Special Conditions of Tender,</p> <p>* (ii) Special Conditions of Contract,</p> <p>(iii) Form of Tender,</p> <p>* (iv) Employer's Requirements comprising:</p> <p style="padding-left: 40px;">Part I – General Obligations and Requirements</p> <p style="padding-left: 40px;">Part II – Particular Obligations and Requirements</p> <p style="padding-left: 40px;">Part III – Particular Specification</p> <p style="padding-left: 40px;">Part IV – Requirements for breakdown of the Contractor's rates and prices</p> <p style="padding-left: 40px;">*Part V – Appendices</p> <p style="padding-left: 80px;">“A” – List of drawings issued in connection with the Works</p> <p style="padding-left: 80px;">“B” – Schedule of Proportions to be used in calculating the Price Fluctuation Factor.</p> <p style="padding-left: 80px;">“C” -</p>	<p>* Delete/Modify as appropriate.</p> <p># or include in item (c) as appropriate.</p>
<p>(b) One set of drawings #[and site investigation information] issued by the Employer as listed in Appendix “A” to the Employer's Requirements.</p>	
<p>(c) One set of the Electronic Dissemination Package (EDP) consisting of:</p> <p>(i) Files containing the contents of the documents stated in sub-clauses (a) and (b) above,</p> <p>(ii) The Licence Conditions on using the files stated in (i) of this sub-clause,</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
(iii) Supporting files containing information on using the files in (i) of this sub-clause.	
GCT 3 Relevant documents not issued	
<p>(1) The following documents are not issued to tenderers:</p> <p>(a) Standard documents, namely:</p> <p style="padding-left: 20px;">(i) General Specification,</p> <p style="padding-left: 20px;">(ii) General Conditions of Contract,</p> <p>* (iii) Construction Site Safety Manual (Chapter 3),</p> <p>* (iv) The Hong Kong International Arbitration Centre Domestic Arbitration Rules.</p> <p style="padding-left: 20px;">(v) Articles of Agreement</p> <p>* (vi) Schedule of Rates</p> <p>* (vii) The Government of the Hong Kong Special Administrative Region Construction Mediation Rules</p> <p>* (b) Drawings as listed in Employer's Requirements Clause</p> <p>The documents referred to in (a) and (b) above may be inspected, by appointment, at the Supervising Officer designate's office during normal office hours.</p> <p>* (c) The 'Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003 = 100)', with base date at April 2003. These and subsequent Index Figures are published in the Government of the Hong Kong Special Administrative Region Gazette.</p>	<p>* Delete/Modify as appropriate.</p> <p>The documents referred to in sub-clauses (a)(i) to (a)(iv) should be described in the Employer's Requirements with the full titles and editions, e.g. "The Government of the Hong Kong Special Administrative Region General Conditions of Contract for Design and Build Contract (1999 Edition)".</p> <p>Note: where applicable, amend this to (b)(i) and add other item(s) such as "site investigation information" as (b)(ii).</p> <p>Ref. ETWB TCW No. 21/2003</p>
GCT 4 Submission of Tender (Formula Approach)	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(1) The following documents shall be enclosed in a sealed envelope addressed, endorsed and deposited as required by the Gazette Notification or Letter of Invitation to Tender or the Tender Notice:</p>	<p>For tenders not using a marking scheme for tender evaluation. Ref. DEVB memo ref. (026NM-01-3) in DEVB(W) 546/17/01 dated 25.6.2010</p>
<p>(a) One set of the documents referred to in GCT Clause 2(1)(a)* above with:</p> <p>(i) The Form of Tender in hard copy format duly completed and signed.</p> <p>* (ii) The pricing part of the Contractor's Proposals i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements in either hard copy format or electronic format.</p> <p>* (iii) Summary of Tender in either hard copy format or electronic format.</p> <p>* (iv) Column 3 in the Schedule of Proportions to be used in calculating the Price Fluctuation Factor completed and the Schedule of Proportions signed, in hard copy format.</p> <p>* (v) *Plant and Labour Schedule/*Equipment Schedule/*Schedules of Particulars completed, in either hard copy format or in electronic format.</p>	<p>* Delete/Modify as appropriate.</p>
<p>(b) A copy each of the documents submitted under sub-clauses (1)(a)(i), *(1)(a)(ii), *(1)(a)(iii), *(1)(a)(iv) and *(1)(a)(v) of this Clause.</p>	<p>Note:</p> <p>1. Attach an appendix to the GCT on the prevailing technical requirements for tender submission in electronic format (Appendix 4 to ETWB TCW No. 11/2005)</p>
<p>(c) The submissions that are required by the General Conditions of Tender (GCT) and Special Conditions of Tender (SCT).</p>	<p>* Delete/Modify as appropriate.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(2) If a tenderer submitted the documents required under sub-clause *(1)(a)(ii), *(1)(a)(iii) and *(1)(a)(v) of this Clause in electronic format as allowed thereunder but failed to submit the required copy under sub-clause (1)(b) of this Clause, the tender opening team shall make the required copy in electronic format on the tenderer's behalf. The tenderer may be asked to bear the cost of making the copy. The cost of duplication is currently set at \$46** per electronic file and the material charge at \$1.0** per 700MB CD-ROM and \$1.3** per 4.7GB DVD+/-R.</p>	<p>** Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB, FSTB and/or PWTB. Ref: DEVB memo ref. (56) in DEVB(W) 511/70/02 dated 24.6.2015, FSTB memo ref. (135) in FT 8/86 Pt. 3 dated 15.11.2010 and PWTB memo ref. (31) in PW1TB/GEN/12 dated 3.6.2013.</p>
<p>(3) If a tenderer submitted the documents required under sub-clause (1)(a) of this Clause in hard copy format as allowed or required thereunder but failed to submit the required copy under sub-clause (1)(b) of this Clause, the tender opening team shall make the required photocopies on the tenderer's behalf. The tenderer may be asked to bear the cost of making the photocopies. The cost of photocopying is currently set at \$7.0** per copied page, which cost also covers material [See Note 2].</p>	<p>** Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB, FSTB and/or PWTB.</p> <p>2. For tenders opened by the CTB Tender Opening Team, the photocopying charge shall be \$7.0 per page.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(4) If a tenderer elects to submit the pricing part of the Contractor's Proposal i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements in hard copy format and where a hard copy has been supplied by the Employer, he should price the pricing part of the Contractor's Proposal on the hard copy supplied by the Employer. If a tenderer fails to do so, any extra cost incurred by the Employer in checking whether the printed descriptions or figures of the tender are identical to those in the hard copy supplied by the Employer is recoverable by the Employer as a debt. The tenderer whose tender has been so checked shall pay such cost if demanded by the Employer.</p> <p>(5) Where a document may be submitted in hard copy format or electronic format and if a tenderer makes two submissions for the same document, one in hard copy format and one in electronic format, the submission in hard copy format shall be discarded.</p> <p>(6) All submissions in electronic format shall comply with the requirements set out in Appendix [] [See Note 1] to these General Conditions of Tender.</p>	
<p>GCT 4 Submission of Tender (Marking Scheme)</p>	
<p>(1) The following documents shall be placed in two separate envelopes as specified below and the two envelopes shall then be enclosed in a sealed envelope addressed, endorsed and deposited as required by the Gazette Notification or Letter of Invitation to Tender or the Tender Notice.</p>	<p>This GCT 4 is for tenders using a marking scheme for tender evaluation. An alternative GCT 4 (Formula Approach) should be adopted for tenders using a formula approach for tender evaluation.</p> <p>Ref. DEVB memo ref. (026NM-01-3) in DEVB(W) 546/17/01 dated</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p style="text-align: center;">In an envelope clearly marked with the tender reference and the words 'Tender Price Documents'</p> <p>(a) One set of the following documents referred to in GCT Clause 2(1)(a)* above:</p> <p style="padding-left: 20px;">(i) The Form of Tender in hard copy format duly completed and signed.</p> <p style="padding-left: 20px;">*(ii) The pricing part of the Contractor's Proposals i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements in either hard copy format or electronic format.</p> <p style="padding-left: 20px;">*(iii) Summary of Tender in either hard copy format or electronic format.</p> <p style="padding-left: 20px;">*(iv) Column 3 in the Schedule of Proportions to be used in calculating the Price Fluctuation Factor completed and the Schedule of Proportions signed, in hard copy format.</p> <p>(b) A copy each of the documents submitted under sub-clauses (1)(a)(i), *(1)(a)(ii), *(1)(a)(iii) and *(1)(a)(iv) of this Clause.</p> <p>(c) The following submissions that are required by the General Conditions of Tender (GCT) and Special Conditions of Tender (SCT) [See Note 1]:</p> <p style="padding-left: 20px;">(i) (GCT Clause [])</p> <p style="padding-left: 20px;">(ii) .....(SCT Clause [])</p>	<p>25.6.2010.</p> <p>* Delete/Modify as appropriate.</p> <p>Note:</p> <ol style="list-style-type: none"> 1. All submissions required from tenderers should be stated, quoting where the details of the requirements are given, e.g. SCT Clause 1. 2. Attach an appendix to the GCT on the prevailing technical requirements for tender submission in electronic format (Appendix 4 to ETWB TCW No. 11/2005)

General Conditions of Tender

Clause	Remarks/Guidelines
<p>In another envelope clearly marked with the tender reference and the words 'Technical Submission'</p> <p>(d) Submissions on technical part of the Contractor's Proposals as required by the Employer's Requirements which are the subject of evaluation in accordance with the marking scheme at [Annex to Notes to Tenderers], in either hard copy format or electronic format.</p> <p>(e) The following submissions that are required by the General Conditions of Tender (GCT) and Special Conditions of Tender (SCT) [See Note 1]:</p> <p style="margin-left: 20px;">(i) (GCT Clause [])</p> <p style="margin-left: 20px;">(ii) .....(SCT Clause [])</p> <p>(2) If a tenderer submitted the documents required under sub-clause (1)(a)(iii) of this Clause in electronic format as allowed thereunder but failed to submit the required copy under sub-clause (1)(b) of this Clause, the tender opening team shall make the required copy in electronic format on the tenderer's behalf. The tenderer may be asked to bear the cost of making the copy. The cost of duplication is currently set at \$46** per electronic file and the material charge at \$1.0** per 700MB CD-ROM or \$1.3** per 4.7GB DVD+/-R [See Note 3].</p> <p>(3) If a tenderer submitted the documents required under sub-clause (1)(a) of this Clause in hard copy format as allowed or required thereunder but failed to submit the required copy under sub-clause (1)(b) of this Clause, the tender opening team shall make</p>	<p>** Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB. Ref: DEVB memo ref. (56) in DEVB(W) 511/70/02 dated 24.6.2015, FSTB memo ref. (135) in FT 8/86 Pt. 3 dated 15.11.2010 and PWTB memo ref. (31) in PW1TB/GEN/12 dated 3.6.2013.</p> <p>** Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB, FSTB and/or PWTB.</p> <p>3. For tenders opened by the CTB Tender Opening Team, the</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>the required photocopies on the tenderer's behalf. The tenderer may be asked to bear the cost of making the photocopies. The cost of photocopying is currently set at \$7.0** per copied page, which cost also covers material.</p> <p>(4) If a tenderer elects to submit the pricing part of the Contractor's Proposal i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements in hard copy format and where a hard copy has been supplied by the Employer, he should price the pricing part of the Contractor's Proposal on the hard copy supplied by the Employer. If a tenderer fails to do so, any extra cost incurred by the Employer in checking whether the printed descriptions or figures of the tender are identical to those in the hard copy supplied by the Employer is recoverable by the Employer as a debt. The tenderer whose tender has been so checked shall pay such cost if demanded by the Employer.</p> <p>(5) Where a document may be submitted in hard copy format or electronic format and if a tenderer makes two submissions for the same document, one in hard copy format and one in electronic format, the submission in hard copy format shall be discarded.</p> <p>(6) All submission in electronic format shall comply with the requirements set out in Appendix [] [See Note 2] to these General Conditions of Tender.</p>	<p>photocopying charge shall be \$7.0 per page.</p>
<p>GCT 5 Financial Information</p>	
<p>The tenderer shall, upon written request by the Supervising Officer designate issued in accordance with General Conditions of Tender Clause 25, submit to the</p>	<p>Remember to insert Appendix. This is a non-essential submission. Ref.: Annex to Appendices 2A & 3B</p>

General Conditions of Tender

Clause	Remarks/Guidelines
Supervising Officer designate the financial information set out in Appendix [] to these General Conditions of Tender. The information shall be used for tender assessment only and shall not form part of the Contract.	of Contractor Management Handbook, Revision B.
GCT 6 Unauthorised alterations	
Any unauthorised alteration or erasure or obliteration to the text of the documents may cause the tender to be disqualified.	
GCT 7 Discrepancies in the documents	
The tenderer shall check the numbers of pages of all documents against page numbers given in summaries, and should he find any discrepancy or indistinctness, he must inform the Supervising Officer designate and have the same rectified.	
GCT 8 Clarification of documents	
Should the tenderer for any reason whatsoever be in doubt about the precise meaning of any item or figure contained in the documents he shall seek clarification from the Supervising Officer designate.	
GCT 9 Qualification of tender	
Any qualification of the tender may cause the tender to be disqualified.	
GCT 10 Errors in tender submission	
In the event of a tenderer discovering an error in his tender after it has been deposited, attention in writing may be drawn to the error and an amendment submitted which, provided that the amendment shall have been deposited before the time fixed for receipt of tenders, shall be accepted.	
GCT 11 Correction rules for tender errors	

General Conditions of Tender

Clause	Remarks/Guidelines
Without prejudice to other General Conditions of Tender and Special Conditions of Tender, if errors and/or omissions are found in a tender during tender examination, such errors and/or omissions shall be dealt with in accordance with the principles and rules contained in Environment, Transport and works Bureau Technical Circular (Works) No. 41/2002*.	* Stipulate the technical circular currently in force for correction of tender errors.
GCT 12 Tenders in HK dollars	
Unless otherwise provided, the tender shall be in Hong Kong dollars.	Please refer to SPR 355 for tenders in foreign currencies.
GCT 13 Tender negotiation	
The Employer reserves the right to negotiate with any tenderer about the terms of the offer.	
GCT 14 Erratic Pricing	
<p>(1) Without prejudice to the generality of the other General Conditions of Tender and Special Conditions of Tender, the Employer may regard a tender as not being the most advantageous, irrespective of whether or not it is the lowest tender or the tender with the highest overall score, if in the Employer's opinion:</p> <p>(a) the pricing part of the Contractor's Proposal i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements have been priced erratically whether or not such erratic pricing is the result of the application of Environment, Transport and Works Bureau Technical Circular (Works) No. 41/2002*; and</p> <p>(b) the erratic pricing is such as to expose the Employer to an unacceptable level of financial risk.</p>	* Stipulate the technical circular currently in force for correction of tender errors.

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(2) For the purposes of this Clause, “erratic pricing” means the situation where an item or certain items in the pricing part of the Contractor’s Proposals are priced or structured in such a way as to suggest significant and unjustified:-</p> <p>(a) inconsistency, irregularity or non-uniformity as compared with item or items of the same or similar nature in the pricing part of the Contractor’s Proposal i.e. breakdown of the Contractor’s rates and prices as required by the Employer’s Requirements or another pricing part of the Contractor’s Proposals submitted by the same tenderer in the same tendering exercise; or</p> <p>(b) deviation from prevailing market prices in respect of the same or similar item or items.</p> <p>The expression “priced erratically” shall be construed accordingly.</p> <p>(3) In determining prevailing market price, the Employer may take into account the Supervising Officer designate’s estimates, the average price of the same item in other tenders submitted for the same tendering exercise, and/or the price of the same or similar items in other tendering exercises after making adjustment for changes in price in accordance with inflation or deflation.</p>	
GCT 15 Tender addenda	
<p>Should the Employer require any amendments, clarifications, or adjustments to be made to the tender documents for the purpose of tendering, the Supervising Officer designate will issue to every tenderer numbered addenda giving full details of such amendments etc. and the tender documents shall be taken as having been</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
amended, clarified or adjusted accordingly upon the issue of these addenda. The tenderer shall acknowledge receipt of these addenda.	
GCT 16 Tender clarifications	
<p>(1) The Employer will not consider any clarification or information submitted by a tenderer after close of tender irrespective of whether or not the clarification or information is submitted at the invitation of the Employer if such clarification or information would alter the tender in substance or give the tenderer an advantage over the other tenderers.</p> <p>(2) Without prejudice to the generality of sub-clause (1) of this Clause, where the Supervising Officer designate has after close of tender invited a tenderer to submit further information or clarification other than the Excepted Information, the tenderer shall submit the requested information or clarification within the time specified in such invitation or within such further time as the Supervising Officer designate may allow.</p> <p>(3) If the requested information or clarification is not provided within the time or further time as referred to in sub-clause (2) of this Clause, the Employer may proceed to evaluate the tender on an as is basis, but in the case where the information is in respect of [the letter referred to in Clause 26(3) of the General Conditions of Tender, the duly signed letter of consent and authorization referred to in Clause 33(1) of the General Conditions of Tender or the Schedule of Proportions referred to in General Conditions of Tender Clause 4(1)(a)(iv)]⁺, the tender may be invalidated.</p>	<p>DEVB's memo ref: DEVB(W) 510/10/01 dated 10.9.2012.</p> <p>⁺ Depending on the provisions of the tender documents as adopted for any particular project, project office/procuring department may include additional item(s) of information. The additional item(s) of information shall not include any Excepted Information (as defined in GCT Clause 16(4)).</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(4) For the purposes of this Clause, "Excepted Information" means the information required to be submitted upon written request by the Supervising Officer designate under General Conditions of Tender Clause 25 and any information for which it is provided that a tenderer's failure to submit on or before close of tender will render its tender invalid or result in its tender not being considered.</p>	
<p>GCT 17 Unreasonably low bids</p>	
<p>Without prejudice to the generality of other General Conditions of Tender and Special Conditions of Tender, the Employer may reject a tender which in the opinion of the Employer is unreasonably low in terms of price and may therefore affect the tenderer's capability to carry out and complete the Contract and/or deliver work of the quality required in accordance with the terms of the Contract.</p>	
<p>GCT 18 Site investigation information</p>	
<p>(1) Site investigation information *as listed in GCT Clause #2(1)(b) is issued with the tender documents/ *as listed in GCT Clause 3 is available for inspection by appointment at the Supervising Officer designate's office during normal office hours for the information of the tenderer. Any site investigation information, if issued, is to be returned to the Supervising Officer designate's office after submission of the tender.</p>	<p>Please refer to the guidelines in Section 11.5, Chapter 5 of the Project Administration Handbook for issuing information to prospective contractors in the pre-contract stage.</p> <p>* Delete as appropriate.</p> <p># Modify as appropriate</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(2) *Except as provided by General Conditions of Contract Clause 13, Alternative I, neither the Employer nor his agents or representatives accept any responsibility whatsoever for the accuracy or sufficiency of any information provided under this Clause and the onus is on the tenderer to carry out at his own expense any further enquiries and investigations he requires for his own information. The attention of the tenderer is drawn to General Conditions of Contract Clause 13 *Alternative I / *Alternative II with regard to inspection of the Site. [See Note]</p>	<p>Note: Include here particulars of any joint site visit which is to be arranged.</p>
<p>GCT 19 Copyright</p>	
<p>(1) The documents, plans, drawings or other materials forming part of the tender documents shall only be used by a tenderer or any person authorized or licensed by the tenderer for the purpose of preparing his tender. All other rights in the aforesaid materials are reserved by the relevant copyright owners. The tenderer shall be liable to the Employer for breach of the foregoing by any such person as if the breach were committed by the tenderer.</p>	<p>Ref: ETWB TCW No. 26/2004 (Based on the SCT clause in the obsolete ETWB TCW No. 39/2002.)</p>
<p>(2) The tenderer shall indemnify and keep indemnified the Employer against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or consequential arising out of any disputes or other claims or proceedings against the Employer by any third party by reason of any breach of sub-clause (1) above by the tenderer or any person authorized or licensed by the tenderer.</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>In this connection the tenderer shall submit with his tender a Letter of Indemnity in the form set out in Appendix []* to these General Conditions of Tender duly executed by the tenderer, or where the tenderer is an incorporated joint venture, he shall submit with his tender a Letter of Indemnity in the form set out in Appendix []** to these General Conditions of Tender duly executed by all the shareholders of the incorporated joint venture.</p>	<p>* referring to the 2nd pro forma at Appendix B.</p> <p>** referring to the 1st pro forma at Appendix B</p>
GCT 20 Management of Sub-Contractors	
<p>(1) The tenderer shall, upon written request by the Supervising Officer designate issued in accordance with General Conditions of Tender Clause 25, submit to the Supervising Officer designate an outline Sub-contractor Management Plan (SMP) which shall contain information as required in the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [] to the Special Conditions of Contract. The outline SMP submitted shall not form part of the Contract.</p> <p>(2) For the purpose of this Clause and Appendix [] to the Special Conditions of Contract, the term ‘sub-contractor’ means all types of sub-contractor including without limitation Specialist Sub-contractor.</p>	<p>Note: This is usually a non-essential submission. However, if the submission of a SMP is considered an essential requirement (which is rare), sub-clause (1) will need to be re-worded to state that the SMP shall be submitted together with the submission of the tender.</p>
GCT 21 Submission of essential requirements	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>Without prejudice to other General Conditions of Tender or Special Conditions of Tender providing for invalidating a tender submitted by a tenderer, the failure of a tenderer to submit with his tender any of the following on or before the original date set for the close of tender or, if this has been extended, the extended date shall render his tender invalid:</p> <p>(i) the Form of Tender required under GCT Clause 4(1)(a)(i)</p> <p>* (ii) the pricing part of the Contractor's Proposal i.e. breakdown of the Contractor's rates and prices as required by the Employer's Requirements required under GCT Clause 4(1)(a)(ii). [For use with GCT 4 Submission of Tender (Marking Scheme)]</p> <p>* (ii) The *Bills of Quantities/ *Schedule of Quantities/ *Schedule of Rates fully priced as to each item, extended, cast and totaled as appropriate as required by the Employer's Requirements under GCT Clause 4(1)(a)(ii). [For use with GCT 4 Submission of Tender (Formula Approach)]</p> <p>*(iii) the programme of Works required under SCT Clause []</p> <p>*(iv) Temporary Works design required under SCT Clause []</p> <p>*(v) Outline Safety Plan required under SCT Clause []</p> <p>*(vi) Outline Quality System for Production and Supply of Structural Concrete required under SCT Clause []</p> <p>*(vii) Sub-contractor Management Plan required</p>	<p>Ref: DEVB memo ref. (01YVQ-01-2) in DEVB(W) 546/17/01 dated 3.4.2009.</p> <p>Note:</p> <ol style="list-style-type: none"> The items (i) and (ii) must be listed under this GCT. Please see also the "remark" for SCT. The items from (iii) to (ix) are used only in rare cases. Please refer to the individual SCT Clause for guidance. These items are to be included as essential requirements if required to be submitted by the tenderers. If these are not regarded as essential requirements they should not be required to be submitted. <p>* Delete as appropriate.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>under GCT Clause 20.</p> <p>*(viii) Outline Environmental Management Plan required under SCT Clause []</p> <p>*(ix) where the tenderer is an unincorporated joint venture, nomination of a lead participant required under SCT Clause []¹</p> <p>*(x) where the tenderer is a joint venture (whether incorporated or unincorporated) :</p> <p>(a) the proposed percentage participation and value (and portion) of work to be undertaken by each participant or shareholder in the joint venture required under SCT Clause []²; and</p> <p>(b) if applicable, documentary evidence supporting job experience required under SCT Clause []³.</p> <p>(xi) Submission of documentary evidence under SCT Clause 4(5)(c)</p>	<p>3. Items (x) and (xi) must be listed for tenders that allow joint ventures to participate.</p> <p>Note on standard SCT Sub-clauses to be quoted:</p> <p>1 SCT 4(2)(a)</p> <p>2 SCT 4(4)</p> <p>3 SCT 4(5)(b), 4(5)(c) and, if applicable, 4(5)(d)</p>
<p>GCT 22 Contractors under suspension</p>	
<p>(1) If the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is under suspension from tendering for *any of/*all of the following category [or categories] of public works, his tender will not be considered unless the suspension is lifted by the relevant works department or the Development Bureau by the date set for the close of tender, or if this has been extended, the extended date.</p> <p>[list the category or categories of public</p>	<p>Ref: Revised Appendix I of DEVB's memo of ref: () in DEVB(W) 520/83/01 dated 26.01.2010.</p> <p>* Delete as appropriate.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>works]</p> <p>Provided that the tender will still be considered if the suspension is due solely to the failure of the tenderer to obtain the ISO 9001:2008 certification.</p> <p>(2) If the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is under voluntary suspension from tendering for *any of/*all of the following category [or categories] of public works at the date of tender invitation but subsequently revokes the voluntary suspension without agreement in writing from either the relevant works department or the Development Bureau, its tender will not be considered.</p> <p>[list the category or categories of public works]</p> <p>Provided that the tender will still be considered if the voluntary suspension is undertaken by the tenderer due solely to its failure to obtain the ISO 9001:2008 certification.</p>	
GCT 23 (Not Used)	
GCT 24 Offering Gratuities	
<p>The tenderer shall not and shall ensure that his agents, consultants and employees shall not offer or give any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Supervising Officer designate or to any member of the Supervising Officer designate's staff. Any breach of or non-compliance with this Clause by the tenderer</p>	<p>Ref: ETWB TCW No. 3/2004 "Ethical Commitment by Consultants and Contractors" is relevant.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
shall, without affecting the tenderer's liability for such breach or non-compliance, invalidate his tender.	
GCT 25 Submission of further information	
<p>The tenderer shall upon written request by the Supervising Officer designate (which may be issued at any time after the tender closing date) submit to the Supervising Officer designate within 7 days of the date of issue of the written request or within reasonable time upon the written request the following documents:</p> <p style="padding-left: 40px;">#[(a)];</p> <p style="padding-left: 40px;">^(b) a letter or, as the case may be, letters of Indemnity as referred to in General Conditions of Tender Clause 19(2).....; and</p> <p style="padding-left: 40px;">(c)]</p> <p>Failure to comply with this Clause by the tenderer shall render his tender invalid.</p>	<p>Note:</p> <p>If a request is made, non submission of the documents will be regarded as withdrawal of tender.</p> <p># Project office to specify the relevant documents with reference to the relevant GCT or SCT clause, e.g. the financial information as referred to in GCT Clause 5. Such documents should not contain information which will affect the evaluation process or the marking scheme.</p> <p>^ In the case where the tenderer is an incorporated JV, two letters of indemnity are required to be submitted by all the participants.</p> <p>Ref: (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.</p>
GCT 26 Anti-collusion	
<p>(1)(a) Subject to sub-clause (2) of this Clause, the tenderer shall not communicate to any person other than the Employer the amount of the tender price or any part thereof until the tenderer is notified by the Employer of the outcome of the tender exercise.</p> <p>(b) Further to paragraph (a) of this sub-clause, the tenderer shall not fix the amount of the tender price or any part thereof by arrangement with</p>	<p>Ref: (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>any other person, make any arrangement with any person about whether or not he or that other person will or will not submit a tender or otherwise collude with any person in any manner whatsoever in the tendering process.</p> <p>(c) Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer's liability for such breach or non-compliance, invalidate his tender.</p> <p>(2) Sub-clause (1)(a) of this Clause shall have no application to the tenderer's communications in strict confidence with:</p> <p>(a) his own insurers or brokers to obtain an insurance quotation for computation of tender price;</p> <p>(b) his consultants or sub-contractors to solicit their assistance in preparation of tender submission; and</p> <p>(c) his bankers in relation to financial resources for the Contract.</p> <p>(3) The tenderer shall submit with his tender a duly signed and witnessed letter in the form set out in Appendix [<i>see below</i>] to these General Conditions of Tender. The signatory to the letter shall be a person authorized to sign Government contracts on the tenderer's behalf.</p> <p>(4) The tenderer shall indemnify and keep indemnified the Employer against all losses, damages, costs or expenses arising out of or in relation to any breach of or non-compliance with sub-clause (1) of this Clause by the tenderer, including but not limited to additional costs due to price escalation, costs and expenses of re-tendering and other costs</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(ii) *[I/We] have not fixed and will not fix the amount of the tender price or any part thereof by arrangement with any person;</p> <p>(iii) *[I/We] have not made and will not make any arrangement with any person as to whether *[I/we] or that other person will or will not submit a tender; and</p> <p>(iv) *[I/We] have not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.</p> <p>*[I/We] shall 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 and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred.</p> <p>In this letter, the expression “Excepted Communications” means *[my/our] communications in strict confidence with:</p> <p>(i) *[my/our] own insurers or brokers to obtain an insurance quotation for computation of tender price;</p> <p>(ii) *[my/our] consultants or sub-contractors to solicit their assistance in preparation of tender submission; and</p> <p>(iii) *[my/our] bankers in relation to financial resources for the Contract.</p> <p>Signed for and on behalf of [name of the tenderer] by [name and position of the signatory]²:</p> <p>_____</p> <p>Name of Witness: _____</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
Signature of Witness: _____ Occupation: _____	
GCT 27 Statement of Convictions Under the Immigration Ordinance (Cap. 115)	
<p>(1) A tender will not be considered if, during the 12-month period prior to the date set for the close of tender, or if this has been extended, the extended date, the tenderer has had three or more convictions in respect of separate incidents under Sections 17I or 38A of the Immigration Ordinance (Cap. 115) for employing illegal workers or for having illegal workers on any site under the tenderer's control, whether or not he has been formally suspended as a result of such convictions. Illegal workers shall mean any persons on construction sites who are illegal immigrants; or any persons who, being not lawfully employable by virtue of Section 17G(2) of the Immigration Ordinance, have committed an offence under Section 41 by contravening the conditions of stay in force in respect of them. If the tenderer is a partnership or an unincorporated or incorporated joint venture, the tender will not be considered if any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture has had three or more such convictions during the 12-month period, whether or not that participant or shareholder has been formally suspended as a result of such convictions.</p>	Ref: ETWB TCW No. 26/2004 with modifications in accordance with the definition in GCT Clause 1(1)(b).
<p>(2) The tenderer shall submit, subject to General Conditions of Tender Clause 25/with the tender**, <u>either</u> a statement of all convictions under Sections 17I or 38A of the Immigration</p>	# For use in tenders which EMSTF is eligible to bid * Or other period specified by the Supervising Officer designate

General Conditions of Tender

Clause	Remarks/Guidelines
<p>Ordinance (Cap. 115) for employing illegal workers or for having illegal workers for all sites under his control (whether they are sites under public or private contracts) during the 12-month* period prior to the date set for the close of tender, or if this has been extended, the extended date, the details of which shall include the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, <u>or</u> a statement of “no conviction”. The statement shall be certified by a person authorized to sign Government contracts on the tenderer’s behalf #[, or in case of EMSTF’s tender, a person authorized to sign the Service Level Agreement.].</p>	<p>where appropriate to cope with the assessment period for tender evaluation using the Marking Scheme.</p> <p>** Delete as appropriate for Formula Approach / Marking Scheme tender evaluation</p>
<p>(3) If the tenderer is a partnership or an unincorporated or incorporated joint venture, each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall submit such a statement separately.</p>	
<p>(4) Where the tenderer (including shareholders and participants in joint ventures) is a company it shall disclose any change of name made during the 12-month* period prior to the date set for the close of tender, or if this has been extended, the extended date, and shall include in its statement of all convictions any conviction recorded under any previous name.</p>	<p>* Or other period specified by the Supervising Officer designate where appropriate to cope with the assessment period for tender evaluation using the Marking Scheme.</p>
<p>#(5) For tenders submitted by EMSTF, the letters of “non-compliance” issued by the relevant regulatory authorities shall also be treated as conviction records.</p>	<p># For use in tenders which EMSTF is eligible to bid</p>
<p>GCT 28 Statement Of Convictions Under The Employment Ordinance (Cap. 57)</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(1) A tender will not be considered if, during the 12-month period prior to the date set for the close of tender, or if this has been extended, the extended date, the tenderer has had three or more convictions in respect of separate incidents under the Employment Ordinance (Cap. 57) on any site under the tenderer's control, whether or not he has been formally suspended as a result of such convictions. If the tenderer is a partnership or an unincorporated or incorporated joint venture, the tender will not be considered if any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture has had three or more such convictions during the 12-month period, whether or not that participant or shareholder has been formally suspended as a result of such convictions.</p>	<p>Ref. ETWB TCW No. 10/2004 and Clause 5.7.1 of the Contractor Management Handbook, with modifications in accordance with the definition in GCT Clause 1(1)(b).</p>
<p>(2) The tenderer shall submit, subject to General Conditions of Tender Clause 25/with the tender, <u>either</u> a statement of all convictions under the Employment Ordinance (Cap. 57) for all sites under his control (whether they are sites under public or private contracts) during the 12-month* period prior to the date set for the close of tender, or if this has been extended, the extended date, the details of which shall include the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, <u>or</u> a statement of "no conviction". The statement shall be certified by a person authorized to sign Government contracts on the tenderer's behalf #[, or in case of EMSTF's tender, a person authorized to sign the Service</p>	<p>* Or other period specified by the Supervising Officer designate where appropriate to cope with the assessment period for tender evaluation using the Marking Scheme.</p> <p>** Delete as appropriate for Formula Approach / Marking Scheme tender evaluation</p> <p># For use in tenders which EMSTF is eligible to bid</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>Level Agreement].</p> <p>(3) If the tenderer is a partnership or an unincorporated or incorporated joint venture, each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall submit such a statement separately.</p> <p>(4) Where the tenderer (including shareholders and participants in joint ventures) is a company it shall disclose any change of name made during the 12-month* period prior to the date set for the close of tender, or if this has been extended, the extended date, and shall include in its statement of all convictions any conviction recorded under any previous name.</p> <p>#(5) For tenders submitted by EMSTF, the letters of “non-compliance” issued by the relevant regulatory authorities shall also be treated as conviction records.</p>	<p>* Or other period specified by the Supervising Officer designate where appropriate to cope with the assessment period for tender evaluation using the Marking Scheme.</p> <p># For use in tenders which EMSTF is eligible to bid</p>
<p>GCT 29 One Tender only for Holding Companies or Subsidiaries</p>	
<p>(1) Unless otherwise provided in the Special Conditions of Tender, no tenderer is permitted to submit more than one tender for each contract.</p> <p>(2) A holding company and all of its subsidiaries who are included in the []# shall be allowed to submit only one tender from any one of the companies in the group of companies as defined in Section 2(1) of the Companies Ordinance (Cap. 622). The existence of a holding-subsidiary relationship shall be determined as at the date set for the close of tender, or if this has been extended, the extended date, and in accordance with the provisions in Sections 13 to 15 of the</p>	<p>Ref. Memo ref. DEVB(W) 510/10/1 dated 16.12.2014.</p> <p>New clause taken from CMH 2.11.1. # Insert the appropriate List</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>Companies Ordinance (Cap. 622).</p> <p>(3) Failure to observe the above conditions shall render all related tenders null and void and any such tenders shall not be considered.</p>	
<p>GCT 30 Admission, Promotion and Confirmation to the List of Approved Contractors for Public Works / the List of Approved Suppliers of Materials and Specialist Contractors for Public Works</p>	
<p>A tender submitted by a contractor who has applied for admission or promotion to the category, class and/or group of the List of Approved Contractors for Public Works specified in the tender invitation or, in relation to a contract for which tenders are invited from confirmed contractors only, a tender submitted by a contractor who has applied for confirmed status will not be considered unless his application for admission or promotion or, as the case may be, confirmation is approved by the date set for the close of tender, or if this has been extended, the extended date.</p>	<p>Ref: Memo ref. DEVB(W)546/83/01 dated 10.8.2011.</p>
<p>GCT 30A Eligibility of Probationary Contractors to Tender and for the Award of Contracts</p>	
<p>(1) A tender submitted by a contractor who is on probation in the category(ies), class(es) and/or group(s) of the List of Approved Contractors for Public Works specified in the tender invitation will not be considered if, at the date set for the close of tender or, if this has been extended, the extended date:</p> <p>(a) the number and/or the value of contracts that he already holds (also counting this Contract) exceeds the limits on number and/or value of contracts in the relevant category, class and group as stipulated in the then current version of the Contractor Management Handbook; or</p>	<p>Ref: Memo ref. DEVB(W)546/83/01 dated 10.8.2011.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(b) he is otherwise ineligible to tender according to the then current version of the Contractor Management Handbook.</p> <p>(2) A tenderer who is on probation in the category(ies), class(es) and/or group(s) specified in the tender invitation will not be eligible for award of this Contract if, at the date when the tender report is completed and signed for submission to the relevant authority for determination of the contract award:</p> <p>(a) the number and/or the value of contracts that he already holds (also counting this Contract) exceeds the limits on number and/or value of contracts in the relevant category, class and group as stipulated in the version of the Contractor Management Handbook current at the date set for close of tender or, if this has been extended, the extended date; or</p> <p>(b) he is otherwise ineligible for the award of the Contract according to the version of the Contractor Management Handbook current at the date set for close of tender or, if this has been extended, the extended date.</p> <p>(3) Tenderers should note that where:</p> <p>(a) a probationary contractor has submitted tenders (including a tender for this Contract) and attained the highest combined scores for more than one contract (including this Contract) in the same category, class and group; and</p> <p>(b) if the award of these contracts are determined at the same time but the award of two or more of these contracts to that probationary contractor will exceed the</p>	

General Conditions of Tender

Clause	Remarks/Guidelines
<p>limits on number and/or value of contracts in the relevant category, class and group as stipulated in the version of the Contractor Management Handbook current at the date set for close of tender or, if this has been extended, the extended date, the Employer shall be entitled to determine which contract(s) is/are to be awarded to that probationary contractor on the basis of a combination of tender awards of these contracts that would cost least to the Employer.</p>	
GCT 31 Ethical Commitment	
<p>(1) The tenderer shall not, and shall procure that his employees, consultants, agents and sub-contractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance, Cap. 201 in connection with the tendering and execution of this Contract.</p> <p>(2) Failure to so procure or any act of offering, soliciting or accepting advantage referred to in sub-clause (1) of this Clause committed by the tenderer or by an employee, consultant, agent or sub-contractor of the tenderer shall, without affecting the tenderer's liability for such failure and act, result in his tender being invalidated.</p>	
GCT 32 Tender Cost	
<p>The Employer shall not in any circumstances be liable for any costs, expenses and damages incurred or suffered by the tenderers in connection with the preparation and submission of their tenders, in the event that this tender exercise is cancelled on any ground[, including on the ground that funds are not available under Special</p>	<p>Note : Originated from the funding approval clause.</p> <p>* Delete the words in square brackets if SCT Clause 9 is not used.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
Conditions of Tender Clause 9].*	
GCT 33 Tenderer's Consent and Authorization on Conviction Records	
<p>(1) The tenderer shall submit with the tender a duly signed letter in the form set out in Appendix __ [<i>see below</i>] to these General Conditions of Tender giving consent to the [<i>name of the project office/procuring department</i>] to obtain from all relevant government departments/bureaux, authorizing such relevant government departments/bureaux to release and make available to [<i>name of the project office/procuring department</i>] and giving further consent to the [<i>name of the project office/procuring department</i>] to furnish to the Supervising Officer designate, all information relating to his convictions, including the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, for offences under the following ordinances (including all subsidiary legislation made thereunder) and specific subsidiary legislation (if any):</p> <p>(a) [<i>set out the ordinances/specific sub-legislation quoted in relevant GCTs and SCTs</i>] [See Note 1];</p> <p>(b) [Land (Miscellaneous Provisions) Ordinance (Cap. 28)] [See Note 2]; and</p> <p>(c) [<i>other ordinances / specific subsidiary legislation to be specified by the project office/procuring department if required for tender assessment in accordance with the provisions of the tender documents as adopted for any particular project</i>]. [See Note 1]</p>	<p>SDEV's memo ref: () in DEVB(W) 510/10/01 dated 3.12.2012.</p> <p>Note 1: Project office/procuring department should check the ordinances/ specific subsidiary legislation to be listed, taking into account the provisions of the tender documents as adopted for any particular project (including GCT and SCT). On the basis of the GCT and SCT promulgated by DEVB (via Technical Circulars and memos) as at 30.11.2012, the ordinances/ specific subsidiary legislation to be covered include:</p> <p>(a) Section 27 of the Public Health and Municipal Services Ordinance (Cap 132);</p> <p>(b) Section 17I and Section 38A of the Immigration Ordinance (Cap 115);</p> <p>(c) Employment Ordinance (Cap 57);</p> <p>(d) Factories and Industrial Undertakings Ordinance (Cap. 59);</p> <p>(e) Occupational Safety and Health Ordinance (Cap. 509);</p> <p>(f) Shipping and Port Control Ordinance (Cap. 313);</p> <p>(g) Merchant Shipping (Local Vessels) Ordinance (Cap. 548);</p> <p>(h) Air Pollution Control Ordinance</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>(2) If the tenderer is a partnership or an unincorporated or incorporated joint venture, each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall submit</p>	<p>(Cap. 311);</p> <p>(i) Noise Control Ordinance (Cap. 400);</p> <p>(j) Waste Disposal Ordinance (Cap. 354);</p> <p>(k) Water Pollution Control Ordinance (Cap. 358);</p> <p>(l) Dumping at Sea Ordinance (Cap. 466);</p> <p>(m) Ozone Layer Protection Ordinance (Cap. 403);</p> <p>(n) Environmental Impact Assessment Ordinance (Cap. 499); and</p> <p>(o) Hazardous Chemicals Control Ordinance (Cap. 595).</p> <p>Note 2: To be included when the standard marking scheme set out in Appendix C1 to DEVB TCW No. 4/2014 is adopted. Departments should check with the Highways Department for such conviction records.</p> <p>Note 3: This is not to be inserted as an essential requirement pursuant to GCT Clause 21. However, contract drafter shall ensure that the submission of the duly signed letter of consent and authorization is covered by GCT Clause 16 as amended in accordance with DEVB's memo ref. DEVB(W) 510/10/01 dated 10.9.2012 and entitled Tender Clarifications.</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>such a duly signed letter. The signatory for such participant or shareholder shall be a person authorized to sign Government contracts on behalf of that participant or, as the case may be, shareholder.</p> <p>Appendix __</p> <p>To: [Name of the procuring department]</p> <p>Dear Sir/Madam,</p> <p style="text-align: center;">Contract No. []</p> <p style="text-align: center;">[Contract title]</p> <p style="text-align: center;">Letter of Consent and Authorization</p> <p>We hereby give consent to the [name of the project office/procuring department] to obtain from all relevant government departments/bureaux and authorize such relevant government departments/bureaux to release and make available to [<i>name of the project office/procuring department</i>] information relating to our conviction records (if any), including the legislation violated, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles, for offences under the following ordinances (including all sub-legislation made thereunder) and specific sub-legislation (if any) for the purposes of assessment of [our submission]* in this tendering exercise.</p> <p>[<i>set out the legislation referred to in GCT X(1)</i>]</p> <p>We give further consent to the [<i>name of the project office / procuring department</i>] to furnish such information to [<i>name of</i></p>	<p>* Where GCT X(2) applies, change to "the submission of [<i>name of the tenderer</i>]".</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p><i>project consultant</i>], the Supervising Officer designate, for the same purposes.</p> <p>(Signed for and on behalf of the tenderer or, where GCT X(2) applies, the relevant participant or, as the case may be, shareholder)</p>	
GCT 34 Reduction of Contingency Sum	
<p>(1) Without prejudice to the generality of the other General Conditions of Tender and Special Conditions of Tender, the Employer reserves the right to reduce unilaterally the amount of the Contingency Sum as stated in the Employer's Requirements by himself giving or requiring the Supervising Officer designate to give a notification in writing as regards the reduction to a tenderer at any time after determination of the overall scores of the tenders in accordance with the evaluation criteria set forth in the tender documents but before award of the Contract.</p> <p>(2) By submitting his tender, a tenderer shall be deemed to have agreed that upon receipt by the tenderer of a notification in writing referred to in sub-clause (1) of this Clause:</p> <p>(a) the amount of the Contingency Sum as stated in the Employer's Requirements shall be taken to be reduced accordingly;</p> <p>(b) the amount of the tender sum as stated in the Form of Tender and Contractor's Proposals shall be taken to be reduced accordingly to reflect the reduction in the amount of the Contingency Sum under paragraph (a) above;[and]¹</p> <p>(c) the reduction in the amount of the Contingency Sum under paragraph (a)</p>	<p>Ref: DEVB memo ref. DEVB(W) 546/70/01 dated 8.8.2011.</p> <p>1. Subject to compliance with the requirements given in paragraph 2 below, this GCT enables the Project Office, in case the original tender sum of the recommended tender exceeds the funding allowed for the contract in the Approved Project Estimate, to unilaterally reduce the Contingency Sum stated in the tender documents and consequentially the tender sum without the need for tender negotiation. The Project Office can then under properly justified circumstances:</p> <p>(i) keep the tender sum of the recommended tender within the funding available and, subject to approval by the relevant tender board, accept the tender without the need to seek additional funding; or</p> <p>(ii) reduce the amount of additional funding required even if after such reduction the tender sum of the recommended tender</p>

General Conditions of Tender

Clause	Remarks/Guidelines
<p>above shall not affect any Provisional Sums specified in the Employer's Requirements [or the amount of the Adjustment Item; and</p> <p>(d) for the purposes of paragraph (c) above, "Adjustment Item" shall have the meaning given in [the Employer's Requirements/Special Conditions of Tender Clause []* and Special Conditions of Contract Clause []*], and the amount of which may (where applicable) be revised in accordance with General Conditions of Tender Clause []**] ².</p> <p>(3) For the avoidance of doubt, the original tender sum as stated in the Form of Tender and Contractor's Proposals will, subject to correction (where applicable) in accordance with General Conditions of Tender Clause []**, be used for determination of the overall scores of the tenders in accordance with the evaluation criteria set forth in the tender documents irrespective of whether or not the Employer has subsequently exercised his right under this Clause to reduce the amount of the Contingency Sum.</p>	<p>still exceeds the funding available and additional funding is still required to be sought.</p> <p>2. In order to exercise this GCT, the Project Office shall have:</p> <p>(a) reviewed the risk assessment made at the pre-tender stage in arriving at the original Contingency Sum;</p> <p>(b) proper justifications that the amount of reduction is genuinely an excessive allowance in the original Contingency Sum; and</p> <p>(c) obtained approval of the Vote Controller.</p> <p>3. In conjunction with the use of this GCT, the Form of Tender and the Letter of Acceptance of Successful Tender shall be modified with reference to those amendments provided for non-D&B contracts in the memo promulgating this GCT ref. DEVB(W) 546/70/01 of 8.8.2011. The letter notifying the tenderer (whose tender is going to be recommended for contract award) of the reduction of the Contingency Sum should also follow the sample provided in the said memo with necessary amendments made to suit D&B contracts.</p> <p><u>Explanatory notes to words in square</u></p>

General Conditions of Tender

Clause	Remarks/Guidelines
	<p><u>brackets</u></p> <p><i>1 To be inserted if the last part of paragraph (c) and the whole of paragraph (d) are deleted (see note 2 below).</i></p> <p><i>2 The last part of paragraph (c) and the whole of paragraph (d), which are in square brackets, should be deleted if "Adjustment Item" is not allowed in relation to the contract being tendered.</i></p> <p>* Insert the clause numbers of the SCT and SCC respectively on Adjustment Item (applicable to a contract which has adopted a SCT and a SCC dealing with Adjustment Item).</p> <p>** Insert the clause number of the GCT dealing with correction rules for tender errors.</p>

APPENDIX [] TO THE CONDITIONS OF TENDER**Financial information required to be submitted in tender for public works Contracts
(for tenderers already on the Approved Lists)**

- (1) Tenderers shall provide the following documents if they have not already been submitted to the Finance Unit of Development Bureau before:
 - (a) unconsolidated financial statements covering the period between the latest set of audited financial statements up to a date not earlier than 3 months before the date of submission;
 - (b) financial statements of Hong Kong Branch or Office covering period mentioned in (a) above, if the tenderer is not incorporated in Hong Kong;
 - (c) a list of current contracts held in hand with the Employer and the private sector including the Hospital Authority and the Housing Authority, both as main contractor or sub-contractor, with total and outstanding contract sums, contract period and time required to complete the outstanding portion of the contract; and
 - (d) bank letters or agreements on existing banking facilities such as term loans and overdraft.

Copies of all statements submitted under paragraphs (a) to (d) above shall be certified true and correct by independent auditors or directors of the company.

- (2) All statements submitted should be prepared in English or Chinese.
- (3) In the case of a joint venture, financial and supplementary statements as mentioned under paragraph (1) above for each participating company must be submitted.

Financial information required to be submitted in tender for public works contracts (for tenderers NOT on the Approved Lists)

- (1) Tenderers shall provide the following documents if they have not already been submitted to the Finance Unit of Development Bureau before:
- (a) the original or copies of annual unconsolidated financial statements for the last three accounting years audited and certified by certified public accountants;
 - (b) unconsolidated financial statements covering the period between the latest set of audited financial statements up to a date not earlier than 3 months before the date of submission;
 - (c) financial statements of Hong Kong Branch or Office covering periods mentioned in (a) and (b) above, if the tenderer is not incorporated in Hong Kong;
 - (d) a statement giving details of significant events which occurred after the year end date of the latest audited financial statements which would affect the tenderer's financial position;
 - (e) a statement giving details of any off-balance sheet liabilities, including contingent liabilities, if not covered in the audited financial statements;
 - (f) a list of current contracts held in hand with the Employer and the private sector including the Hospital Authority and the Housing Authority, both as main contractor or sub-contractor, with total and outstanding contract sums, contract period and time required to complete the outstanding portion of the contract; and
 - (g) bank letters or agreements on existing banking facilities such as term loans and overdraft.

Copies of audited financial statements submitted under paragraph (a) and all documents under paragraphs (b) to (g) above shall be certified true and correct by independent auditors or directors of the company.

- (2) All statements submitted should be prepared in English or Chinese.
- (3) Audited financial statements include auditors' report, balance sheets, profit and loss accounts and cash flow statements together with relevant notes showing details of accounting policies, shareholders' fund, non-current assets and liabilities, investments, current assets and current liabilities.
- (4) The latest audited financial statements must be for a period ending no more than 18 months before the submission date.
- (5) In the case of a joint venture, financial and supplementary statements as mentioned under paragraph (1) above for each participating company must be submitted.

Letter of Indemnity

To : The Government of the Hong Kong Special Administrative Region

From : []

Date : []

Dear Sirs,

Letter of Indemnity for Contract No. []

Contract Title: []

We refer to the tender ("the tender") submitted to you by [] ("the tenderer"), for the above Contract.

In consideration of your agreeing to consider the tender we hereby irrevocably and unconditionally agree to indemnify you against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever which you have incurred or suffered as a result of the violation of General Conditions of Tender Clause 19(1) by the tenderer and/or any person authorized or licensed by the tenderer. We agree that we shall be jointly and severally liable for our obligations under this letter of indemnity and all references to "we" shall take effect as references to all of us or any of us and the words "us" and "our" shall be construed accordingly. We hereby represent that, with respect to our obligations, liabilities or any other matter under or arising out of or in connection with this letter of indemnity, neither we nor any of our properties or assets have, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings; from the giving of relief in any legal action, suit or proceedings; from set-off or counterclaim; from the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction; from service of process upon us or any agent; from attachment prior to judgment in order to obtain satisfaction thereof; from attachment after judgment or from execution or any other process for the endorsement of any judgment or other legal process in any jurisdiction; and to the extent that we are or become entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction with respect to our obligations, liabilities or any other matter under or arising out of or in connection with this letter of indemnity, we hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity. We further consent to the giving of any relief in any legal action, suit or proceeding and to execution and or any other form of process for the enforcement of any judgment against us or our assets.

We acknowledge that we comprise all the shareholders of (name of the tenderer).

This letter of indemnity shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region and we hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region and irrevocably appoint the tenderer to act as our duly appointed agent for the service of process at the address shown in the tender.

**Works departments shall select and insert the appropriate attestation clauses for the tenderer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

Letter of Indemnity

To : The Government of the Hong Kong Special Administrative Region

From : []

Date : []

Dear Sirs,

Letter of Indemnity for Contract No. []

Contract Title: []

I/We refer to my/our tender ("the tender") for the above Contract.

In consideration of your agreeing to consider the tender I/we hereby irrevocably and unconditionally agree to indemnify you against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever which you have incurred or suffered as a result of the violation of General Conditions of Tender Clause 19(1) by me/us and/or any person authorized or licensed by me/us. [We agree that we shall be jointly and severally liable for our obligations under this letter of indemnity and all references to "we" shall take effect as references to all of us or any of us and the words "us" and "our" shall be construed accordingly.]¹ I/We hereby represent that, with respect to my/our obligations, liabilities or any other matter under or arising out of or in connection with this letter of indemnity, neither I/we nor any of my/our properties or assets have, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings; from the giving of relief in any legal action, suit or proceedings; from set-off or counterclaim; from the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction; from service of process upon us or any agent; from attachment prior to judgment in order to obtain satisfaction thereof; from attachment after judgment or from execution or any other process for the endorsement of any judgment or other legal process in any jurisdiction; and to the extent that I/We am/are or become entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction with respect to my/our obligations, liabilities or any other matter under or arising out of or in connection with this letter of indemnity, I/we hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity. I/We further consent to the giving of any relief in any legal action, suit or proceeding and to execution and or any other form of process for the enforcement of any judgment against me/us or my/our assets.

[We acknowledge that we comprise all the participants of (name of the tenderer).]¹

¹ For use where the tenderer is an unincorporated joint venture.

This letter of indemnity shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region and I/we hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

**Works departments shall select and insert the appropriate attestation clauses for the tenderer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

Special Conditions of Tender

Index

*SCT 1	Programme of Works
*SCT 2	Alternative Tenders
SCT 3	Submission of Temporary Works design (Optional)
*SCT 4	Contractors' Joint Venture
SCT 5	Outline Quality System for Production and Supply of Structural Concrete
SCT 6	Not Used
SCT 7	Outline Environmental Management Plan
SCT 8	Disclosure of Information (bid challenges)
SCT 9	Funding Approval
SCT 10	Drawings
SCT 11	Statement of Convictions under the Factories and Industrial Undertakings Ordinance (Cap 59), The Occupational Safety And Health Ordinance (Cap 509), The Shipping And Port Control Ordinance (Cap 313), The Merchant Shipping (Local Vessels) Ordinance (Cap. 548) The Air Pollution Control Ordinance (Cap 311), The Noise Control Ordinance (Cap 400), The Waste Disposal Ordinance (Cap 354), The Water Pollution Control Ordinance (Cap 358), The Dumping At Sea Ordinance (Cap 466), The Ozone Layer Protection Ordinance (Cap. 403), Land (Miscellaneous Provisions) Ordinance (Cap. 28), The Environmental Impact Assessment Ordinance (Cap. 499) and The Hazardous Chemicals Control Ordinance (Cap. 595).
SCT 12	Statement of Convictions under section 27 of the Public Health and Municipal Services Ordinance (Cap. 132)
SCT 13	Outline Safety Plan

SCT 14	Specialist Sub-contractors
SCT 15	Not Used
SCT 16	Not Used
SCT 17	Not Used
SCT 18	Not used
SCT 19	Financial Requirements for Unlisted Contractors
SCT 20	Not Used
SCT 21	Presentation of Design Proposals to the Employer

* Alternative Clause

Special Conditions of Tender

Clause	Remarks/Guidelines
SCT 1 Programme of Works	
<p>(1) The tenderer shall submit with his tender a construction programme showing the phasing and construction times of the major items of the Works.</p> <p>The tenderer shall take cognizance of any sequence, method or timing of construction specified in the Contract. [Optional: The tenderer's attention is drawn to the following factors when preparing his proposed programme submission:</p> <ul style="list-style-type: none"> (a) critical completion dates for Section(s) ## of the Works; (b) interface problems or constraints; (c) special sequencing requirements; (d) site access constraints; (e) work restrictions; (f) etc.] <p>(2) The programme to be submitted with the tender shall be in the form of a bar chart showing the earliest and latest start and finish dates for each major item and the critical path.</p> <p>[Note: if other forms of programme are required, reword the above sentence accordingly.]</p>	<p>This SCT Clause shall not be used generally. Pursuant to the guidelines given in SETW's memo ref.: ETWB(W) 546/83/01 dated 10.1.2003, departments should not ask tenderers to make immaterial submissions where a non-submission or a poor submission would not affect the tender recommendation.</p> <p>In general, where selective tendering is adopted or where a marking scheme is used to ensure that only qualified contractors are eligible to tender, the contractor will be expected to possess the necessary expertise for programming and undertaking the Works and examination of the programme at tender stage will not be necessary.</p> <p>Only when the project is very complex and with anticipated problems in interfacing and phased completion requirements and it is essential for a tenderer to demonstrate in his tender his ability to identify and manage such complexities, then such SCT shall be included.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(3) The submission of this programme is for the tenderer to demonstrate his understanding of and his capability in programming the Works for the Contract.</p> <p>(4) The programme shall not form part of the Contract.</p>	<p>Where the SCT is included, it shall be inserted as an essential requirement pursuant to GCT Clause 21. Where a Programme of Works is required to be submitted with the tender, the tender shall be invalidated if the tenderer does not make such a submission. If the tenderer makes a poor submission which fails to demonstrate his understanding of and his capability in programming the Works for the Contract under the very special circumstances or programme requirements as specified, the tenderer shall be considered as not technically capable for recommendation for award of the Contract. Legal advice should be obtained to form such a recommendation.</p>
[OR]	
SCT 1 Outline Programme (To be adopted where the programme required will be assessed in marking scheme. Please seek legal advice before use of this SCT)	

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(1) “Outline Programme” means the programme submitted by the tenderer with the tender showing the sequence, method and timing, including (in so far as such work is described in the Employer’s Requirements) due allowance for the carrying out of Specialist Works and work by utility undertaking in which the tenderer proposes to carry out the Works.</p> <p>The Outline Programme which shall indicate how the tenderer intends to organize and carry out the Works and achieve the appropriate Key Dates. Detailed requirements for the Outline Programme are set out in the Employer’s Requirements. [Optional: The tenderer’s attention is drawn to the following factors when preparing his proposed Outline Programme submission:</p> <ul style="list-style-type: none"> (a) General requirements; (b) Commencement date, period for completion, critical achievement of Key Dates and completion dates for Section(s) of the Works; (c) interface problems or constraints; (d) special sequencing requirements; (e) site access constraints; (f) work restrictions; (g) possession of temporary and permanent work areas; (h) design checking; (i) project control group and meetings; <p>etc.]</p>	<p>This SCT Clause shall be used in contracts where SCC Clause 42 Works Programme and Monthly Progress Reports is adopted replacing D&B GCC Clause 16.</p>
<p>(2) The Outline Programme to be submitted with the tender shall be in the form of a bar chart showing the earliest and latest start and finish dates for each major item and the critical path.</p> <p>[Note: if other forms of programme are</p>	<p>Where the SCT is included, it shall be inserted as an essential requirement pursuant to GCT Clause 21. Where a Outline Programme is required to be submitted with the tender, the tender</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>required, reword the above sentence accordingly.]</p> <p>(3) The submission of the Outline Programme is for the tenderer to demonstrate his understanding of and his capability in programming the Works for the Contract.</p> <p>(4) The tenderer's attention is drawn to the requirement of Special Conditions of Contract [] (2) that the draft Works Programme shall be submitted within 7 days of notification of acceptance of the tender. The tenderer should note that he may be required to amplify, explain and develop the Outline Programme prior to acceptance of tender. Such programme development may necessitate the incorporation of a date for commencement of the Works or Section of the Works or such other date as may be agreed.</p> <p>(5) The Outline Programme shall not in any event constitute a submission under Special Conditions of Contract Clause 42.</p> <p>(6) The Outline Programme shall form part of the Contract.</p>	<p>shall be invalidated if the tenderer does not make such a submission. If the tenderer makes a poor submission which fails to demonstrate his understanding of and his capability in programming the Works for the Contract under the very special circumstances or programme requirements as specified, the tenderer shall be considered as not technically capable for recommendation for award of the Contract. Legal advice should be obtained to form such a recommendation.</p>
<p>SCT 2 Alternative Tenders</p>	

Special Conditions of Tender

Clause	Remarks/Guidelines
Alternative tenders or designs for which no invitation has been made shall not be considered.	<p>This SCT Clause shall be used if no invitation of alternative tenders will be made.</p> <p>Please refer to ETWB memo dated 3/5/2007.</p>
[OR]	
SCT 2 Alternative Tenders	
<p>The tenderer may elect to submit a conforming tender or alternatively a conforming tender in all respects other than a shorter completion time for the Works (hereinafter referred to as “alternative tender”). Only one tender shall be submitted by the tenderer. If more than one conforming tenders are submitted, all conforming tenders will not be considered. If one conforming tender and an alternative tender are submitted, only the alternative tender with the shortest completion time will be considered. For evaluation purpose, in evaluating an alternative tender, its tender price will be reduced by the known amount of benefit of earlier completion of the Works to the Employer calculated by using a formula stated in the Appendix to the Form of Tender prior to performing a discounted cash flow calculation for determining the net present value. The net present value of the reduced tender price will be used in the price assessment of the tender.</p> <p>Other than the alternative tender referred to in this SCT, any other forms of alternatives, design or otherwise, will not be considered.</p>	<p>This SCT Clause shall be used only if a substantial amount of tangible benefit can be identified, e.g. revenue earning such as rental income. The calculation of benefits shall be stated in the Appendix to the Form of Tender. The savings in “interest on the capital invested”; “the supervisory cost” and “fluctuation cost” which are used in the calculation of liquidated damages will not be considered as benefits and shall not be included as benefits for the purpose of this provision. Invitation for other types of alternative tenders or designs shall be subject to the approval of an officer of D2 rank or above.</p> <p>Please refer to ETWB memo dated 3/5/2007.</p>
SCT 3 Submission of Temporary Works Design (Optional)	

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(1) The tenderer shall submit with the tender a method statement of proposals for (which shall include proposals for the foundations and support of) the following Temporary Works #[to demonstrate his technical competence in executing the Works]</p> <p><i>List the items of work for which this requirement applies. Particular attention shall be paid to the lateral stability of the Temporary Works.</i></p>	<p>This SCT Clause may be used either on its own or in conjunction with the Employer's Requirements requiring independent checking of Temporary Works design.</p> <p># Delete for marking scheme</p> <p>This SCT Clause shall not be used generally. Pursuant to the guidelines given in SETW's memo ref.: ETWB(W) 546/83/01 dated 10.1.2003, departments should not ask tenderers to make immaterial submissions where a non-submission or a poor submission would not affect the tender recommendation. In general, where selective tendering is adopted or where a marking scheme is used to ensure that only qualified contractors are eligible to tender, the contractor will be expected to possess the necessary expertise for undertaking the Works. Only when the project is very complex and with anticipated problems in temporary works design and construction and it is essential for a tenderer to demonstrate in his tender his ability to identify and manage such complexities, then such SCT shall be included.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(2) These proposals shall form part of the Contract.</p>	<p>Where the SCT is included, it shall be inserted as an essential requirement pursuant to GCT Clause 21. The tender shall be invalidated if the tenderer does not make such a submission. If the tenderer makes a poor submission which fails to demonstrate his understanding of the complexities and his capability in his temporary works design, the tenderer shall be considered as not technically capable for recommendation for award of the Contract. Legal advice should be obtained to form such a recommendation.</p>
<p>SCT 4 Contractors' Joint Venture</p>	
<p>Tenders from an incorporated joint venture or an unincorporated joint venture will not be considered unless the incorporated joint venture or the unincorporated joint venture is itself separately listed on its own account in [to be inserted¹] on the List of Approved Contractors for Public Works/separately listed on its own account on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works [to be inserted²].</p>	<p>This SCT Clause is extracted from Appendix A2 in ETWB TCW No. 50/2002 and should be used if joint venture is not allowed to tender.</p> <p>Note 1: Insert the appropriate Class(es), Group(s) and Category(ies) of Contractors on the List of Approved Contractors for Public Works that are permitted to tender for this Contract. It should be the same as that stipulated in the Gazette Notice or Tender Notice for invitation to tender for this Contract.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
	<p>Note 2:</p> <p>Insert the appropriate Category(ies), Group(s), Class(es) and/or status of Contractors on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works that are permitted to tender for this Contract. It should be the same as that stipulated in the Gazette Notice or Tender Notice for invitation to tender for this Contract.</p>
[OR]	
SCT 4 Contractors' Joint Venture	
<p>(1) Tenderers may submit their tender in the form of a joint venture provided:</p> <p>(a) the participants or shareholders in the joint venture collectively satisfy the qualification requirements; and</p> <p>(b) each participant or shareholder in the joint venture is technically capable for that part of the Works it undertakes.</p> <p>(2) Where the tenderer is an unincorporated joint venture, it must:</p> <p>(a) subject to General Conditions of Tender Clause 21 nominate a lead participant whose proposed value of work in the joint venture pursuant to sub-clause (4) below shall be more than that of any other participant in the joint venture.</p>	<p>ETWB TCW No. 50/2002 stipulates that joint ventures shall be permitted to tender for contracts covered by the WTO GPA. For contracts not covered by the WTO GPA, departments may decide whether or not to allow joint ventures to tender. This SCT Clause is to be used for tenders that allow joint ventures to participate. For tenders adopting open tendering procedures, project officers are advised to note the necessary amendments and to stipulate criteria on evaluation of technical capabilities or to consider using Stage 1 Screening.</p> <p>The submission required under sub-clause (2)(a) of this Clause is an essential requirement and shall be mentioned in the GCT Clause 21 on essential requirements.</p> <p>Note 3: Insert the appropriate</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>[The lead participant must be a confirmed* Group C contractor in the List of Approved Contractors for Public Works for Buildings*, Port Works*, Roads and Drainage*, Site Formation* and*/or* Waterworks* (see Note 3).]; and</p> <p>(b) subject to General Conditions of Tender Clause 25, submit to the Supervising Officer designate a Letter of Undertaking in the form set out in Appendix[#] to these Special Conditions of Tender duly executed by all the participants of the unincorporated joint venture.</p> <p>Failure to comply with this sub-clause by an unincorporated joint venture shall render his tender invalid.</p> <p>(3) Where the tenderer is an incorporated joint venture it shall, subject to General Conditions of Tender Clause 25, submit to the Supervising Officer designate a Letter of Undertaking in the form set out in Appendix[#] to these Special Conditions of Tender duly executed by all the shareholders of the incorporated joint venture. [There must be at least one shareholder who is a confirmed* Group C contractor in the List of Approved Contractors for Public Works for Buildings*, Port Works*, Roads and Drainage*, Site Formation* and*/or* Waterworks* (see Note 1) and the proposed value of work of that shareholder (hereinafter referred to as the major shareholder) in the joint venture pursuant to sub-clause (4) below shall be more than that of any other shareholder in the joint venture^{##}.] Failure to comply with this sub-clause by an incorporated</p>	<p>description in the event that the contract is invited from the List of Approved Suppliers of Materials and Specialist Contractors for Public Works. [Words in square brackets are not applicable to open tendering.]</p> <p>* Delete as appropriate.</p> <p># The form in Appendix B2 in ETWB memo of 4.8.2006 shall be used.</p> <p>* Delete as appropriate.</p> <p># The form in Appendix A1 in ETWB memo of 4.8.2006 shall be used.</p> <p>## For open tendering, the words in square brackets are not applicable and shall be amended as appropriate for compatibility with sub-clause (4) regarding the determination of the major shareholder.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>joint venture tenderer shall render his tender invalid.</p> <p>(4)A Where the tenderer is a joint venture (whether incorporated or unincorporated), the tenderer shall, subject to General Conditions of Tender Clause 21, provide with its tender details of the proposed value (and portion)*** of work to be undertaken by each participant or shareholder in the joint venture. The percentage participation of each participant or shareholder in a joint venture shall be calculated by reference to the proposed value of (his portion of work against the corrected tender sum. Any portions of work not specifically undertaken by any participants or shareholders are)** deemed to be undertaken by the lead participant or the major shareholder. [Where a joint venture participant or shareholder undertakes more than one category of works given in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, the proposed value (and portion)*** of work to be undertaken by such participant or shareholder in a joint venture shall be sub-divided into each category of work he undertakes (see Note 4).] If the total percentage participation of all the participants or shareholders in a joint venture is less than 100%, the difference shall be attributed to the lead participant nominated or the major shareholder# determined under sub-clauses (2) and (3) of this SCT as the case may be such that the total percentage participation of the participants or shareholders shall be 100%. If the total percentage participation of the participants or shareholders in a joint venture is more than 100%, the</p>	<p>Sub-clause (4)A should be used for tenders using the formula approach for tender evaluation.</p> <p>The submissions on the value of work proposed to be undertaken by each participant or shareholder required under sub-clause (4)A of this Clause are essential requirements and shall be mentioned in the GCT Clause 21 on essential requirements.</p> <p>** For term contracts without a tender sum, the estimated total contract expenditure stated in the Notes to Tenderers/Form of Tender as appropriate should be used. Replace the bracketed words with “work against the estimated total expenditure stated in the tender documents. Any work not specifically undertaken by any participants or shareholders is” Departments should in such a case state the estimated total expenditure instead of the estimated annual contract expenditure in the Notes to Tenderers/Form of Tender as appropriate.</p> <p>*** For term contracts without a tender sum, delete the bracketed words “and portion”.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>percentage participation of each participant or shareholder shall be reduced proportionately such that the total percentage participation of the participants or shareholders shall add up to 100%.</p> <p>[If the proposed value of work to be undertaken by a participant or shareholder in a joint venture submitted by the tenderer does not tally with the proposed portion of work to be undertaken by him, the Supervising Officer designate may seek clarification from the tenderer and if the difference in value remain irreconcilable after clarification, the tender shall not be considered further. (See Note 5)]</p>	<p># The reference to major shareholder is not applicable to open tendering.</p> <p>Note 4: The words in square brackets are not needed for open tendering.</p> <p>Note 5: The words in square brackets are not needed for term contracts without a tender sum.</p>
<p>(4)B Where the tenderer is a joint venture (whether incorporated or unincorporated), the tenderer shall, subject to General Conditions of Tender Clause 21, provide with its tender details of the proposed percentage participation, proposed value (and portion)*** of work to be undertaken by each participant or shareholder in the joint venture. The proposed value of work to be undertaken by each participant or shareholder in the joint venture shall be submitted in the “Tender Price Documents” required under General Conditions of Tender Clause 4. (See Note 6)</p> <p>The proposed percentage participation shall be used for technical assessment. After completion of the technical assessment, the “Tender Price Documents” shall be opened. The proposed percentage participation of each participant or shareholder in a joint venture shall then be adjusted by reference to the proposed value of his (portion of work against</p>	<p>Sub-clause (4)B should be used for tenders using the marking scheme approach for tender evaluation.</p> <p>The submissions on the proposed percentage participation and value of works proposed to be undertaken by each participant or shareholder required under sub-clause (4)B of this Clause are essential requirements and shall be mentioned in GCT Clause 21 on essential requirements.</p> <p>Note 6: This submission requirement should be listed under GCT Clause 4(1)(c).</p> <p>** For term contracts without a tender sum, the estimated total contract expenditure stated in the Notes to Tenderers/Form of Tender as appropriate</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>the corrected tender sum. Any portions of work not specifically undertaken by any participants or shareholders are)** deemed to be undertaken by the lead participant or the major shareholder#. If the adjusted percentage participation based on the proposed value of work, after it became known are different to the proposed percentage participation submitted by the tenderer, this will be regarded as error of form and the technical scores shall be adjusted using the adjusted percentage participation instead of the proposed percentage participation.</p> <p>[Where a joint venture participant or shareholder undertakes more than one category of works given in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, the proposed value (and portion)*** of work to be undertaken by such participant or shareholder in a joint venture shall be sub-divided into each category of work he undertakes. (See Note 4 above)]</p> <p>If the total percentage participation of all the participants or shareholders in a joint venture is less than 100%, the difference shall be attributed to the lead participant nominated or the major shareholder# determined under sub-clauses (2) and (3) of this SCT as the case may be such that the total percentage participation of the participants or shareholders shall add up to 100%. If the total percentage participation of the participants or shareholders in a joint venture is more than 100%, the</p>	<p>should be used. Replace the bracketed words with “work against the estimated total expenditure stated in the tender documents. Any work not specifically undertaken by any participants or shareholders is”. Departments should in such a case state the estimated total expenditure instead of the estimated annual contract expenditure in the Notes to Tenderers/Form of Tender as appropriate.</p> <p>*** For term contracts without a tender sum, delete the bracketed words “and portion”.</p> <p># The reference to major shareholder is not applicable to open tendering.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>percentage participation of each participant or shareholder shall be reduced proportionately such that the total percentage participation of the participants or shareholders shall add up to 100%.</p> <p>[If the proposed value of work to be undertaken by a participant or shareholder in a joint venture submitted by the tenderer does not tally with the proposed portion of work to be undertaken by him, the Supervising Officer designate may seek clarification from the tenderer and if the difference in value remain irreconcilable after clarification, the tender shall not be considered further. (See Note 5 above)]</p> <p>(5) (See Note 7) Without prejudice to any other General Conditions of Tender and Special Conditions of Tender, a participant or shareholder in a joint venture will be considered as technically capable of undertaking the Works or part of the Works as required under sub-clause (1)(b) of this SCT, if:</p> <p>(a)(i) the participant or shareholder in the joint venture is a contractor included in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works (“the List”); and</p> <p>(ii) the proposed (portion of work) to be undertaken by the participant or shareholder is of the same category of the List in which the participant or shareholder is included unless there is no such category in the List which could match such work; and</p>	<p>Note 7: Sub-clause (5) is not needed for opening tendering. Project officer must state specific criteria needed to assess technical capabilities in open tendering to suit specific contract needs or to adopt Stage 1 Screening.</p> <p>The submissions required under sub-clauses 5(b), 5(c) and, if applicable, sub-clause 5(d) of this Clause are essential requirements and shall be mentioned in GCT Clause 21 on essential requirements.</p> <p>* For term contracts without a tender sum, replace the bracketed words with “work”.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(iii) the proposed value of work to be undertaken by the participant or shareholder does not exceed the values of contract or works that may be undertaken by a contractor listed in the same category and group in which the participant or shareholder is included, the details of which are set out in the Contractor Management Handbook “CMH” published by the Development Bureau. For the purpose of the application of this sub-clause, probationary contractors will be treated in the same manner as confirmed contractors and the limits on the values of contract or works that may be undertaken by probationary contractors as set out in the CMH will not apply except for the lead participant or major shareholder; or</p> <p>(b) if the participant or shareholder in the joint venture is NOT a contractor included in the List, the proposed value of work to be undertaken by this participant or shareholder does not exceed the limits described in sub-clause (5)(i)(c) of this SCT, as if this participant or shareholder were included in the relevant category, group and, if applicable, class on the List to which it would have been eligible provided that this participant or shareholder satisfies the minimum technical and management criteria set out in the CMH for direct entry to the respective category, group and, if applicable, class on the List for the category of work it proposed to undertake either on a probationary status, or as a confirmed contractor if the category of</p>	

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>work concerned has no probationary status. For this purpose, experience gained in contracts overseas (government or non-government) will be counted. The joint venture tenderer shall submit, subject to General Conditions of Tender Clause 21, together with its tender, documentary evidence, in the form of a certificate of completion and articles of agreement and the like to the satisfaction of the Supervising Officer designate, supporting their job experience; or</p> <p>(c) if the participant or shareholder in the joint venture is a contractor included in the List and if this participant or shareholder wishes to take up work in excess of the value governed by sub-clause (5)(a)(iii) of this SCT in the category and group in which the participant or shareholder is included, the proposed value of work to be undertaken by this participant or shareholder does not exceed the governing values referred to in sub-clause (5)(b) of this SCT. Submission of documentary evidence, subject to General Conditions of Tender Clause 21, will also be required; or*</p> <p>(d) (See Note 8) if the participant or shareholder in the joint venture, irrespective of whether it is a contractor included in the List, wishes to take up “trenchless replacement and rehabilitation work” under the Contract, the value of such work it proposed to undertake does not exceed the governing values referred to in sub-clause (5)(b) of this SCT. The “trenchless replacement and rehabilitation work” will be regarded as waterworks</p>	<p>* Delete “; or” if (5)(d) is not used and end the sentence with “.”.</p> <p>Note 8: Where there is specific work in a contract of which there is no exact match in the List, such as “trenchless replacement and rehabilitation work” in a water supplies or drainage contract, the project officer shall, upon consultation with the Managing Department of the relevant category, determine and state the assessment criteria in this sub-clause. Otherwise this sub-clause is not necessary. Sub-clause (5)(d) is provided here as an example.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>and the requirements for direct entry to the respective group on the List for Waterworks category shall apply for the purpose of assessment. The experience gained in “trenchless replacement and rehabilitation works” will be regarded as mainlaying experience and the assessment criteria and submissions set out and required under sub-clause (5)(b) of this SCT shall apply.</p> <p>Failure to comply with the submission requirements under this sub-clause by a joint venture tenderer shall render his tender invalid.</p> <p>(6) No tenderer is permitted to submit more than one tender for each contract. For the purpose of this Clause, a tenderer who submits a tender on its own behalf and as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture in response to a tender exercise shall be regarded as having submitted more than one tender. A holding company and its subsidiaries are considered as one and the same tenderer. Tenders submitted from a tenderer on his own behalf who is found to be in breach of this sub-clause or from a joint venture or joint ventures in which any participant or shareholder is found to be in breach of this sub-clause shall not be considered.</p>	
<p>SCT 5 Outline Quality System for Production and Supply of Structural Concrete</p>	
<p>(1) The tenderer shall submit with his tender an outline quality system for the production and supply of structural concrete for incorporation into the Works. The submission of the outline quality system is for the tenderer to</p>	<p>This SCT Clause is extracted from ETWB TCW No. 57/2002 and revised in ETWB TCW No. 26/2004. The SCT Clause shall not be used generally.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>demonstrate his technical capability in managing the quality of the production and supply of structural concrete for the Works.</p> <p>(2) The outline quality system for the production and supply of structural concrete shall form part of the Contract.</p>	<p>Pursuant to the guidelines given in SETW's memo ref.: ETWB(W) 546/83/01 dated 10.1.2003, departments should not ask tenderers to make immaterial submissions where a non-submission or a poor submission would not affect the tender recommendation. In general, where selective tendering is adopted or where a marking scheme is used to ensure that only qualified contractors are eligible to tender, the contractor will be expected to possess the necessary expertise for undertaking and managing the quality of the Works and examination of the Quality System at tender stage will not be necessary.</p> <p>Project officer may include this SCT Clause in contracts where particular difficulties in the production of structural concrete are envisaged. It may be used in conjunction with the SCC on "Quality Assurance for Structural Concrete" for contracts located at remote areas (such as outlying islands) or where the volume of structural concrete involved is less than 50 cubic meter.</p> <p>Where the SCT is included, it shall be inserted as an essential requirement pursuant to GCT Clause 21. Where a Quality System for Production and Supply of Structural Concrete is required to be submitted with the</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
	tender, the tender shall be invalidated if the tenderer does not make such a submission. If the tenderer makes a poor submission which fails to demonstrate his understanding of and his capability in managing the quality of the production and supply of structural concrete for the Works for the Contract, the tenderer shall be considered as not technically capable for recommendation for award of the Contract. Legal advice should be obtained to form such a recommendation.
SCT 6 Not Used	
SCT 7 Outline Environmental Management Plan	
<p>(1) The tenderer shall upon written request by the Supervising Officer designate in accordance with the General Conditions of Tender Clause 25 submit an Outline Environmental Management Plan, which shall be the tenderer's proposal to:</p> <p>(a) minimize the environmental nuisances of air, noise and wastewater pollution; and</p> <p>(b) minimize the generation of surplus construction and demolition (C&D) materials, in particular, the proposed measures to avoid/minimize the use of timber for Temporary Works construction, to effectively carry out on-site sorting of C&D materials and to minimize the generation of C&D waste from equipment/material packaging during the course of the Works.</p> <p>(2) The Outline Environmental Management Plan</p>	<p>As a general rule, D&B contracts having an estimated contract sum of \$20M or more (or a smaller contract sum as set by individual departments) shall be included under Pay for Safety and Environment Scheme (PFSES). For contracts with a substantial portion of their value as E&M equipment, the cost of such equipment (including those in the form of provisional sums) shall be excluded from the estimated contract sum in determining whether they should be included under PFSES. Irrespective of the value of the contract, contracts with duration of 6 months or less can be exempted from inclusion under PFSES.</p> <p>Submission required by this SCT shall also be mentioned in GCT Clause 25.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>shall be specific to the Site and used for the preparation of the Environmental Management Plan after the Contract is awarded. It shall form part of the Contract.</p>	
SCT 8 Disclosure of Information (Bid Challenges)	
<p>(1) The tenderer shall note that the provisions of the Agreement on Government Procurement of the World Trade Organisation (WTO GPA) apply to this procurement. In the event of a bid challenge by a tenderer to the Review Body on Bid Challenges of alleged breaches of the WTO GPA in respect of this procurement, the Employer may be requested by the Panel appointed in accordance with the Rules of Operation of the Review Body on Bid Challenges (the Panel) to disclose information submitted by other tenderers.</p> <p>(2) By submitting his tender, the tenderer shall be deemed to have consented that in the event of a bid challenge by a tenderer to the Review Body on Bid Challenges of alleged breaches of the WTO GPA in respect of this procurement and the Employer is requested by the Panel to disclose information submitted in his tender, the Employer may disclose the information to the Panel and to such other persons and in such manner as the Panel may require in accordance with the Rules of Operation. This may include disclosing the information to the complainant which has lodged the bid challenge.</p>	<p>To be used if the tender exercise is subject to WTO GPA.</p>
SCT 9 Funding Approval	
<p>The tenderers shall note that this tender exercise is held before the necessary funds for the contract have been approved. The tenderers shall also note that</p>	<p>To be used if funding has not been approved at the time of tender.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>the Employer reserves the right to cancel this tender exercise for not having the necessary funds approved; and that the tenderers will accordingly be notified if the necessary funds are not approved.</p>	
SCT 10 Drawings	
<p>Any drawings issued are to be returned to the issuing office after submission of the tender.</p>	<p>This SCT Clause may be used if it is desired that the drawings issued to the tenderers are to be returned to the issuing office after submission of the tender.</p>
<p>SCT 11 Statement Of Convictions Under The Factories And Industrial Undertakings Ordinance (Cap 59), The Occupational Safety And Health Ordinance (Cap 509), The Shipping And Port Control Ordinance (Cap 313), The Merchant Shipping (Local Vessels) Ordinance (Cap. 548), The Air Pollution Control Ordinance (Cap 311), The Noise Control Ordinance (Cap 400), The Waste Disposal Ordinance (Cap 354), The Water Pollution Control Ordinance (Cap 358), The Dumping At Sea Ordinance (Cap 466), The Ozone Layer Protection Ordinance (Cap. 403), Land (Miscellaneous Provisions) Ordinance (Cap. 28), The Environmental Impact Assessment Ordinance (Cap. 499) and The Hazardous Chemicals Control Ordinance (Cap. 595)</p>	
<p>(1) The tenderer shall submit with the tender, either a statement of “no conviction” or a statement of all convictions for site safety and environmental offences under the Factories and Industrial Undertakings Ordinance (Cap 59), the Occupational Safety and Health Ordinance (Cap 509), the Shipping and Port Control Ordinance (Cap 313), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), the Air Pollution Control Ordinance (Cap 311), the Noise Control Ordinance (Cap 400), the Waste Disposal Ordinance (Cap 354), the Water Pollution Control Ordinance (Cap 358), the Dumping at Sea Ordinance (Cap 466), the Ozone Layer Protection Ordinance (Cap. 403), Land (Miscellaneous Provisions) Ordinance</p>	<p>This SCT Clause is extracted from DEVB TCW No. 3/2009. It is only needed if Marking Scheme tender evaluation is used.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(Cap. 28), the Environmental Impact Assessment Ordinance (Cap. 499) and The Hazardous Chemicals Control Ordinance (Cap. 595) for each site during the period of twelve months* prior to the date set for the close of tender, or if this has been extended, the extended date, based on the date of conviction. The statement of all convictions shall include the legislation contravened, dates of offences, dates of convictions and the associated fine imposed by the court, site addresses, contract numbers and contract titles (including sub-contracts where the contractor has acted as a sub-contractor). The statement shall be certified by a person authorized to sign Government contracts on the tenderer's behalf. #[, or in case of EMSTF's tender, a person authorized to sign the Service Level Agreement.]</p> <p>(2) If the tenderer is a joint venture, each participant or shareholder of the joint venture shall submit such a statement separately.</p> <p>(3) Where the tenderer (including shareholders and participants in joint ventures) is a company it shall disclose any change of name made during the period of twelve months* prior to the tender closing date, or if this has been extended, the extended date, and shall include in its statement of all convictions any conviction recorded under any previous name.</p> <p>#(4) For tenders submitted by EMSTF, the letters of "non-compliance" issued by the relevant regulatory authorities shall also be treated as conviction records.</p>	<p># For use in tenders which EMSTF is eligible to bid</p> <p>* [or other period specified by the Supervising Officer where appropriate to cope with the assessment period for tender evaluation]</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
SCT 12 Statement of Convictions under Section 27 of the Public Health and Municipal Services Ordinance (Cap.132)	
<p>(1) The tenderer shall submit with the tender, either a statement of “no conviction” or a statement of all convictions under section 27 of the Public Health and Municipal Services Ordinance (Cap.132) for control of water likely to contain larvae or pupae of mosquitoes for each site during the period of twelve months* prior to the date set for the close of tender, or if this has been extended, the extended date, based on the date of conviction. The statement of all convictions shall include site addresses, contract numbers, contract titles, dates of offences, dates of convictions and the associated fine imposed by the court. The statement shall be certified by a person authorized to sign Government contracts on the tenderer's behalf. #[, or in case of EMSTF’s tender, a person authorized to sign the Service Level Agreement.]</p> <p>(2) If the tenderer is a joint venture, each participant or shareholder of the joint venture shall submit such a statement separately.</p> <p>(3) Where the tenderer (including the shareholders and participants in a joint venture) is a company it shall disclose any change of name made during the period of twelve months* prior to the date set for the close of tender, or if this has been extended, the extended date, and shall include in its statement of all convictions any conviction recorded under any previous name.</p> <p>(4)# For tenders submitted by EMSTF, the letters of “non-compliance” issued by the relevant regulatory authorities shall also be treated as conviction records.</p>	<p># For use in tenders which EMSTF is eligible to bid</p> <p>* [or other period specified by the Supervising Officer where appropriate to cope with the assessment period for tender evaluation.]</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
SCT 13 Outline Safety Plan	
<p>(1) The tenderer shall submit with his tender an Outline Safety Plan which shall be the tenderer's proposals to ensure safety and health in the execution of the Works and which shall be able to demonstrate his capability in identifying and managing risks in the execution of the Works.</p> <p>(2) The Outline Safety Plan shall start with a formal statement of policy on safety and health and shall include:</p> <ul style="list-style-type: none"> (a) identification of safety and health hazards which may be encountered in the execution of the Works; (b) an outline of proposed safety and health measures for the control and prevention of such safety and health hazards, and (c) the manner by which safety and health measures will be implemented and monitored. <p>(3) The Outline Safety Plan shall form part of the Contract.</p>	<p>This SCT Clause shall not be used generally. Pursuant to the guidelines given in SETW's memo ref.: ETWB(W) 546/83/01 dated 10.1.2003, departments should not ask tenderers to make immaterial submissions where a non-submission or a poor submission would not affect the tender recommendation. In general, where selective tendering is adopted or where a marking scheme is used to ensure that only qualified contractors are eligible to tender, the contractor will be expected to possess the necessary expertise for undertaking the Works and examination of the outline safety plan at tender stage will not be necessary. In extremely rare circumstances where there are special risks in the contract for which it is essential that a tenderer demonstrates in his tender his ability to identify and manage the risks, an outline safety plan may be required from the tenderers.</p> <p>Where the SCT is included, it shall be inserted as an essential requirement pursuant to GCT Clause 21. The tender shall be invalidated if the tenderer does not make such a submission. If the tenderer makes a poor submission which fails to demonstrate his understanding of and his capability to ensure safety and health in the execution of the Works, the tenderer shall be considered as not technically capable for recommendation for award of the</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
	Contract. Legal advice should be obtained to form such a recommendation.
SCT 14 Specialist Sub-contractors	
<p>(1) The tenderer shall hold a tender exercise inviting tenders only from the List of Specialist Sub-contractors attached hereto as Appendix [] to the Employer's Requirements. Upon completion of the tender exercise, the tenderer shall confirm with the Employer that the Specialist Sub-contractor selected has not been suspended or removed from the relevant list and shall include the name of the selected Specialist Sub-contractor in his tender. After award of the Contract the tenderer shall enter into a sub-contract using the standard form of sub-contract published by The Hong Kong Construction Association with the same selected Specialist Sub-contractor named in the tender, who has not been suspended or removed from the relevant list. The tenderer shall not negotiate tender prices with the tenderers for the Specialist Sub-contract after the tender exercise. In the event that no tender is received, or the selected Specialist Sub-contractor has been suspended and/or removed from the relevant list as shown on the gazette from time to time the tenderer may, with the prior written consent of the Supervising Officer designated conduct another tender exercise in accordance with the procedures set out in this clause for the selection of the Specialist Sub-contractor for such work. The tenderers shall invite tenders in respect of the following Specialist Sub-contracts:</p>	<p>Special Conditions of Tender to be incorporated into tender documents for contracts for Building Works where the main contractor is required to enter into written sub-contracts using the Standard Form of Domestic Sub-contract (for specialist works). This Special Conditions of Tender (and subsidiary documentation) may not be suitable for Engineering Works. Engineering Works departments should seek separate advice from Legal Advisory Division, DEVB.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(i)</p> <p>(ii)</p> <p>(2) The tenderer shall ensure that the obligations and responsibilities of the Specialist Sub-contractor under sub-clause (4) hereof* are duly incorporated into the Specialist Sub-contract.</p> <p>(3) The tenderer shall procure the attendance of the Specialist Sub-contractor at meetings with the Supervising Officer designate in respect of items included in the Schedule of major items of Plant and equipment and allow the Specialist Sub-contractor to discuss such items with the Supervising Officer designate in his presence.</p> <p>* (4) The tenderer shall procure, prior to entering into a sub-contract with any Specialist Sub-contractor, an undertaking to provide a warranty under seal provided by the Specialist Sub-contractor in the form appearing in Appendix [] to the Employer's Requirements hereto with only such amendments thereto as may have been previously approved by the Supervising Officer designate in writing in respect of the following:</p> <p style="padding-left: 40px;">(i)</p> <p style="padding-left: 40px;">(ii)</p> <p>(5) The tenderer shall include in his tender exercise the Special Conditions of Tender and the Special Conditions of Sub-contract to be incorporated in the Specialist Sub-contract set out in Appendix [] to the Employer's Requirements.</p>	<p>* Special Conditions of Tender Clause 14(4) should only be used where the Specialist Sub-contractor has design responsibility.</p> <p>A sample form of sub-contractor's warranty for roofing system is attached for reference. The sample form of sub-contractor's warranty should be amended to suit for other types of works and separate advice from Legal Advisory Division, DEVB should be sought.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>(6) The tenderer shall submit with the tender a statement confirming that all sub-contractors on the List of Specialist Sub-contractors for the specialist sub-contracts listed under sub-clause (1) who have not been suspended and/or removed from the said list have been invited to submit tenders when the tender exercise was conducted. The statement shall be signed by a person authorized to sign the Form of Tender on behalf of the tenderer.</p> <p>(7) The tenderer must submit with the tender a copy of a letter from the Specialist Sub-contractor indicating his agreement to carry out the respective part of the Works for the tenderer should the tender be accepted.</p> <p>(8) Failure to submit a copy of such a letter may cause the tender to be disqualified.</p>	
SCT 15 Not Used	
SCT 16 Not Used	
SCT 17 Not Used	
SCT 18 Not Used	
SCT 19 Financial Requirements for Unlisted Contractors	
<p>(1) Without limiting the submission of financial information required in General Conditions of Tender Clause 5, the tenderer shall, upon written request by the Supervising Officer designate issued in accordance with General Conditions of Tender Clause 25, submit to the Supervising Officer designate such additional financial information as the Supervising Officer designate considers necessary to demonstrate that his current financial position meets the criteria set out in Appendix 2A/3B*</p>	<p>This SCT Clause stipulates the financial requirements for vetting of unlisted contractors who are allowed or invited in open tendering.</p> <p>* Delete as appropriate.</p> <p>** Amend the part in italics to suit the size and nature of the contract in accordance with either Appendix 2A or 3B of the CMH. For Appendix 2A, the criteria for confirmed status must</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
<p>of the Contractor Management Handbook (CMH). More specifically, the financial criteria adopted for this Contract is set out under <i>paragraph 3(i)(b), Group A confirmed, of Appendix 2A of the CMH**</i>.</p> <p>(2) A copy of the CMH is available for download at this web site address: http://www.etwb.gov.hk/press_releases_and_publications/publications/management/index.aspx?langno=1&nodeid=1055</p>	<p>always be used.</p>
SCT 20 Not Used	
SCT 21 Presentation of Design Proposals to the Employer	
<p>(1) Prior to the award of the Contract, the tenderer who is identified to be likely to be awarded the Contract shall be required to present its proposed design to the Employer. Only drawings and information submitted with the tender shall be used for this presentation.</p> <p>(2) The tenderer who is identified to be likely to be awarded the Contract will be notified of the date and venue [x]* days before the presentation.</p> <p>(3) By submitting its tender the tenderer is deemed to have agreed that the Employer shall have the right to disclose, show, display or otherwise including without limitation the right to copy or reproduce all documents and materials to [specify the relevant aspects e.g. the proposed design]# submitted by the tender exercise to the LegCo [including its panels and committees]^ for any purpose relating to obtaining funding approval.</p> <p>(4) Notwithstanding the Sub-clauses (1) and (2) of</p>	<p>For D&B tenders invited prior to funding approval. SCT adopted for Contract No. SS W303 – Cruise Terminal Building/</p> <p>* Works departments to fill in the number of days required.</p> <p># Works departments to specify the relevant aspects.</p> <p>^ Works departments to specify the relevant panels/committees.</p>

Special Conditions of Tender

Clause	Remarks/Guidelines
this Clause, the Government is not bound to accept the tender or any tender and may cancel the tender exercise on public interest ground. In considering the acceptance of a tender, tenderer's attention is drawn to the provisions set out in NTT(h).	

[Reference: This form relates to Special Conditions of Contract, Clauses SCC[] (Specialist Sub-contractor) and SCC[] (Sub-contractor’s warranty); WBTC No. 25/94]

[Guidance Note: This sample form of sub-contractor’s warranty is drafted for roofing system work. For other works required to be covered by similar warranty, amend the terms/text which are in bold font and enclosed by square brackets in the following parts of this form and make other appropriate amendments as necessary.]

FORM OF SUB-CONTRACTOR'S WARRANTY for [ROOFING SYSTEM]

THIS DEED OF AGREEMENT

is made the [] day of [] []

BETWEEN

(1) [] [whose registered office is at]/[of][] (the “Sub-contractor”); and

(2) The Government of the Hong Kong Special Administrative Region (the “Employer”).

WHEREAS

- (A) By a contract no. (the “Contract”) made between the Employer and [] (the “Contractor”) the Contractor has agreed to execute and complete certain works as more particularly described in the Contract relating to _____ (the “Works”) upon the terms and conditions contained in the Contract.
- (B) The Sub-contractor has had an opportunity of reading and noting the provisions of the Contract (save for those parts of a confidential commercial nature).
- (C) By a contract dated [] (the “Sub-contract”) made between the Contractor and the Sub-contractor, the Sub-contractor has agreed to *design and construct the **[Roofing System]** forming part of the Works.
- (D) Pursuant to the terms of the Contract, the Contractor agreed to procure the provision of a warranty in the terms hereof by the Sub-contractor.
- (E) At the request of the Contractor, the Sub-contractor has agreed to provide this warranty.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. All references in this Agreement to the [**“Roofing System”**] shall mean [**a roofing system or different roofing systems**] for different parts of a building or for different buildings and shall be construed as %%**[comprising the *design, selection, supply and laying of proprietary roof membranes, protective layers, insulation, adhesive, any screed or finishing layers to the structural roof deck or slab together with all flashings, joints around pipes, junctions, surrounds, collars, funnels, rain water outlets and the like including priming, sealing, crack filling and other preparation where necessary.]**
2. The Sub-contractor hereby warrants and undertake to the Employer that:
 - (a) it has executed and completed and will execute and complete the *design and construction of the [**Roofing System**], and it has carried out and will carry out each and all of the obligations, duties and undertakings of the Sub-contractor under the Sub-contract when and if such obligations, duties and undertakings shall become due and performable, in accordance with the terms of the Sub-contract (as the same may from time to time be varied or amended with the consent of the Employer); and
 - (b) it will supply the Employer with all information as the Employer may reasonably require from time to time in relation to progress of the *design and construction of the [**Roofing System**].
3. Without limiting the Sub-contractor's obligations and liabilities under Clause 5 hereof, the Sub-contractor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer provided that the Sub-contractor shall have no greater liability to the Employer by virtue of its undertaking under this Clause 3 than the liability of the Contractor to the Employer under the Contract in so far as and to the extent that the same has arisen by reason of any breach by the Sub-contractor of its obligations, duties and undertakings under the Sub-contract.
4. Without prejudice to the generality of Clauses 2 and 3 hereof, the Sub-contractor further warrants:-
 - &&(a) that the *design /*selection of the [**Roofing System**] and the resultant work shall be suitable for use as part of the Works;
 - (b) that the [**Roofing System**] shall remain in a [**watertight**] condition for a period of [**ten**] years from the date of completion stated in the certificate of completion with respect to the Works issued pursuant to the provisions of the Contract;
 - (c) the suitability of the [**Roofing System**] for [**application and bonding to the roof structure and any finishes applied thereto and the compatibility and bonding between each of the elements of the Roofing System so as to ensure that the Roofing System is watertight**];

- (d) *(that all reasonable skill, care and diligence has been and shall be exercised by the Sub-contractor in connection with the design of the **[Roofing System]** and) that the materials and goods in connection with the **[Roofing System]** will be fit for the purpose for which they are intended and of good quality; and
 - (e) that the **[Roofing System]** shall conform to any performance specification or requirement applicable to the **[Roofing System]** included or referred to in the Contract.]
- 5.
- (a) The Sub-contractor undertakes that in the event of a failure in the **[Roofing System]** discovered at any time during the period referred to in Clause 4(b) hereof, it shall as soon as reasonably practicable after receipt of notification by the Employer, carry out at its own cost all repair or replacement work including emergency and temporary works which is necessary in the opinion of the Employer to ensure that the **[Roofing System]** conforms to the warranties set out in Clause 4 hereof. All repair or replacement work including emergency and temporary works shall be carried out by the Sub-contractor at times as specified by the Employer so as not to interfere with the proper use and functioning of the completed Works. In the event that such repair or replacement work is not carried out by the Sub-contractor in accordance with this Clause 5(a), the Employer may, without prejudice to any other remedy, proceed to carry out such work by its own workers or by other contractors and the cost properly incurred by the Employer in having such work carried out shall be a debt due to the Employer from the Sub-contractor and shall be paid to the Employer by the Sub-contractor immediately on demand.
 - (b) The Sub-contractor undertakes to indemnify the Employer against all losses and claims for injury or damage to any person or property whatsoever which may be caused by any failure in the **[Roofing System]** to conform to the warranties set out in Clause 4 hereof and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
 - (c) The Sub-contractor undertakes to make good or, at the option of the Employer, pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and undertakes to recompense the Employer in respect of any damage, loss or injury which may occur to any employee of the Employer caused by any failure in the **[Roofing System]** to conform to the warranties set out in Clause 4 hereof.
 - (d) Provided that nothing in Clause 5(b) and (c) shall be deemed to render the Sub-contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:
 - (i) failure in the **[Roofing System]** caused by work which was not constructed by the Sub-contractor, or

- (ii) failure in the **[Roofing System]** caused by repair, maintenance or alteration to the **[Roofing System]** (other than the repair or replacement work carried out by the Employer's own workers or other contractors in accordance with Clause 5(a) hereof) done after the date of completion stated in the certificate of completion with respect to the Works issued pursuant to the provisions of the Contract by persons other than the Sub-contractor or its servants or agents.

or for or in respect of all claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

- 6. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to the provisions of the Contract, the expression "certificate of completion" shall, for the purpose of Clause 4(b) and Clause 5(d)(ii), mean the last of such certificates.
- 7. No allowance of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Agreement or the Sub-contract on the part of the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor from any liability under this Agreement.
- 8. The Sub-contractor agrees that it will not without first giving the Employer not less than twenty-one (21) days' prior notice in writing exercise any right it may have to terminate the Sub-contract or treat the same as having been repudiated by the Contractor or withhold performance of its obligations, duties and undertakings under the Sub-contract.
- 9.
 - (1) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within twenty-one (21) days of such termination, the Sub-contractor shall carry out and complete its obligations under this Agreement and shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
 - (2) In the event that the Employer does not require the Sub-contractor to enter into a novation agreement as required by sub-clause (1) of this Clause, the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Agreement.

10. In so far as the copyright or other intellectual property rights, in any plans, calculations, drawings, documents, materials, know-how and information relating to the **[Roofing System]** shall be vested in the Sub-contractor, the Sub-contractor grants to the Employer its successors and assigns a royalty free, transferable, perpetual, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and such know-how and information for all purposes relating to the Works (including without limitation the design, construction, reconstruction, completion, maintenance, reinstatement, extension, repair and operation of the Works). To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Sub-contractor, the Sub-contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Sub-contractor shall for any reason cease to be employed in connection with the **[Roofing System]**.
11. In the event of any ambiguity or conflict between the terms of the Sub-contract and this Agreement, the terms of this Agreement shall prevail.
12. The provisions of this Agreement shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Sub-contractor whether in tort or otherwise.
13. Nothing contained in this Agreement shall vary or affect the Sub-contractor's rights and obligations under the Sub-contract.
14. The Employer shall be entitled to assign the benefit of this Agreement at any time without the consent of the Sub-contractor being required.
15. All documents arising out of or in connection with this Agreement shall be served:-
 - (1) upon the Employer at []
marked for the attention of []; and
 - (2) upon the Sub-contractor, at
[] Hong Kong.
16. The Employer and the Sub-contractor may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.
17. This Agreement shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region.

- [18. (1) (a) Any dispute or difference of any kind whatsoever between the Employer and the Sub-contractor arising under, out of or in connection with this Agreement shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.
- (b) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
- (ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
- (iii) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

"20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

- (a) are necessary for implementation or enforcement;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration. "

(c) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

(d) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force.

- (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under, out of or in connection with the Contract (the Contract Dispute) then provided that an arbitrator has not already been appointed pursuant to Clause 18(1), the Employer may by notice in writing to the Sub-contractor refer and the Sub-contractor shall be deemed to have consented to refer such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
- (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation of the Supervising Officer as defined in the Contract or the Contractor relating to the dispute or difference.]*

[Guidance Notes:

* - Delete if not applicable.

%%[] - The definition should be the same as the description of the **[Roofing System]** as adopted in the Contract.

&&[] - The warranties in Clause 4 should mirror the warranties with respect to the **[Roofing System]** given by the Contractor in the Contract.]

IN WITNESS WHEREOF this Warranty has been executed as a deed by the parties hereto on the date first above written.

**Works departments shall select and insert the appropriate attestation clauses for the Sub-contractor and the Employer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

All Guidance Notes above, in bold lettering, should be deleted when preparing this document for signature.

- end -

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

BOND

CONTRACT NO.

BY THIS BOND WE, ^(a)
.....
.....
trading as ^(b)
at ^(c)
whose registered office is at ^(d)
.....
in Hong Kong Special Administrative Region being the Contractor as defined in Contract
No. (hereinafter called “the Contractor”) and
.....
whose registered office is at
in Hong Kong Special Administrative Region (hereinafter called “the Surety”) are held and firmly
bound unto the Government of the Hong Kong Special Administrative Region (hereinafter called “The
Employer”) in the sum of Hong Kong Dollars
.....
for the payment of which sum the Contractor and Surety bind themselves their personal representatives
successors and assigns jointly and severally by these presents.

Sealed with our respective seals and dated this day of

WHEREAS the Contractor and the Employer have entered into Contract
No. (hereinafter called “the said Contract”) for the execution of certain
Works namely in conformity with the
provisions of the said Contract.

NOW THE CONDITION of the above-written Bond is such that if the Contractor shall duly perform and observe all the terms provisions conditions and stipulations of the said Contract on the Contractor's part to be performed and observed according to the true purport intent and meaning thereof or if on default by the Contractor the Surety shall satisfy and discharge the damages sustained by the Employer thereby up to the amount of the above-written Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect but no alteration in terms of the said Contract made by agreement between the Employer and the Contractor or in the extent or nature of the Works to be executed thereunder and no allowance of time by the Employer or the Supervising Officer under the said Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the said Contract on the part of the Employer or the said Supervising Officer shall in any way release the Surety from any liability under the above-written Bond. In this Condition, "Supervising Officer" means the person, company or firm appointed from time to time by the Employer and notified in writing to the Contractor to act as the Supervising Officer for the purposes of the said Contract.

**Works departments shall select and insert the appropriate attestation clauses for the Contractor and the Surety as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

- end -

FORM OF DESIGNER'S WARRANTY

THIS WARRANTY is made the [] day of [] of []

BETWEEN

1. [] [whose registered office is at []/of []("the Designer");

AND

2. The Government of the Hong Kong Special Administrative Region ("the Employer").

WHEREAS

- A. By a contract ("the Contract") made between the Employer and []("the Contractor") and dated the [] day of [] [] the Contractor has agreed to design, construct, complete and maintain certain works as more particularly described in the Contract relating to []("the Works") upon the terms and conditions contained in the Contract.
- B. The Designer has had an opportunity of reading and noting the provisions of the Contract (save for those parts of a confidential commercial nature).
- C. By an agreement dated [] ("the Consultancy Agreement") made between the Contractor and the Designer, the Designer has agreed to execute the Contractor's obligations under the Contract in relation to the design of the Works.
- D. Pursuant to the terms of the Contract, the Contractor agreed to procure the provision of this Warranty executed by the Designer.

NOW IT IS HEREBY AGREED AS FOLLOWS :

- 1. All references in this Warranty to "the Works" shall be construed as meaning the Works as defined in Clause 1(1) of the General Conditions of Contract of the Contract. In this Warranty the expression "design of the Works" means to execute the design component of "the Works" as defined in Clause 1(1) of the General Conditions of Contract of the Contract as aforesaid.
- 2. Except to the extent (if any) expressly permitted by the Consultancy Agreement, the Designer shall not employ sub-consultants to carry out any of the Designer's obligations under the Consultancy Agreement without the prior written consent of the Supervising Officer.
- 3. The Designer hereby warrants and undertakes to the Employer that he has executed and will execute the design of the Works, and has carried out and will carry out each and all of the obligations, duties and undertakings of the Designer under the Consultancy Agreement when and if such obligations, duties and undertakings shall become due and performable, in accordance with the terms of the Consultancy Agreement.
- 4. Without limiting the Designer's obligations and liabilities under Clause 5, the Designer undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any demands, claims, causes of action, proceedings, liabilities, loss, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature provided that the Designer shall have no greater liability to the Employer by virtue of his undertaking under this clause than the liability of the Contractor to the Employer under the Contract in so far as and to the extent that the same has arisen by reason of any breach by the Designer of his obligations, duties and undertakings under the Consultancy Agreement.

5. Without prejudice to the generality of Clause 3, the Designer further warrants that all reasonable skill and care has been and shall be exercised by the Designer in connection with the design of the Works.
6. (a) The Designer shall indemnify and save harmless the Employer against and from all demands, claims, causes of actions, proceedings, liabilities, losses, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature arising from or contributed to by :
 - (i) any breach by the Designer, his servants or agents, (including without limitation sub-consultants, their servants or agents) of this Warranty; and
 - (ii) any negligence or breach of statutory duty on the part of the Designer, his servants or agents (including without limitation sub-consultants, their servants or agents); and
 - (iii) any wilful misconduct on the part of the Designer, his servants or agents (including without limitation sub-consultants, their servants or agents).
- (b) Provided that the Designer's obligation to indemnify the Employer against any such demands, claims, causes of actions, proceedings, liabilities, loss, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature as set out in sub-clause (a) shall be reduced to the extent that the same was caused by or contributed to by any act, neglect, omission or default of the Employer or its servants or agents.
7. No allowance of time by the Employer hereunder or by the Contractor under the Consultancy Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Consultancy Agreement on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Designer from any liability under this Warranty.
8. The Designer agrees that he shall not without first giving the Employer not less than twenty-one (21) days prior notice in writing exercise any right he may have to terminate the Consultancy Agreement or treat the same as having been repudiated by the Contractor or withhold performance of his obligations, duties and undertakings under the Consultancy Agreement.
9. (a) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within twenty-one (21) days of such termination, the Designer shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Designer shall undertake inter alia to perform the Consultancy Agreement and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
- (b) In the event that the Employer does not require the Designer to enter into a novation agreement as required by sub-clause (a), the Designer shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
10. (a) In so far as the copyright or other intellectual property rights subsisting in any plans, calculations, drawings documents, materials, know-how and information relating to the Works shall be vested in the Designer, the Designer hereby grants and agrees to grant to the Employer and the subsequent owners or occupiers of the Works a royalty free, transferable, perpetual, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works, designs or inventions incorporated and referred to in such documents or materials and such know-how and information for all purposes relating to or in connection with the Works including without limitation the design, construction, reconstruction, completion, testing, commissioning, completion, maintenance, reinstatement, extension, repair and operation of the Works. .

- (b) To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Designer, the Designer shall procure that the beneficial owner thereof shall grant a like licence to the Employer and the subsequent owners or occupiers of the Works.
 - (c) For the avoidance of doubt, any such licence (as referred to in sub-clauses (a) and (b)) granted shall not be determined if the Designer shall for any reason cease to be employed in connection with the Works.
 - (d) The Designer shall, at the request of the Employer, do such acts and execute such deeds or documents (or procure that the same be done or executed) as the Employer may require to vest in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in sub-clauses (a) and (b). The Designer shall bear his own cost and expense in relation thereto.
 - (e) The Designer shall indemnify and save harmless the Employer against and from all demands, claims, causes of actions, proceedings, liabilities, losses, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature for or on account of infringement (whether alleged or actual) of any intellectual property rights or breach of confidence in respect of or in connection with the Works.
 - (f) The Designer hereby irrevocably and unconditionally waives and shall procure at his own cost and expense all authors to waive all moral rights in the design of the Works to which they may now or at any time in future be entitled under the Copyright Ordinance (Cap. 528) or under any similar law in force from time to time anywhere in the world.
11. In the event of any ambiguity or conflict between the terms of the Consultancy Agreement and this Warranty, then for the purposes of this Warranty the terms of this Warranty shall prevail.
12. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Designer whether in tort or otherwise.
13. Nothing contained in this Warranty shall vary or affect the Designer's rights and obligations under the Consultancy Agreement.
14. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Designer being required.
15. All documents arising out of or in connection with this Warranty shall be served :-
- (a) upon the Employer at [] marked for the attention of []; and
 - (b) upon the Designer, at [], Hong Kong Special Administrative Region.
16. The Employer and the Designer may change their respective nominated addresses for service of documents to another address in the Hong Kong Special Administrative Region but only by prior written notice to each other. All demands and notices must be in writing.
17. (a) The Designer hereby represents that, with respect to his obligations, duties, undertakings or any other matter under or arising out of or in connection with this Warranty, neither he nor any of his properties or assets has, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings from :
- (i) the giving of relief in any legal action, suit or proceedings;
 - (ii) set-off or counterclaim;
 - (iii) the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction;
 - (iv) service of process upon him or any agent;

- (v) attachment prior to judgement in order to obtain satisfaction hereof; or
- (vi) attachment after judgement or from execution or any other process for the enforcement of any judgement or other legal process in any jurisdiction;

and to the extent that the Designer is or becomes entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction in respect of his obligations, duties, undertakings or any other matter under or arising out of or in connection with this Warranty, he does hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity.

- (b) The Designer further consents to the giving of any relief in any legal action, suit or proceedings and to execution or any other form of process for the enforcement of any judgement against him or his assets.

18. This Warranty shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region.

19. (a) Without prejudice to his obligations under this Warranty, the Designer shall maintain with underwriters approved by the Employer and on terms and conditions reasonably acceptable to the Employer professional indemnity insurance in respect of the Designer and his sub-consultants for HK\$[](Hong Kong Dollars) in relation to his design of the Works for any one occurrence or series of occurrences arising out of any one event from the date of commencement of appointment or engagement of the designer until 6 years after the date of the certificate of completion of the Works, or where more than one such certificates has been or is to be issued, the date of the last such certificate of completion issued.

(b) In the event that, although no fault of the Designer, such insurance becomes unavailable at reasonable commercial rates the Designer shall immediately inform the Employer and the Contractor and shall, subject to obtaining the prior written consent of the Employer, effect such insurance at such levels of cover as are, in the opinion of the Employer, reasonably available. The Designer shall immediately inform the Employer if for any reason professional indemnity insurance is not maintained in accordance with this Warranty or becomes void and unenforceable.

(c) If the Designer shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance as required by sub-clause (a), the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to recover such premium or premiums as a debt due from the Designer.

[Guidance Note: Delete this Clause 19 and renumber following clause when Special Condition of Contract requiring the Designer to provide Professional Indemnity Insurance (PII) is not adopted.]

20. (a) Any dispute or difference of any kind whatsoever between the Employer and the Designer arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.

(b) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(iii) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

" 20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person

without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

- (a) are necessary for implementation or enforcement;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration. "

- (c) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.
- (d) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force.
- (e) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation of the Supervising Officer as defined in the Contract or the Contractor relating to the dispute or difference.

IN WITNESS WHEREOF this Warranty has been executed as a deed on the date first above written.

**Works departments shall select and insert the appropriate attestation clauses for the Designer and the Employer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

*The italic parts are not part of the execution clause. They are for guidance or information only.

All Guidance Notes above, in bold lettering, should be deleted when preparing this document for signature.

- end -

Annex G7

FORM OF DESIGN CHECKER'S WARRANTY

THIS WARRANTY is made the [] day of [] of []

BETWEEN

1. [] [whose registered office is at []/of []("the Design Checker");

AND

2. The Government of the Hong Kong Special Administrative Region ("the Employer").

WHEREAS

- A. By a contract ("the Contract") made between the Employer and []("the Contractor") and dated the [] day of [] [] the Contractor has agreed to design, construct, complete and maintain certain works as more particularly described in the Contract relating to []("the Works") upon the terms and conditions contained in the Contract.
- B. The Design Checker has had an opportunity of reading and noting the provisions of the Contract (save for those parts of a confidential commercial nature).
- C. By an agreement dated [] ("the Consultancy Agreement") made between the Contractor and the Design Checker, the Design Checker has agreed to check the design of the Works as more particularly set out in the Consultancy Agreement.
- D. Pursuant to the terms of the Contract, the Contractor agreed to procure the provision of this Warranty executed by the Design Checker.

NOW IT IS HEREBY AGREED AS FOLLOWS :

- 1. All references in this Warranty to "the Works" shall be construed as meaning the Works as defined in Clause 1(1) of the General Conditions of Contract of the Contract. In this Warranty the expression "design of the Works" means to execute the design component of "the Works" as defined in Clause 1(1) of the General Conditions of Contract of the Contract as aforesaid.
- 2. Except to the extent (if any) expressly permitted by the Consultancy Agreement, the Design Checker shall not employ sub-consultants to carry out any of the Design Checker's obligations under the Consultancy Agreement without the prior written consent of the Supervising Officer.
- 3. The Design Checker hereby warrants and undertakes to the Employer that he has executed and will execute the checking of the design of the Works, and has carried out and will carry out each and all of the obligations, duties and undertakings of the Design Checker under the Consultancy Agreement when and if such obligations, duties and undertakings shall become due and performable, in accordance with the terms of the Consultancy Agreement.
- 4. Without limiting the Design Checker's obligations and liabilities under Clause 5, the Design Checker undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against all demands, claims, causes of actions, proceedings, liabilities, loss, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature provided that the Design Checker shall have no greater liability to the Employer by virtue of his undertaking under this clause than the liability of the Contractor to the Employer under the Contract insofar as and to the extent that the same has arisen by reason of any breach by the Design Checker of his obligations, duties and undertakings under the Consultancy Agreement.

5. Without prejudice to the generality of Clause 3, the Design Checker further warrants that all reasonable skill and care has been and shall be exercised by the Design Checker in connection with the checking of the design of the Works.
6. (a) The Design Checker shall indemnify and save harmless the Employer against and from all demands, claims, causes of actions, proceedings, liabilities, losses, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature arising from or contributed to by:
 - (i) any breach by the Design Checker, his servants or agents, (including without limitation sub-consultants, their servants or agents) of this Warranty; and
 - (ii) any negligence or breach of statutory duty on the part of the Design Checker, his servants or agents (including without limitation sub-consultants, their servants or agents); and
 - (iii) any wilful misconduct on the part of the Design Checker, his servants or agents (including without limitation sub-consultants, their servants or agents).
- (b) Provided that the Design Checker's obligation to indemnify the Employer against any such demands, claims, causes of actions, proceedings, liabilities, loss, damages, costs, charges and expenses sustained, incurred or payable by the Employer of whatsoever nature as set out in sub-clause (a) shall be reduced to the extent that the same was caused by or contributed to by any act, neglect, omission or default of the Employer or its servants or agents.
7. No allowance of time by the Employer hereunder or by the Contractor under the Consultancy Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Consultancy Agreement on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Design Checker from any liability under this Warranty.
8. The Design Checker agrees that he shall not without first giving the Employer not less than twenty-one (21) days prior notice in writing exercise any right he may have to terminate the Consultancy Agreement or treat the same as having been repudiated by the Contractor or withhold performance of his obligations, duties and undertakings under the Consultancy Agreement.
9. (a) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within twenty-one (21) days of such termination, the Design Checker shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Design Checker shall undertake inter alia to perform the Consultancy Agreement and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
- (b) In the event that the Employer does not require the Design Checker to enter into a novation agreement as required by sub-clause (a), the Design Checker shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
10. In the event of any ambiguity or conflict between the terms of the Consultancy Agreement and this Warranty, then for the purposes of this Warranty the terms of this Warranty shall prevail.
11. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Design Checker whether in tort or otherwise.

12. Nothing contained in this Warranty shall vary or affect the Design Checker's rights and obligations under the Consultancy Agreement.
13. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Design Checker being required.
14. All documents arising out of or in connection with this Warranty shall be served :-
- (a) upon the Employer at [] marked for the attention of []; and
 - (b) upon the Design Checker, at [], Hong Kong Special Administrative Region.
15. The Employer and the Design Checker may change their respective nominated addresses for service of documents to another address in the Hong Kong Special Administrative Region but only by prior written notice to each other. All demands and notices must be in writing.
16. (a) The Design Checker hereby represents that, with respect to his obligations, duties, undertakings or any other matter under or arising out of or in connection with this Warranty, neither he nor any of his properties or assets has, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings from :
- (i) the giving of relief in any legal action, suit or proceedings;
 - (ii) set-off or counterclaim;
 - (iii) the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction;
 - (iv) service of process upon him or any agent;
 - (v) attachment prior to judgement in order to obtain satisfaction hereof; or
 - (vi) attachment after judgement or from execution or any other process for the enforcement of any judgement or other legal process in any jurisdiction;
- and to the extent that the Design Checker is or becomes entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction in respect of his obligations, duties, undertakings or any other matter under or arising out of or in connection with this Warranty, he does hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity.
- (b) The Design Checker further consents to the giving of any relief in any legal action, suit or proceedings and to execution or any other form of process for the enforcement of any judgement against him or his assets.
17. This Warranty shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region.
18. (a) Without prejudice to his obligations under this Warranty, the Design Checker shall maintain with underwriters approved by the Employer and on terms and conditions reasonably acceptable to the Employer professional indemnity insurance in respect of the Design Checker and his sub-consultants for HK\$[](Hong Kong Dollars) in relation to his checking of the design of the Works for any one occurrence or series of occurrences arising out of any one event from the date of commencement of appointment or engagement of the Design Checker until 6 years after the date of the certificate of completion of the Works, or where more than one such certificates has been or is to be issued, the date of the last such certificate of completion issued.

- (b) In the event that, although no fault of the Design Checker, such insurance becomes unavailable at reasonable commercial rates the Design Checker shall immediately inform the Employer and the Contractor and shall, subject to obtaining the prior written consent of the Employer, effect such insurance at such levels of cover as are, in the opinion of the Employer, reasonably available. The Design Checker shall immediately inform the Employer if for any reason professional indemnity insurance is not maintained in accordance with this Warranty or becomes void and unenforceable.
- (c) If the Design Checker shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance as required by sub-clause (a), the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to recover such premium or premiums as a debt due from the Design Checker.

[Guidance Note: Delete this Clause 18 and renumber following clause when Special Condition of Contract requiring the Design Checker to provide Professional Indemnity Insurance (PII) is not adopted.]

19. (a) Any dispute or difference of any kind whatsoever between the Employer and the Design Checker arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.
- (b) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
 - (ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
 - (iii) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

" 20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

 - (a) are necessary for implementation or enforcement;
 - (b) are required by the parties’ auditors or for some other legitimate business reason;
 - (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
 - (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party’s request, the Government party shall convey the request to the said Committee for its consideration. "
- (c) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration

instituted in accordance with this Clause.

- (d) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force.
- (e) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation of the Supervising Officer as defined in the Contract or the Contractor relating to the dispute or difference.

IN WITNESS WHEREOF this Warranty has been executed as a deed on the date first above written.

**Works departments shall select and insert the appropriate attestation clauses for the Design Checker and the Employer as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

* The italic parts are not part of the execution clause. They are for guidance or information only.

All Guidance Notes above, in bold lettering, should be deleted when preparing this document for signature.

- end -

To : The Government of the Hong Kong Special Administrative Region

From : []

Date : []

Dear Sirs

Letter of Undertaking
Joint Venture Guarantee for Contract No. []

Contract Title : []

We refer to the Tender (“the Tender”) submitted to you by [] (“the Tenderer”), for the above Contract.

In consideration of your agreeing to consider the Tender we hereby irrevocably and unconditionally undertake to duly execute and provide to you the joint venture guarantee in the form as set out in Appendix [] to the Special Conditions of Contract within fourteen (14) days of your letter of acceptance of the Tender (if the Tender is indeed accepted by you).

We hereby irrevocably and unconditionally agree to indemnify you against all losses, damages, costs and expenses you may incur or suffer as a result of our failing to abide by our above undertaking. We agree that we shall be jointly and severally liable for our obligations under this undertaking and all references to “we” shall take effect as references to all of us or any of us and the words “us” and “our” shall be construed accordingly..

We hereby represent that, with respect to our obligations, liabilities or any other matter under or arising out of or in connection with this letter of undertaking, neither we nor any of our properties or assets have, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings; from the giving of relief in any legal action, suit or proceedings; from set-off or counterclaim; from the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction; from service of process upon us or any agent; from attachment prior to judgment in order to obtain satisfaction thereof; from

attachment after judgment or from execution or any other process for the endorsement of any judgment or other legal process in any jurisdiction; and to the extent that we are or become entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction with respect to our obligations, liabilities or any other matter under or arising out of or in connection with this letter of undertaking, we hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity. We further consent to the giving of any relief in any legal action, suit or proceeding and to execution and or any other form of process for the enforcement of any judgment against us or our assets.

We acknowledge that we comprise all the shareholders of **[name of the Tenderer]**. This letter of undertaking shall be applicable whether the Tender accepted by you comprises the conforming or any alternative tender or with any amendment, modification or change thereto agreed between the Tenderer and yourself.

This letter of undertaking shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region and we hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region and irrevocably appoint the Tenderer to act as our duly appointed agent for the service of process at the address shown in the Tender.

IN WITNESS WHEREOF this Undertaking has been executed as a deed by the shareholders of the Tenderer on the date first above written.

**Works departments shall select and insert the appropriate attestation clause or clauses for each of the shareholders as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

* The italic parts are not part of the execution clause. They are for guidance or information only.

[Reference: This form relates to Special Conditions of Contract, Clause SCC31 (Contractors' joint venture); ETWB/TCW No. 50/2002]

FORM OF JOINT VENTURE GUARANTEE

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

CONTRACT NO. / /

TITLE

THIS GUARANTEE is made the [] day of [] []

BETWEEN :

- (1) The Government of the Hong Kong Special Administrative Region (together with its successors and assigns, hereinafter called "the Employer"); and
- (2) [] whose registered office is at [] and [] whose registered office is at [] and (hereinafter collectively called "the Guarantors").

WHEREAS

- (A) By a contract between the Employer and [] (hereinafter called "the Contractor") dated [] (hereinafter called "the Contract"), the Employer and the Contractor undertook certain obligations towards each other in relation to the execution and completion of certain works ("the Works") upon the terms and conditions contained in the Contract.
- (B) Pursuant to the terms of the Contract, the Contractor agreed to procure the provision of a guarantee in the terms hereof.
- (C) The Guarantors are shareholders of the Contractor and at the request of the Contractor have agreed to guarantee jointly and severally the due performance of the Contract by the Contractor in the manner hereinafter appearing.

IT IS HEREBY AGREED AS FOLLOWS

1. In consideration of the Employer entering into the Contract with the Contractor, the Guarantors hereby irrevocably and unconditionally guarantee to the Employer as a primary obligation and not as a surety punctual true and faithful performance and observance by the Contractor of the obligations, terms, conditions and liabilities to be performed, observed and assumed by the Contractor under the provisions of the Contract and of any further agreement entered into between the Employer and the Contractor in connection with the Contract and in furtherance of this guarantee irrevocably and unconditionally undertake and guarantee that on demand by the Employer the Guarantors shall perform, observe and assume those obligations, terms, conditions and liabilities.

2. The Guarantors irrevocably and unconditionally indemnify the Employer against all losses, damages, costs and expenses suffered or incurred by the Employer arising by reason of any act, default or omission on the part of the Contractor in the performance, observance and assumption of the Contractor's obligations, terms, conditions and liabilities under the provisions of the Contract and of any further agreement entered into between the Employer and the Contractor in connection with the Contract.
3. The Guarantors irrevocably and unconditionally indemnify the Employer against all losses, damages, costs and expenses suffered or incurred by the Employer arising by reason of any act, default or omission on the part of the Guarantors in the performance and observance of their obligations hereunder.
4. This Guarantee and the Guarantors' obligations hereunder shall remain in full force and effect and shall not be affected or discharged by :-
 - 4.1 any alteration (whether or not made with the Guarantors' consent) to the terms of the Contract made by agreement between the Employer and the Contractor in the extent or nature of the works or services to be carried out thereunder;
 - 4.2 any suspension of the Works or extension of time being given to the Contractor or by any other indulgence or concession to the Contractor or by any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - 4.3 any other bond, security or guarantee now or hereafter held by the Employer for all or any part of the obligations of the Contractor under the Contract or any release or waiver thereof;
 - 4.4 the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation, arrangement, compensation or other proceedings of or affecting the Contractor or his assets, or any change in the constitution or shareholdings of the Contractor;
 - 4.5 any assignment by the Contractor of any or all of the obligations, terms and conditions to be performed and observed under the Contract whether or not any such assignment has been consented to; and
 - 4.6 without prejudice to the generality of the foregoing any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision can, would or might constitute or afford a legal or equitable discharge or release of or defence to a guarantor, other than the express written release by the Employer of the Guarantors' obligations.

5. The Guarantors shall not on any ground whatsoever claim or recover by the institution of proceedings or the threat of proceedings or otherwise or claim any set-off or counterclaim against the Contractor or prove in competition with the Employer for the recovery of any payment by the Guarantors hereunder or be entitled in competition with the Employer to claim or have the benefit of any security which the Employer holds or may hold for any money or liabilities due or incurred by the Contractor to the Employer and in case the Guarantors receive any sums from the Contractor in respect of any payment by the Guarantors hereunder the Guarantors shall hold such monies in trust for the Employer so long as any sums are payable (contingently or otherwise) hereunder.
6. The Guarantors shall not be released from liability under this Guarantee by reason of the unenforceability, invalidity or termination of the Contract for any reason whatsoever.
7. The Guarantors hereby represent that, with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Guarantee, neither they nor any of their properties or assets have, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings; from the giving of relief in any legal action, suit or proceedings; from set-off or counterclaim; from the jurisdiction of any court, in the Hong Kong Special Administrative Region or in any other jurisdiction; from service of process upon them or any agent; from attachment prior to judgment or from execution or any other process for the enforcement of any judgment or other legal process in any jurisdiction; and to the extent that the Guarantors are or become entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction in respect of their obligations, liabilities or any other matter under or arising out of or in connection with this Guarantee, they do hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity. The Guarantors further consent to the giving of any relief in any legal action, suit or proceeding and to execution or any other form of process for the enforcement of any judgment against them or their assets.
8. The Guarantors shall be jointly and severally liable for their obligations under this Guarantee and all reference to the Guarantors shall take effect as references to all the Guarantors or any of them.
9. This Guarantee shall be governed by and construed in all respects according to the laws for the time being in force in the Hong Kong Special Administrative Region and the Guarantors hereby agree to submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region and irrevocably appoint the Contractor to act as their duly appointed agent for acceptance of the service of process.

IN WITNESS WHEREOF this Guarantee has been executed as a deed by the Guarantors on the date first above written.

**Works departments shall select and insert the appropriate attestation clause or clauses for each of the guarantors as specified in prevailing TC(W) on Guidance on Execution of Public Works Contracts as a Deed.*

* The italic parts are not part of the execution clause. They are for guidance or information only.

LIBRARY OF NOTES TO TENDERERS

(For Design & Build Contracts)

Index

- (a) Location of tender box
- (b) Pre-tender Meeting
- (c) Clarifications from Supervising Officer designate
- (d) Check list
- (e) Destruction of documents
- (f) Changes in status of qualifications
- (g) (Not used)
- (h)* Formula Approach
- (h)* Marking Scheme
- (h)* For use in tenders which EMSTF is eligible to bid
- (i) Procedures for opening tenders
- (j) Bid challenge (WTO GPA)
- (k) Assessment of EMSTF offers
- (l) Assessment of Section Subject to Excision
- (m) MTRC indemnity
- (n) Electronic submission
- (o) Enhanced Site Cleanliness and Tidiness
 - Daily Cleaning and Weekly Tidying
- (p) Site Safety Cycle
- (q) Sub-contractor management plan
- (r) Constraints on Supervising Officer's power
- (s) Award to Trading Fund
- (t) Regulating actions on inappropriate conducts
- (u) Land (Miscellaneous Provisions) (Amendment) Ordinance 2003
- (v) Proof of plant ownership
- (w) (Not used)
- (x) Disclosing of Cashflow Discount Rates for Tender Evaluation to Tenderers
- (y) Trip Ticket System
- (z) Systematic Risk Management

- (aa) Waste Disposal (Charges for Disposal of Construction Waste) Regulation
- (ab) Environmental management
- (ac) Non-contractual partnering
- (ad) Tree-preservation
- (ae) Professional Indemnity Insurance

NTTs (af) to (ah) for Measures on Workers Wages (for consultant administered contracts)

- (af)* Employing Site Personnel for the Contract and Payment of Site Personnel's Wages
- (ag)* Reimbursement of mandatory provident fund (MPF) contribution
- (ah)* Regulating Actions on Poor Records of Non-payment of Wages to Site Workers by Contractors

Alternative NTTs (af) to (ai) for Measures on Workers Wages (for in-house contracts)

- (af)* Employing Site Personnel for the Contract and Payment of Site Personnel's Wages
- (ag)* Reimbursement of mandatory provident fund (MPF) contribution
- (ah)* Regulating Actions on Poor Records of Non-payment of Wages to Site Workers by Contractors
- (ai)* Reimbursement of actual payment made by the Contractor to Labour Relations Officer
- (aj) Limiting the Tiers of Sub-contracting
- (ak) Regulating Action (Serious Incident or Conviction for Site Safety or Environmental Offences)
- (al) Mechanical Dump Truck Covers
- (am) Employer's Power to Reduce Contingency Sum
- (an) Breakdown of Contractor's rates and prices
- (ao) Anti-collusion
- (ap) Provision of Uniform for Site Personnel
- (aq) Dispute Resolution Advisor System
- (ar) Mandatory Employment of Graduates of the Enhanced Construction Manpower Training Scheme (ECMTS)
- (as) Contractor Cooperative Training Scheme (CCTS)
- (at) Engagement of Sub-contractors Registered From Subcontractor Registration Scheme

- (au) Pay for Safety Performance Merit Scheme (PFSPMS) as Extension to the Pay for Safety Scheme (PFSS) and the Pay for Safety and Environment Scheme (PFSES)
- (av) New Requirement in Pruning Works

* alternatives

Clause	Remarks/Guidelines
<p>(a) *[The tender box is located in the lift lobby on the Lower Ground Floor of the Central Government Offices (East Wing), 2 Tim Mei Avenue, Tamar, Hong Kong.]</p> <p>*[The tender box is located in Room 4128f on the 41st Floor, Queensway Government Offices, 66 Queensway, Hong Kong.]</p>	<p>Location of tender box. (The former and latter locations are for tenders to be opened by the tender opening teams of the Central Tender Board and Public Works Tender Board respectively.)</p> <p>* Delete as appropriate.</p> <p>SFST's memo ref. (14) in TsyB T 00/810-1/3/0 dated 12.8.2011 is relevant.</p>
<p>(b) The time and venue of the pre-tender meeting (if any).</p>	<p>Pre-tender Meeting.</p>
<p>(c) Should the tenderer for any reason whatsoever be in doubt about the precise meaning of any item or figure contained in the documents he shall seek clarification from the [<i>Insert contact details as appropriates.</i>]</p>	<p>Advice directing tenderers to submit any queries about the particulars of the tender documents to the Supervising Officer designate for the Contract (the contact telephone number for enquiries on the tender should also be included).</p>
<p>(d) (1) Before the tender is sealed and delivered to the *Government Secretariat Tender Box / *Public Works Tender Box, please check the following:</p> <p>(i) The tender has been properly signed and the signature witnessed.</p> <p>(ii) All the documents issued with or requested in the tender such as acknowledgements of receipt of corrigenda or addenda, are properly completed and attached to the tender.</p> <p>#(iii) Copies of the Form of Tender, the Pricing Part and the Technical Part of the Contractor's Proposal as required under General Conditions of Tender (GCT) Clause 4 are attached to the</p>	<p>The check-list for tenders deposited in the Government Secretariat Tender Box / Public Works Tender Box .</p> <p>* Delete as appropriate.</p> <p># Delete/Modify as appropriate</p>

Clause	Remarks/Guidelines
<p>tender. The *Central Tender Board / *Public Works Tender Board will make copies, if any, on behalf of tenderers who have failed to submit copies of such documents, and the tenderer may be asked to bear the cost of making the copy as more particularly described in GCT Clause 4(2) and (3).</p> <p>(iv) The envelope or cover holding the tender does not bear the name of the tenderer but the tender reference or contract number and the closing date should be shown on the cover.</p> <p>(2) Tenderers should also note the following:</p> <p>(i) Unless otherwise indicated, plans and drawings issued with the tender documents shall not be returned and deposited in the *Government Secretariat Tender Box / *Public Works Tender Box, such plans and drawings are to be returned to the issuing office after submission of the tender.</p> <p>(ii) Samples, if called for, should be submitted separately to the issuing office inviting the tenders with the tender reference or contract number indicated clearly on the cover, and should not be deposited in the *Government Secretariat Tender Box / *Public Works Tender Box.</p> <p>(iii) Tenders that are bulky should be wrapped properly with strong paper which is unlikely to break when the tender is being deposited in the Tender</p>	

Clause	Remarks/Guidelines
<p>Box. Tenders with a size exceeding 0.1m² and a thickness of more than 30cm should be separated into smaller parcels, each parcel to be properly labelled.</p> <p>(iv) For tender submission, either in electronic format or hard copy format, the tender opening team will make copies of the required documents on behalf of tenderers who have failed to submit the required duplicate in electronic format. The tenderer may be asked to bear the cost of making the duplicate as more particularly described in GCT Clause 4(2) and (3).</p> <p>(3) Please allow adequate time for your tender to be delivered to the *Government Secretariat Tender Box / *Public Works Tender Box. The Tender Box is closed on the tender closing date, which will be a Friday, as soon as the 12:00 noon time signal is broadcast by a local radio channel and the staff of the *Central Tender Board / *Public Works Tender Board are under strict instruction not to accept the tender that is delivered after the closing time. However, if tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force at any time between 9:00 a.m. and 12:00 noon on the tender closing date, the tender closing time will be extended to 12:00 noon on the first working day after the tropical cyclone signal No. 8 is lowered, or the black rainstorm warning signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force. In case of blockage of the public access to the location of *Government Secretariat Tender Box / *Public Works Tender Box 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 and time to a date and time to be specified in a further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable.</p>	

Clause	Remarks/Guidelines
<p>The announcements concerning “extreme conditions after super typhoons” and blockage will be made via press releases on the website of Information Services Department (http://www.info.gov.hk/gia/general/today.htm)</p> <p>In order to ensure that your tender is deposited in the Tender Box well before the closing time, you should as far as possible arrange for the tender to be deposited before the closing date.</p> <p>Tenderers may rest assured that no person is allowed access to the tenders that have been deposited in the *Government Secretariat Tender Box / *Public Works Tender Box until after the closing time when they will be removed by authorized personnel.</p>	
<p>(e) Documents of unsuccessful tenderers may be destroyed *three months ⁽¹⁾/three years⁽²⁾ after the date the contract has been awarded.</p>	<p>Advice to tenderers that documents of unsuccessful tenderers will be destroyed at certain time after the date of the contract has been awarded and the agreement signed. (See SPR 530)</p> <p>* delete as appropriate</p> <p>⁽¹⁾ for tenders not covered by WTO GPA.</p> <p>⁽²⁾ for tenders covered by WTO GPA.</p> <p>(See DEVB TCW No. 2/2014)</p> <p>Before destruction, project officers are required to check whether on-going disputes may require retention of these documents as evidence. Consult LAD(W) if in doubt.</p>
<p>(f) Tenderers should inform Government in their tender submission of any factor which might affect their status of qualifications. Government reserves the right to review the tenderers’ qualified status in the light of any new information relevant to their qualification.</p>	<p>Advice to tenderers to inform Government of any factor which might affect the tenderer’s qualified status (See SPR 330).</p>
<p>(g) (Not Used)</p>	

Clause	Remarks/Guidelines
<p><u>For Formula Approach</u></p> <p>(h) Tenders will be evaluated in accordance with the formula approach set out below. Tenderers should note DEVB TC(W) 4/2014 which sets out the use of the formula approach for tender evaluation. Tenderers shall note that Government is not bound to accept the tender with the highest overall score or any tender and may cancel the tender exercise on public interest ground. In considering the acceptance of a tender, Government will take account of all relevant circumstances including the following :-</p> <p>(i) The overall score;</p> <p>(ii) The effect of incident of payments by discounting future payments to obtain the present values and use the present values to substitute the tender prices in determining the ranking of the tenders, if the tender prices/overall scores are very close (<i>only for tenders with a tender price</i>);</p> <p>(iii) The effect of exceptionally high or low priced items;</p> <p>(iv) The tenderer's capability (financially, commercially and technically) in undertaking the contract. For the avoidance of doubt, matters such as bankruptcy, false declaration, lack of integrity, and acts of dishonesty, the latest available information and reports reflecting serious shortfall in</p>	<p>Ref: DEVB memo ref: DEVB(W)510/10/1 dated 2.5.2014.</p> <p>To be used for tender evaluation using formula approach.</p>

Clause	Remarks/Guidelines
<p>performance and the latest available information and reports relating to serious site safety or environmental incidents may be taken into account in determining whether a tenderer is fully capable of undertaking the contract; and</p> <p>(v) The effect of erratic pricing determined in accordance with Clause 14 of the General Conditions of Tender.</p> <p>[Set out the adopted formula approach (the formula and the relevant notes). Incorporate details of the Stage I Screening and all the minimum requirements where applicable and the consequences of failing Stage I.]</p>	
<p><u>For Marking Scheme</u></p> <p>(h) Tenderers should note that tenders will be evaluated in accordance with the marking scheme at Annex [<i>see below</i>]. Tenderers should note DEVB TC(W) 4/2014 which sets out the use of marking scheme for tender evaluation. Tenderers shall note that Government is not bound to accept the tender with the highest overall score or any tender and may cancel the tender exercise on public interest ground. In considering the acceptance of a tender, Government will take account of all relevant circumstances including the following :-</p> <p>(i) The overall score;</p> <p>(ii) The effect of incident of payments by discounting future payments to obtain the present values and use the present</p>	<p>Ref: DEVB memo ref: DEVB(W)510/10/1 dated 2.5.2014.</p> <p>To be used for tender evaluation using marking scheme.</p>

Clause	Remarks/Guidelines
<p>values to substitute the tender prices in determining the ranking of the tenders, if the tender prices/overall scores are very close (<i>only for tenders with a tender price</i>);</p> <p>(iii) The effect of exceptionally high or low priced items;</p> <p>(iv) The tenderer’s capability (financially, commercially and technically) in undertaking the contract. For the avoidance of doubt, matters such as bankruptcy, false declaration, lack of integrity, acts of dishonesty, the latest available information and reports reflecting serious shortfall in performance and the latest available information and reports relating to serious site safety or environmental incidents may be taken into account in determining whether a tenderer is fully capable of undertaking the contract; and</p> <p>(v) The effect of erratic pricing determined in accordance with Clause 14 of the General Conditions of Tender.</p> <p>Tenderers are required to make a technical submission in accordance with Clause 4 of the General Conditions of Tender, which will be taken into account in the tender evaluation. The submissions on technical resources and technical proposals shall form part of the Contract. The tender price submitted in the Tender is deemed to be inclusive of the execution of the Works in accordance with the submissions on technical resources and technical proposals. Tenderers</p>	

Clause	Remarks/Guidelines
<p>shall ensure that it is legally and physically possible to execute the Works in accordance with the submitted technical proposals. Should the Contractor for any reason be unable to adhere to the submissions on technical resources and technical proposals, any cost savings to the Contractor arising therefrom shall be determined by the Supervisor Officer and deducted from the Contract Sum. For the avoidance of doubt, the Contractor shall not be entitled to any additional payment or extension of time for completion for the execution of the Works in a manner which differs from the submissions on technical resources and technical proposals. Tenderers' attention is drawn to Special Conditions of Contract Clause [].</p> <p>Annex []</p> <p>MARKING SCHEME IN TENDER EVALUATION</p> <p><i>[Disclose the full marking scheme including Stage I Screening where applicable. Disclose the weighting of each attribute in the technical evaluation, the marking standard, the assessment criteria and the formula in determining the overall score. The information provided should be similar to those shown in Appendix C1 in DEVB TC(W) 4/2014, as well as any additional qualification requirements on tenderers as part of the Stage I Screening and/or any criteria of assessment specific to the needs of the contract. The consequences of failing Stage I Screening should be clearly stated.]</i></p>	

Clause	Remarks/Guidelines
<p><u>For use in tenders which EMSTF is eligible to bid</u></p> <p>Tenderers shall note that Government is not bound to accept the tender with the lowest tender price/tender value* or any tender and may cancel the tender exercise on public interest ground. In considering the acceptance of a tender, Government will take account of all relevant circumstances including the following :-</p> <ul style="list-style-type: none"> (i) The tender price/tender value*; (ii) The effect of incident of payments by discounting future payments to obtain the present values and use the present values to substitute the tender prices in determining the ranking of the tenders, if the tender prices are very close (<i>only for tenders with a tender price</i>); (iii) The effect of exceptionally high or low priced items; (iv) The tenderer's capability (financially, commercially and technically) in undertaking the contract. For the avoidance of doubt, matters such as bankruptcy, false declaration, lack of integrity, and acts of dishonesty and frequency and seriousness of convictions relating to site safety and environmental incidents may be taken into account in determining whether a tenderer is fully capable of undertaking the contract. For tenders submitted by EMSTF, the letters of "non-compliance" issued by the relevant regulatory authorities shall also 	<p>Ref: DEVB memo ref: DEVB(W)510/10/1 dated 2.5.2014.</p> <p>For use in tenders which EMSTF is eligible to bid.</p> <p>* delete as appropriate</p>

Clause	Remarks/Guidelines
<p>be treated as conviction records; and</p> <p>(v) The effect of erratic pricing determined in accordance with Clause 14 of the General Conditions of Tender.</p>	
<p>(i) Tenders will be opened by the tender opening team of the (name of tender board) at 12 noon on the date set for the close of tender or, if this has been extended, the extended date at (address).</p>	<p>Procedures for opening tenders</p> <p>Ref: DEVB TCW No. 2/2014</p>
<p>(j) This tender is covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA) and the provisions of the WTO GPA will apply to this tender. Tenderers are requested to note that a Review Body on Bid Challenges (under WTO GPA) (“the Review Body”) has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA and the relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (“the Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties upon request. In the event that a tenderer believes that a breach of the WTO GPA had occurred, the tenderer may, within 10 working days after he/she knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless, the tenderer is encouraged to seek resolution of its complaint in consultation with the procuring department before lodging a</p>	<p>Advice to tenderers of the bid challenge system under the WTO GPA (see SPR Appendix III(E)1). Only needed for tenders governed by WTO GPA.</p>

Clause	Remarks/Guidelines
<p>complaint to the Review Body. In such instances, the procuring department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.</p> <p>Tenderers are also to note that the Review Body may receive and consider a late challenge but a challenge shall not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known.</p>	
<p>(k) Tenderers should note that tenders are invited from suppliers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (“hereafter referred to as the relevant trading fund department”).</p> <p>All tenders will be evaluated on a fair basis. Every effort has been and will be made by the Government to ensure that the relevant trading fund department would not undertake both the role of consultant and contractor in this tender exercise and where appropriate, independent consultant (who may be outside or within the Government) has been and will be engaged for the preparation of the tender documents, assessment of tenders and subsequent tender supervision.</p> <p>The Electrical and Mechanical Services Trading Fund may submit a tender for this contract. A code of conduct for staff of the Electrical and</p>	<p>Advice to tenderers about assessment of EMSTF’s (Electrical and Mechanical Services Trading Fund) offer (see SPR Appendix III(E)2, FC 5/2001 & WBTC No. 25/2001).</p>

Clause	Remarks/Guidelines
<p>Mechanical Services Department seconded to other department(s) is also in place for the staff to observe to avoid conflict of interest and is available for inspection by tenderers.</p>	
<p>(l) Tenderers are advised that if, by the time a tender recommendation is made, the Government has decided not to proceed with the work contained within the Section Subject to Excision as defined in sub-clause (1) of SCC [][#], then the tender price for that Section shall be discarded and the net tender value shall be taken for the purposes of tender evaluation.[#] Insert the relevant clause number of the SCC clause on Section Subject to Excision.</p> <p>NTT(l) to be included in the Notes to Tenderers when SCC [] on Section Subject to Excision is incorporated.</p> <p>DEVB memo ref. (02B2L7-01-2) in DEVB(W) 510/10/01 dated 12.4.2011 promulgating the SCC is relevant.</p>	
<p>(m)Tenderers shall note that part of the Works will take place in the vicinity of the MTR Kowloon-Canton Railway (Hong Kong) East Rail section, Tsim Sha Tsui Extension and Ma On Shan Rail section and that the Contractor shall be required to complete and return to the MTRCL an indemnity form and a letter of undertaking in accordance with Clause [xx] of the Particular Specification of Employer's Requirements before being permitted to enter the railway zone.</p>	<p>Advice to tenderers about the requirements to complete the MTRCL's "Indemnity Form" and "Letter of Undertaking" for works within or adjacent to the MTR Kowloon-Canton Railway (Hong Kong) section, Tsim Sha Tsui Extension and Ma On Shan Rail section boundaries.</p> <p>[xx] Insert clause number.</p> <p>Ref: ETWB TCW No. 2/2005</p>

Clause	Remarks/Guidelines
	<p>This NTT is under review in consultation with MTRC following the merging of KCRC and MTRC. Works Departments are advised to consult DEVB before adopting the NTT.</p>
<p>(n) Tenderers may submit tenders in traditional hard copy format or partly in electronic format in accordance with General Conditions of Tender Clause 4. All tenders, whether in hard copy format or partly in electronic format, will be evaluated on an equal basis.</p> <p>When submitting tenders in electronic format, tenderers are reminded to digitally sign their tenders in electronic format, which shall comply with the requirements set out in Appendix [&]###.</p>	<p>Advice to tenderers about electronic submission of tender returns in removable media.</p> <p>[&] Insert the appropriate number.</p> <p>## The requirements have been set out in Appendix 4 of ETWB TCW No. 11/2005.</p> <p>Ref: ETWB TCW No. 11/2005</p>
<p>(o) Tenderers should note the Special Conditions of Contract and the Employer’s Requirements on “Site Cleanliness and Tidiness - Daily Cleaning and Weekly Tidying Up of the Site”. Separate items are stipulated in the Schedule of Rates for the cleaning and tidying up work of the Site, including Public Cleaning Areas which are required for cleaning solely by the Contractor and have to be maintained open to the general public throughout the construction period. The Employer’s Requirements shall be strictly enforced by the Supervising Officer.</p> <p>Failure to perform satisfactorily on Daily Cleaning and Weekly Tidying as specified in the Contract with non-payment for two consecutive Cleaning Days or Cleaning Week Days, OR more than two Cleaning Days or Cleaning Week Days in any rolling five</p>	<p>Advice to tenderers about enhanced site cleanliness and tidiness</p> <p>Ref: DEVB TC(W) No. 8/2010.</p>

Clause	Remarks/Guidelines
<p>Cleaning Days or Cleaning Week Days can result in a verbal warning which shall be recorded in writing. If performance is not improved, a written warning will be issued which will result in “Poor” rating in the item for “Cleanliness of Site” in the report on contractor’s performance. If the performance is still not improved, the Supervising Officer may, at his sole discretion, issue further verbal warning which shall be recorded in writing or issue further written warning which will result in “Very Poor” rating in the item for “Cleanliness of Site” in the report on contractor’s performance.</p>	
<p>(p) Tenderers should note that this Contract includes the Employer’s Requirements on Site Safety Cycle and the provision of welfare facilities for workers at construction sites. Tenderers should also note the Particular Preamble for the provision of hard-paved area for the Pre-work Activities of Site Safety Cycle and the provision of welfare facilities for workers under the Preliminary Item “Temporary Accommodation for the Contractor” [or “Contractor’s Site Accommodation in the Preliminaries” as appropriate].</p>	<p>Advice to tenderers about requirements for the implementation of Site Safety Cycle and the provisions of welfare facilities for worker.</p> <p>Ref: WBTC No. 30/2002.</p>
<p>(q) Tenderers’ attention is drawn to GCT Clause 20, Special Conditions of Contract Clauses [xx] and [yy] and Employer’s Requirements Section [zz] requiring the submission and quarterly updating of the Sub-contractor Management Plan (SMP) in the form and contents as prescribed in the Contract. Tenderers’ attention is also drawn to the requirement to monitor and ensure the implementation of and the compliance with the</p>	<p>Advice to tenderers about requirements for submission of Sub-contractor Management Plan (SMP)</p> <p>[xx], [yy], [zz] Insert clause/section nos.</p> <p>Ref: ETWB TCW No. 47/2002, as amended by DEVB memo ref. DEVB(W) 109/11/01 Pt. 9 dated 19.12.2008.</p>

Clause	Remarks/Guidelines
<p>SMP.</p> <p>Separate items are stipulated in the Schedule of Rates for the provision of, implementation of and compliance with the SMP.</p>	
<p>(r) (1) The tenderer's attention is drawn to the constraints on the Supervising Officer's powers set out in the Appendix to the Form of Tender.</p> <p>(2) In addition to the above constraints, the Supervising Officer is also required under the terms of his appointment by the Employer to:</p> <ul style="list-style-type: none"> (i) refer the details of every Variation to the Works, including the reasons for the Variation and its estimated value, to the Employer for information as soon as the Variation is ordered; (ii) refer the details of the evaluation to the Employer for information as soon as the value of a Variation to the Works has been determined; (iii) report to the Employer all claims for additional payment made by the Contractor and, except for those solely in respect of agreement of rates, refer the principles underlying his assessment of each claim, to enable the Employer to provide his view of the matter before the Supervising Officer reaches a decision; and (iv) report to the Employer all delays to the progress of the Works and, except for 	<p>Standard constraints on the power of the Supervising Officer.</p> <p>Ref: WBTC Nos. 19/2000, 20/2000 and 16/2002, ETWB TCW Nos. 56/2002A and 6/2004, and DEVB TCW No. 5/2007.</p>

Clause	Remarks/Guidelines
<p>those delays solely in respect of inclement weather conditions or the hoisting of storm signals, refer his assessment of grant of extension of time for completion, if any, to enable the Employer to provide his view of the matter before the Supervising Officer reaches a decision.</p> <p>(v)</p>	<p>[add any constraints as necessary and specified in the consultancy agreements other than the above.]</p>
<p>(s) Tenderers should note that tenders are invited from suppliers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (“hereafter referred to as the relevant trading fund department”)</p> <p>The Employer will award the Contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of others, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in this tender documentation is determined to be the most advantageous unless it is in the public interest not to do so. In the situation where the tenderer selected in accordance with the foregoing criteria is the relevant trading fund department, the Employer may make a decision in the public interest not to issue a contract and instead to enter into a service level agreement</p>	<p>This is to be used if Trading Fund is invited to tender.</p>

Clause	Remarks/Guidelines
with the relevant trading fund department.	
(t) Where the tenderer is involved in any of the inappropriate conducts as described in paragraph 5.13.1 of the Contractor Management Handbook – Revision [&] and which gives rise to reasonable suspicions as to his capability or integrity, regulating action may be taken against the tenderer in accordance with the terms thereof.	Advice to tenderers about regulating actions for withdrawal of tenders within the Tender Validity Period. [&] Insert the revision version.
(u) Tenderers should note that the Land (Miscellaneous Provisions) (Amendment) Ordinance 2003 came into operation on 1.4.2004. Tenderers should note the Special Conditions of Contract Clause [xx] [and the Particular Specification Clause **] on permits for excavation works under the Lands (Miscellaneous Provisions) Ordinance, Cap. 28.	Land (Miscellaneous Provisions) (Amendment) Ordinance 2003. Refer to ETWB's memo dated 29&31.3.2004 ref: ETWB(W) 249/38/02 [TC 13/2001] for detailed application of this clause. [xx] Insert clause number. ** Words in square brackets inserted where applicable.
(v) Tenderers' attention is drawn to Special Conditions of Contract Clause [xx] on Hired and Hire-purchase Constructional Plant. [It is anticipated that proof of ownership and where applicable written undertaking from the plant owner may be required for the following types of Constructional Plant: <i>(provide list here)</i> Tenderers shall note that the above list is not exhaustive and is given for the tenderers' reference only. The above list shall not form part of the Contract. The Supervising Officer may, in accordance with Special Condition of Contract Clause [xx], require proof of ownership and where applicable written undertaking from the plant owner for any item	Proof of plant ownership Ref. ETWB TCW No. 9/2004. # Delete the words in square brackets if it is not considered practicable to produce a list of Constructional Plant for inclusion in the tender documents. [xx] Insert clause number.

Clause	Remarks/Guidelines										
of Constructional Plant which may or may not be of a type set out in the above list.] [#]											
(w) Not Used											
<p>(x) A programme for the purpose of conducting a net present value analysis in accordance with Note (h) of these Notes to Tenderers is included in the tender documents <i>[state appropriate location]</i>. This programme is for tender assessment only and will not form part of the Contract.</p> <p>The cashflow discount <i>*[rate/rates]</i> to be used for the aforesaid net present value analysis shall be <i>*[a% per annum/as follows:</i></p> <table border="0" data-bbox="236 967 833 1272"> <thead> <tr> <th data-bbox="236 967 427 1003"><u>Calendar Year</u></th> <th data-bbox="549 967 673 1003"><u>Cashflow</u></th> </tr> <tr> <th colspan="2" data-bbox="485 1034 833 1070"><u>Discount Rate (Per annum)</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="236 1102 427 1137"><i>[Current year]</i></td> <td data-bbox="612 1102 657 1137">x%</td> </tr> <tr> <td data-bbox="236 1169 427 1205"><i>[Next 4 years]</i></td> <td data-bbox="612 1169 657 1205">y%</td> </tr> <tr> <td data-bbox="236 1236 587 1272"><i>[6th-10th year, if applicable]</i></td> <td data-bbox="612 1236 657 1272">z%</td> </tr> </tbody> </table> <p>The cashflow discount <i>*[rate/rates]</i> provided herein <i>*[is/are]</i> for tender assessment only and will not form part of the Contract. The cashflow discount <i>*[rate/rates]</i> shall not be taken as the economic forecasts by the Government.</p> <p>The Government makes no warranties, representations or statements (whether express or implied) of any kind whatsoever in relation to the programme and the cashflow discount <i>*[rate/rates]</i> provided herein or any part thereof, including any warranties,</p>	<u>Calendar Year</u>	<u>Cashflow</u>	<u>Discount Rate (Per annum)</u>		<i>[Current year]</i>	x%	<i>[Next 4 years]</i>	y%	<i>[6th-10th year, if applicable]</i>	z%	<p>Revised Clause (x) in Library of Notes to Tenderers – Disclosing of Cashflow Discount Rates for Tender Evaluation to Tenderers. Ref. DEVB(W) 545/14/01 dated 19 .4.2010.</p> <p>Net present value (NPV) analysis. This is to be included for tenders with a tender price in conjunction with NTT (h)(ii).</p> <p>The programme should indicate some guidance notes on the allocation of preliminary costs and the contingencies throughout the contract period to be used in NPV analysis.</p> <p>The cashflow discount rate/rates shall be based on the real discount rate (i.e. a%) for contracts subject to price fluctuation adjustment or the nominal discount rates (i.e. x%, y% and z%) for contracts not subject to price fluctuation adjustment, applicable on the first publication date of tender invitation or, where the tender invitation is not published⁺, the date of issuance of the tender invitation, as announced in Secretary for Financial</p>
<u>Calendar Year</u>	<u>Cashflow</u>										
<u>Discount Rate (Per annum)</u>											
<i>[Current year]</i>	x%										
<i>[Next 4 years]</i>	y%										
<i>[6th-10th year, if applicable]</i>	z%										

Clause	Remarks/Guidelines
<p>representations or statements in respect of the accuracy, completeness, appropriateness and/or sufficiency of the same.</p>	<p>Services and the Treasury's memo to the departmental STA around March each year.</p> <p>*[] – Works departments should include the former for contracts subject to price fluctuation adjustment and the latter for contracts not subject to price fluctuation adjustment, and delete the one which is not applicable accordingly.</p> <p>+ The tender invitation is not published where prequalified tendering or single/restricted tendering is adopted.</p>
<p>(y) The unauthorised disposal of construction and demolition (C&D) materials from the Site to any place other than that designated in the Contract or approved or directed by the Supervising Officer is forbidden. The tenderer shall refer to the relevant part of the Employer's Requirements for detailed requirements on dealing with disposal of C&D materials. Failure to observe the requirements will result in regulating action. The tenderer is referred to the DEVB TC(W) No. 6/2010 on the "Trip Ticket System for Disposal of Construction and Demolition Materials".</p>	<p>Trip Ticket System Ref: DEVB TCW No. 6/2010</p>
<p>(z) Tenderers should note that Systematic Risk Management in accordance with ETWB TCW No. 6/2005 and ETWB Risk Management User Manual has been carried out for the Works in the Contract and the risks that the Contractor is required to bear and be responsible for include without limitation those shown in the risk treatment plans attached in Appendix [].</p>	<p>Systematic Risk Management Ref: ETWB TCW No. 6/2005</p>

Clause	Remarks/Guidelines
<p>Tenderers should note that the list is not exhaustive and is given for the tenderers' reference only. The list does not in anyway release the Contractor from any of his obligations under the Contract. The list shall not form part of the Contract.</p>	
<p>(aa) Tenderers should note that the Waste Disposal (Charges for Disposal of Construction Waste) Regulation made under the Waste Disposal Ordinance Cap 354 has come into operation since 1 December 2005. Pursuant to Section 9 of the Regulation, the Contractor who is awarded this contract should make an application to the Director of the Environmental Protection Department to establish a billing account within 21 days after being awarded the contract. The Contractor shall ensure that the billing account is used for paying any prescribed charge in respect of construction waste generated from the construction works under the contract. Non-compliance of these provisions are offences under the Regulation.</p>	<p>Waste Disposal (Charges for Disposal of Construction Waste) Regulation</p> <p>The notes are applicable to contracts with value \geq \$1M. Please contact the Departmental Representative for advice regarding those contracts with value < \$1M.</p> <p>Ref: DEVB memo ref. (00W45-01-9) in ETWB(W) 810/72/01 dated 21.11.2005</p>
<p>(ab) Tenderers should note the Special Conditions of Contract and the Employer's Requirements on "Environmental Management" and "Environmental Management Plan" for minimising nuisances and waste generation from the Works. In addition, tenderers should note that all Constructional Plant powered by diesel fuel working on this Contract must use ultra low sulphur diesel.</p>	<p>Environmental Management</p> <p>Ref: ETWB TCW No. 19/2005, with subsequent amendment by memo ref. (014G7-01-1) in ET WB(W)517/91/01 dated 19.6.2006</p>
<p>(ac) Tenderers' attention is drawn to the Employer's intention to adopt non-binding post-award project partnering with participation of all stakeholders of the project. If the non-binding</p>	<p>Non-contractual Partnering</p> <p>Ref: DEVB Practice Note on Adoption of Non-contractual Partnering in Public Works Contracts, June 2006</p>

Clause	Remarks/Guidelines
<p>post-award project partnering is implemented, the costs associated with the partnering workshops including the services of an independent professional facilitator are to be shared equally between the Employer and the successful tenderer.</p>	<p>Ref: DEVB memo ref. (013YR-01-4) in ETWB(W) 506/30/02 dated 8.6.2006.</p> <p>The Practice Note is available in Appendix 5.28, Chapter 5 of the Project Administration Handbook.</p>
<p>(ad) Tenderers should note that the Employer's Requirements Clause [xx] requires the Contractor to assign a competent member of the site supervisory staff to oversee and supervise the tree works under the Contract, and that such a person should possess the practical experience as required under the Employer's Requirements Clause.</p>	<p>An optional NTT and apply where appropriate.</p> <p>Tree Preservation</p> <p>[xx] Insert clause number.</p> <p>Ref: DEVB TCW No. 10/2013</p>
<p>(ae) Tenderers' attention is drawn to Special Conditions of Contract Clause [xx] regarding the professional indemnity insurance requirement under the contract. Please also refer to DEVB TCW No. 9/2007 for details of the above.</p>	<p>Professional Indemnity Insurance</p> <p>[xx] Insert clause number.</p> <p>Ref: DEVB TCW No. 9/2007</p>
<p>(The following NTT clauses (af) to (ah) are related to Measures on Workers Wages for consultant administered contracts)</p>	<p>Ref: DEVB memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010.</p> <p>[xx], [zz] Insert clause numbers.</p> <p>[X] Insert Section no.</p>
<p>(af) Tenderers' attention is drawn to Special Conditions of Contract Clause [zz] requiring all Site Personnel engaged in the Contract to be employed under written employment contracts with either the Contractor or his sub-contractors (irrespective of the tiers) including *specialist sub-contractors and *Designated/Nominated Sub-contractors. Self-employed persons shall be subject to other requirements of the Contract. Tenderers' attention is also drawn to the new</p>	<p>Employing Site Personnel for the Contract and Payment of Site Personnel's Wage</p> <p>* Delete/modify as appropriate</p>

Clause	Remarks/Guidelines
<p>requirement and arrangement on Payment of Site Personnel's Wages set out in Employer's Requirements Section [X]. In the event the Contractor or his sub-contractors including *specialist sub-contractors and *Designated/ Nominated Sub-contractors fail to pay wages to their Site Personnel, the Employer may pay any wages in arrears to the Site Personnel and recover the same from any monies due to the Contractor under the Contract.</p>	
<p>(ag) The Tenderers' attention is drawn to Special Conditions of Contract Clause [xx] on the arrangements in the reimbursement of the Contractor's and sub-contractor's contribution to MPF.</p>	<p>Reimbursement of mandatory provident fund (MPF) contribution</p>
<p>(ah) Tenderers' attention is drawn to the new regulating actions introduced in the Contractor Management Handbook (CMH) on poor records of non-payment of wages to site workers by contractors. These are repeated here for ease of reference:-</p> <p>“CMH Section 5.1.3 – Circumstances which may lead to the taking of regulation actions, include, but are not limited to: -</p> <p>Add (xviii) – poor records on non-payment of workers' wages, including those of his sub-contractors. A “non-payment of workers' wages” record is defined as a claim filed in the office of the Labour Department and proof thereof is furnished to the satisfaction of the Commissioner for Labour, in which the Contractor or any of his sub-contractors, irrespective of tiers, is liable.</p> <p>CMH Section 5.2.3(c) – Circumstances warranting mandatory suspension from</p>	<p>Regulating Actions on Poor Records of Non-payment of Wages to Site Workers by Contractors</p>

Clause	Remarks/Guidelines
<p>tendering in all categories (A time limit for review to be set in all cases but should not be longer than six months):-</p> <p>Add (vii) – poor records on non-payment of workers’ wages, including those of his sub-contractors. A “non-payment of workers’ wages” record is defined as a claim filed in the office of the Labour Department and proof thereof is furnished to the satisfaction of the Commissioner for Labour, in which the Contractor, or any of his sub-contractors, irrespective of tiers, is liable.”</p>	
<p>(The following alternative NTT clauses (af) to (ai) related to Measures on Workers Wages are for in-house contracts)</p>	<p>Ref: DEVB memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010.</p> <p>[xx], [zz], [vv] Insert clause numbers.</p> <p>[X] Insert Section no.</p>
<p>(af) Tenderers’ attention is drawn to Special Conditions of Contract Clause [zz] requiring all Site Personnel engaged in the Contract to be employed under written employment contracts with either the Contractor or his sub-contractors (irrespective of the tiers) including *specialist sub-contractors and *Designated/Nominated Sub-contractors. Self-employed persons shall be subject to other requirements of the Contract. Tenderers’ attention is also drawn to the new requirement and arrangement on Payment of Site Personnel’s Wages set out in Employer’s Requirements Section [X]. In the event the Contractor or his sub-contractors including *specialist sub-contractors and *Designated/Nominated Sub-contractors fail to pay wages to their Site Personnel, the Employer may pay any wages in arrears to the Site Personnel and</p>	<p>Employing Site Personnel for the Contract and Payment of Site Personnel’s Wages</p> <p>* Delete/modify as appropriate</p>

Clause	Remarks/Guidelines
<p>recover the same from any monies due to the Contractor under the Contract.</p>	
<p>(ag) The Tenderers' attention is drawn to Special Conditions of Contract Clause [xx] on the arrangements in the reimbursement of the Contractor's and sub-contractor's contribution to MPF.</p>	<p>Reimbursement of mandatory provident fund (MPF) contribution</p>
<p>(ah) Tenderers' attention is drawn to the new regulating actions introduced in the Contractor Management Handbook (CMH) on poor records of non-payment of wages to site workers by contractors. These are repeated here for ease of reference:-</p> <p>“CMH Section 5.1.3 – Circumstances which may lead to the taking of regulation actions, include, but are not limited to: -</p> <p>Add (xviii) – poor records on non-payment of workers' wages, including those of his sub-contractors. A “non-payment of workers' wages” record is defined as a claim filed in the office of the Labour Department and proof thereof is furnished to the satisfaction of the Commissioner for Labour, in which the Contractor or any of his sub-contractors, irrespective of tiers, is liable.</p> <p>CMH Section 5.2.3(c) – Circumstances warranting mandatory suspension from tendering in all categories (A time limit for review to be set in all cases but should not be longer than six months):-</p> <p>Add (vii) – poor records on non-payment of workers' wages, including those of his sub-contractors. A “non-payment of workers' wages” record is defined as a claim filed in the</p>	<p>Regulating Actions on Poor Records of Non-payment of Wages to Site Workers by Contractors</p>

Clause	Remarks/Guidelines
<p>office of the Labour Department and proof thereof is furnished to the satisfaction of the Commissioner for Labour, in which the Contractor, or any of his sub-contractors, irrespective of tiers, is liable.</p>	
<p>(ai) The Tenderers' attention is drawn to Special Conditions of Contract Clause [vv] on reimbursement of Contractor's actual payment and payment of Contractor's associated expenses in providing Labour Relations Officers for the Contract. The Contractor shall be reimbursed the actual payment made to Labour Relations Officers as certified by the Supervising Officer in accordance with General Conditions of Contract Clauses 78 & 79 and shall also be paid a percentage fee of the actual payment made to Labour Relations Officers as certified by the Supervising Officer in accordance with General Conditions of Contract Clauses 78 & 79 as the Contractor's associated expenses in providing Labour Relations Officers. The rate of the percentage fee is as inserted by tenderers in [] of the tender document and is to be used for arriving at the Provisional Sum for the Contractor's associated expenses in providing Labour Relations Officers.</p>	<p>Reimbursement of Contractor's actual payment and payment of Contractor's associated expenses in providing Labour Relations Officers</p>
<p>(aj) The Tenderers' attention is drawn to the provisions under Special Conditions of Contract Clause [xx] which impose certain restrictions on sub-contracting.</p>	<p>To notify tenderers of the SCC clause promulgated in DEVB memos ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008, ref (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010 and 6.9.2013.</p> <p>[xx] Insert clause number.</p>

Clause	Remarks/Guidelines
<p>(ak) Tenderers' attention is drawn to the Special Conditions of Tender Clause [xx] requiring a statement of “no conviction” or a statement of all convictions under the Factories and Industrial Undertakings Ordinance (Cap 59), the Occupational Safety and Health Ordinance (Cap 509), the Shipping and Port Control Ordinance (Cap 313), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), the Air Pollution Control Ordinance (Cap 311), the Noise Control Ordinance (Cap 400), the Waste Disposal Ordinance (Cap 354), the Water Pollution Control Ordinance (Cap 358), the Dumping at Sea Ordinance (Cap 466), the Ozone Layer Protection Ordinance (Cap. 403), the Environmental Impact Assessment Ordinance (Cap. 499), and the Hazardous Chemicals Control Ordinance (Cap. 595). The statement need take no special form.</p>	<p>Regulating Action against Contractors for Occurrence of a Serious Incident or Conviction for Site Safety or Environmental Offences</p> <p>Ref: DEVB TCW No. 3/2009</p> <p>[xx] Insert clause number.</p>
<p>(al) (i) Tenderers’ attention is drawn to Employer’s Requirements Section [X] on mechanical dump truck covers.</p> <p>(ii) Tenderers should note that there are no separate items in the Schedule of Rates for measurement of use of mechanical dump truck covers and that, in line with the General Preambles to the Schedule of Rates, the rates in the Schedule of Rates shall cover, inter alia, provision of mechanical covers for dump trucks.</p>	<p>Mechanical Dump Truck Covers</p> <p>Ref: DEVB memo ref. DEVB(W) 810/83/09 dated 24.9.2010.</p> <p>For use in capital works contracts with Pay for Safety and Environment Scheme and term contracts with Pay for Safety Scheme to be tendered on or after 1.11.2010.</p> <p>[X] Insert Section no.</p>
<p>(am) Tenderers’ attention is drawn to General Conditions of Tender Clause [xx] on “Reduction of Contingency Sum”.</p>	<p>This is to be used where the General Conditions of Tender on "Reduction of Contingency Sum" is included.</p>

Clause	Remarks/Guidelines
	<p>Ref: DEVB memo ref. DEVB(W) 546/70/01 dated 8.8.2011.</p> <p>[xx] Insert clause number.</p>
<p>(an) The Tenderers' particular attention is drawn to the Employer's Requirements Part IV – Requirements for breakdown of Contractor's rates and prices regarding the adjustment of the quantities.</p>	<p>This is to be used by works departments where appropriate.</p>
<p>(ao) Tenderers' attention is drawn to the anti-collusion provisions in GCT Clause 26.</p>	<p>Ref: (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.</p>
<p>(ap) Tenderers should note Special Conditions of Contract Clause [xx] and Particular Specification Clause [xx] on "Uniform and Associated Facilities*". A separate pre-priced item is stipulated in the breakdown of the Contractor's rates and prices for the provision of uniform to Contractor's Site Personnel (as defined in Special Conditions of Contract Clause [xx]) and self-employed workers. Monthly audit(s) will be conducted to determine the Non-compliance Rate for Uniform in accordance with the Particular Specification and the monthly instalment payments for the pre-priced item will be subject to adjustment based on the Non-compliance Rate for Uniform in accordance with Special Conditions of Contract Clause [xx].</p>	<p>Ref: DEVB(Trg) 133/3(7) dated 11.5.2011.</p> <p>[xx] Insert clause number.</p> <p>* delete as appropriate.</p>
<p>(aq) (i) The Contract incorporates the Dispute Resolution Advisor System as stipulated in the Special Conditions of Contract Clause [xx].</p> <p>(ii) A list of candidates for the position of</p>	<p>Ref: DEVB memo ref. (02BBG-01-4) in DEVB(W) 506/00/01 dated 24.3.2011.</p> <p>[xx] Insert clause number.</p>

Clause	Remarks/Guidelines
<p>Dispute Resolution Advisor (“DRA”) will be sent to the Contractor after the award of the Contract.</p>	
<p>(ar) Tenderers’ attention is drawn to Special Conditions of Contract Clause [xx] requiring the Contractor to, within 6 months from the date for commencement of the Works / date for commencement of construction of the Works / date for commencement of the Contract Period*, employ for at least 12 months a minimum total number of ECMTS Graduates trained by the Construction Industry Council under its Enhanced Construction Manpower Training Scheme. ECMTS Graduates employed by sub-contractors to work on the Site in accordance with the provisions of Special Conditions of Contract Clause [xx] shall be counted towards the said minimum total number.</p>	<p>Ref: DEVB memo ref. DEVB(Trg) 133/4(9) dated 7.12.2012.</p> <p>[xx] Insert clause number.</p> <p>* Delete as appropriate</p>
<p>(as) Tenderers’ attention is drawn to Special Conditions of Contract Clause [X] on the implementation of the Contractor Cooperative Training Scheme (CCTS), requiring the employment and training of CCTS Trainees in building and civil work trades *[and CCTS Trainees in electrical and mechanical work trades], and the employment of CCTS Graduates.</p>	<p>Ref: SDEV’s memos ref. DEVB(Trg)133/4(9) dated 5.8.2013 and 16.8.2013.</p> <p>[X] Insert clause number.</p> <p>* Delete as appropriate</p>
<p>(at) “Tenderers’ attention is drawn to the Special Condition of Contract [x] requiring the engagement of sub-contractors who are registered under the respective trades available in the Primary Register of the Subcontractor Registration Scheme.”</p>	<p>Ref: SDEV’s memo ref: (02KJ8-01-4) in DEVB(W) 510/94/02 dated 22.7.2013.</p>

Clause	Remarks/Guidelines
<p>(au) Tenderers shall note that besides the task-tied payment items for the Pay for Safety Scheme (PFSS)*/Pay for Safety and Environment Scheme (PFSES)*, performance-tied payment items for the newly introduced Pay for Safety Performance Merit Scheme (PFSPMS) are also included in this Contract. Tenderers shall pay attention to the Special Conditions of Contract Clause SCC # “Pay for Safety Performance Merit Scheme (PFSPMS)”, Measurement Rules for the Performance-tied Payment Items of the PFSPMS and Schedule of Performance-tied Payment Items of the PFSPMS in Appendix # to the Special Conditions of Contract and the Particular Specification (PS) Clause # of “Particular Specification for Site Safety”** for the operation of the PFSPMS.</p>	<p>Ref: SDEV’s memo ref: (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013.</p> <p>For use in all capital works contracts which adopt PFSES/PFSS and with tenders to be invited on or after 1.2.2014.</p> <p>(*Delete as appropriate.)</p> <p>(**Amend as appropriate.)</p> <p>(# Insert as appropriate.)</p>
<p>(av) Tenderers should note that the Particular Specification Clause ___# requires the Contractor to assign worker(s) with relevant qualification to undertake tree pruning works involving the use of chainsaw.</p>	<p>Ref: SDEV’s memo ref: (36) in DEVB(GLTM) 302/5/1 dated 17.12.2014. The NTT shall be adopted where the required PS is incorporated.</p> <p>(# Insert as appropriate.)</p> <p>For use in new maintenance contracts to be invited from April 2015 onwards.</p> <p>For use in all other contracts to be invited from April 2016 onwards.</p>

SPECIMEN SPECIAL CONDITIONS OF CONTRACT

INDEX

SPECIMEN SPECIAL CONDITIONS OF CONTRACT

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
1	Care of Works	21(1)	D&B Admin. Procedures (1999 Edition)	DECEMBER 1999
2	Definitions	1(1)	ETWB TCW No. 18/2000A WBTC No. 18/2000	FEBRUARY 2003
3	(Not Used)	-	-	-
4	Duties and powers of the Supervising Officer's representative	2	WBTC 18/2000	SEPTEMBER 1999
5A & 5B	Quality assurance for structural concrete	-	ETWB TCW No. 57/2002	DECEMBER 2002
6	Sectional commencement	1, 21, 47, 48 & 49	WBTC No. 12/93	MARCH 1993
7	Section Subject to Excision	47	LWBTC No. 6/89 WBTC No. 5/2000 SDEV's memo ref.(02B2H-01-5) in DEVB(W) 510/10/01 dated 9.3.2011	MARCH 2011
8	Delayed possession of Portions of the Site	48	WBTC 18/2000	MARCH 1988
9A, 9B, 9C & 9D	Deletion of extensions of time for inclement weather	50	WBTC No. 26/98 WBTC No. 18/2000	SEPTEMBER 1999

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
10A & 10B	Deletion of contract price & fluctuations	89	ETWB TCW No. 21/2003 SDEV's memo ref. DEVB(PS) 107/3 dated 18.7.2008	JULY 2008
11	Care of the Works insurance	21	ETWB TCW No. 7/2005	JUNE 2005
12	Third party insurance	22	ETWB TCW No. 7/2005	JUNE 2005
13	Third party claims in respect of damage on and to agricultural lands	22(1) 83	WBTC No. 28/92	SEPTEMBER 1992
14A to 14C	Sub-contracting	4	S for W's memo ref. WB(W) 209/32/110 dated 23.3.2001 and 2.5.2001	MARCH 2001
15	(Not Used)			
16	Definitions (Landscape Works)	1(1)	WBTC 18/2000	MARCH 1988
17	(Not Used)			
18	Completion of Landscape Softworks and commencement of Establishment Works	53(5)(b)	-	MARCH 1988
19	Refuse containment booms	82	WBTC No. 10/92	MAY 1992
20	(Not Used)			
21	(Not Used)			

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
22	Works in the vicinity of the Kowloon-Canton Railway	-	ETWB TCW No. 2/2005	FEBRUARY 2005
23	Safety Plan	-	WBTC No. 18/2000 (from WBTC No. 32/99, WBTC No. 21/99, WBTC No. 30/2000 & WBTC No. 30/2002) SCC provisions in Appendix II(a) to Chapter 3 of Contractor Site Safety Manual Ref: "Revision to Contractor Site Safety Manual" in SDEV memo ref. (01S44) in DEVB(W) 516/71/01 dated 28.5.2008	MAY 2008
24	Independent Safety Audit	1(1)	WBTC No. 32/99	DECEMBER 1999
25	Qualified Tradesmen and Intermediate Tradesmen	1(1), 18(1), 39(1)	WBTC No. 13/2002 SDEV's memo ref. (01M97-01-4) in DEVB(PS)105/64/1 on 17.12.2007	DECEMBER 2007
26	(Not Used)			
27	Assessment of liquidated damages	52	ETWB TCW No. 4/2003	JANUARY 2003
28	(Not Used)			
29	(Not Used)			
30	Passes	41	D&B Admin. Procedures (1999 Edition)	DECEMBER 1999
31	Contractors' joint venture	-	ETWB TCW No. 50/2002 (as amended in SETW's memo ref. (01656-01-3) in ETWB(W) 511/34/01 dated 4.8.2006	AUGUST 2006
32	Year 2000 warranty for Contract Computer Facilities	-	ETWB TCW No. 12/2004	JUNE 2004

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
33A & 33B	Security or sureties	12	WBTC No. 10/97 10/97A	AUGUST 1997
34	(Not Used)			
35	Disturbance to the progress of the Works	63	WBTC 18/2000	JANUARY 2000
36	Ordering variation during the Maintenance Period/Defects Liability Period	60	S for W's memo ref. WB(W) 209/32/110 dated 15.5.2001 & 17.5.2001	MAY 2001
37	Interim certification after determination	81	WBTC No. 11/2001	MAY 2001
38A & 38B	Completion date of certificate of completion -Tests on completion of the Works	1(1), 21(1), 50(1) & 53	S for W's memo ref. WB(W) 250/32/32 dated 6.7.2001	JULY 2001
39	Power to accept unremedied defect	46	S for W's memo ref. WB(W) 250/32/32 dated 12.9.2001	SEPTEMBER 2001
40	Contract information to be used for cost estimation or cost analysis for the Employer's other works	8	WBTC No. 3/2002	JANUARY 2002
41	Site cleanliness and tidiness	38	DEVB TCW No. 8/2010	NOVEMBER 2010
42	Works Programmes and Monthly progress reports	16	D&B Admin. Procedures (1999 Edition)	DECEMBER 1999
43	Computer aided drafting standard for Works Projects	-	ETWB TCW No. 38/2002 & 38/2002A	MAY 2005

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
44	Management of Sub-contractors	4	ETWB TCW No. 47/2002 As modified by “Enhancement Measures for Subcontractor Management Plan (SMP)” in SDEV’s memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19.12.2008	DECEMBER 2008
44A	Payment for Sub-contractor Management Plan	-	ETWB TCW No. 47/2002 As modified by “Enhancement Measures for Subcontractor Management Plan (SMP)” in SDEV’s memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19.12.2008	DECEMBER 2008
45	Joint and several liability of partners and unincorporated joint venture participants	11	ETWB TCW No. 5/2003	JANUARY 2003
46	Milestone payment	1, 46, 48, 52, 56, 58, 63, 78, 79, 88	D&B Admin. Procedures (1999 Edition)	DECEMBER 1999
47	Employment of Technician Apprentices and Building & Civil Engineering Graduates by Contractors of Public Works Contracts	-	ETWB TCW No. 12/2003 (use when contract sum exceeds \$50M)	JUNE 2003
48	Land (Miscellaneous Provisions) (Amendment) Ordinance – Permits for Excavation Works under Land (Miscellaneous Provisions) Ordinance Cap. 28		SDEV’s memo ref. (02B0P-01-7) in DEVB(W) 510/70/01 dated 18.3.2011	March 2011
49	Confidentiality clauses	8	ETWB TCW No. 29/2003	OCTOBER 2003
50	Information not to be divulged	8	ETWB TCW No. 3/2004	JANUARY 2004
51	Ethical commitment	37	ETWB TCW No. 3/2004	JANUARY 2004
52	Contractor’s interim statements	78	ETWB TCW No. 3/2004	JANUARY 2004

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
53	Acknowledgement of being notified of the ethical requirements	-	ETWB TCW No. 3/2004	JANUARY 2004
54	Marking Scheme in Tender Evaluation New D&B Procedures		D&B Administrative Procedures 2014	AUGUST 2014
55	Settlement of disputes	86	SDEV's memo ref. DEVB(W) 505/17/01 dated 26.6.2012	JUNE 2012
56	Hired and hire-purchase constructional plant	74	ETWB TCW No. 9/2004	MAY 2004
57	(Not Used)			
58	Extension of time for unforeseen utility work	50	ETWB TCW No. 17/2004	JUNE 2004
59	Right of Government to terminate for convenience	-	ETWB TCW No. 23/2004	JULY 2004
60	Changes in Law	1(1), 29, 30, 50	ETWB TCW No. 23/2004 and SDEV's memo ref. DEVB(W) 510/10/01 dated 20.12.2012	JULY 2004
61A to 61F	Preservation and Protection of Old and Valuable Trees	1(1), 4	DEVB TCW No. 10/2013 and the Cyber Manual for Greening under ETWB TC(W) No. 11/2004	DECEMBER 2013
62	Systematic Risk Management	-	ETWB TCW No. 6/2005	JUNE 2005
63	Environmental Management	-	ETWB TCW No. 19/2005 + Interim Guidance Notes (SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006)	JUNE 2006

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
64	Use of ultra low sulphur diesel	-	ETWB TCW No. 19/2005 + Interim Guidance Notes (S for ETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006)	JUNE 2006
65A & 65B	Definition and Interpretation	1(1)	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010	JULY 2010
66	Reimbursement of Contractor's contribution to the Mandatory Provident Fund for his Site Personnel	-	SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012	NOVEMBER 2012
67	Reimbursement of Contractor's actual payment and payment of Contractor's associated expenses in providing Labour Relations Officers	-	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010	JULY 2010
68A & 68B	Payment of wages of Site Personnel	-	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010	JULY 2010
69A & 69B	Contractor's management team	-	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010	JULY 2010
70	Sub-contract conditions	-	SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012	NOVEMBER 2012
71	Limiting the tiers of sub-contracting	-	SDEV's memo ref. (01TC9-01-5) in DEVB(W)510/17/01 dated 17.7.2008	JULY 2008
72	Professional Indemnity Insurance	-	DEVB TCW No. 9/2007 & SDEV's memo ref. (02245-01-13) in DEVB(W)510/34/01 of 6.10.2009	OCTOBER 2009
73	Disposal Ground	-	DEVB TCW No. 6/2010	SEPTEMBER 2010
74	Dayworks	60	D&B Admin. Procedures (1999 Edition)	DECEMBER 1999

<u>SCC Ref.</u>	<u>Content</u>	<u>Related GCC</u>	<u>Related TC/Memo/Reference</u>	<u>Date of Issue of SCC/Memo</u>
75	Bond for Off-Site Manufacture of Major Prefabrications Item(s)	21, 72, 78, 79	SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 20.7.2012	JULY 2011
76A & 76B	Release of Retention Money	79	SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011	MARCH 2011
77	Uniform and Associated Facilitates for Contracts	-	SDEV's memo ref. DEVB(Trg)13/3(7) dated 11.5.2011	MAY 2011
78	Dispute Resolution Advisor System	-	SDEV's memo ref. (102BBG-01-4) in DEVB(W) 506/00/01 dated 24.3.2011	MARCH 2011
79	Mandatory Employment of Graduates of the Enhanced Construction Manpower Training Scheme (ECMTS)	-	SDEV's memo ref. DEVB(Trg)13/3(9) dated 7.12.2012	JULY 2012
80A & 80B	Implementation of the Contractor & Cooperative Training Scheme (CCTS)	-	SDEV's memos ref. DEVB(Trg)133/4(9) dated 5.8.2013 and 16.8.2013	AUGUST 2013
81	Extension of Time due to Labour Shortage		DEVB TC(W) No. 5/2013	JULY 2013
82	Engagement of Sub-contractors Registered from Subcontractor Registration Scheme	4	SDEV's memo ref: (02KJ8-01-4) in DEVB(W) 510/94/02 dated 22.7.2013	JULY 2013
83	Pay for Safety Performance Merit Scheme (PFSPMS)		SDEV's memo ref: (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013	NOV 2013

SCC 1	<p>General Conditions of Contract Clause 21 is amended by inserting after "commencement" and before "of" at line one of sub-clause (1) the following :</p> <p>"of construction".</p>	Care of the Works	D&B Admin. Procedures (ver1999) SCC 38
SCC 2 (1)	<p>General Conditions of Contract Clause 1(1) is amended by adding the following :</p> <p>"Public Office" means an office of emolument under the Government of the Hong Kong Special Administrative Region, whether such office be permanent or temporary.</p> <p>"utility undertaking" means any person, undertaking, company, organization or government department and includes any office, division, sub-division, section, sub-section, unit or group within a government department which engages in or is so engaged in supplying or providing utilities (including electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the Works under the Contract, including the contractors and sub-contractors of any tier of such person, undertaking, company, organization or government department."</p>	Definitions	<p>WBTC No. 18/2000 SCC2(2)</p> <p>EWTB TC(W) No. 18/2000A</p>
SCC 3	(Not Used)		
SCC 4	<p>General Conditions of Contract Clause 2(1) is amended by adding the following sub-clause (h):</p> <p>(h) Where a person is appointed to be the Supervising Officer or the Supervising Officer's Representative as the case may be and is described as the holder for the time being of a Public Office it is declared that any person for the time being lawfully discharging the functions of that Public Office or any part of such functions and any person appointed to act in or perform the duties of such Public Office or any part of such duties for the time being may carry out the duties and may exercise the powers of the Supervising Officer or the Supervising Officer's Representative as the case may be.</p>	Duties and powers of the Supervising Officer and the Supervising Officer's Representative	WBTC 18/2000 SCC 4A

Specimen Special Conditions of Contract
Marginal Notes Guidelines

<p>SCC 5A All structural concrete for incorporation into the Works shall be produced at a certified plant and supplied by a concrete supplier certified under the Quality Scheme for the Production and Supply of Concrete by Hong Kong Quality Assurance Agency or other certification bodies accredited by the Hong Kong Accreditation Service.</p>	<p>Quality assurance for structural concrete</p>	<p>ETWB TCW No. 57/2002</p> <p>For all public works contracts (except for those located at remote areas such as outlying islands or where the volume of structural concrete involved is less than 50m³)</p>
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OR

<p>SCC 5B The Contractor shall submit to the Supervising Officer for approval within 30 days of the date of the Employer's letter of acceptance of the Tender a quality system for production and supply of structural concrete for incorporation into the Works. The quality system shall contain detailed information as required by the Quality System for Production and Supply of Structural Concrete at Annex [][#] attached. All structural concrete shall be produced and supplied in accordance with the quality system approved by the Supervising Officer.</p>	<p>Quality assurance for structural concrete</p>	<p>For all other contracts including structural concrete</p> <p><i>#See Annex 1 to Appendix A of ETWB TCW No. 57/2002.</i></p>
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<p>SCC 6 (1) General Conditions of Contract Clause 1 is amended by replacing the meaning of the word "Section" by the following :</p> <p>"Section" means a part of the Works identified as such and more particularly described in the Employer's Requirements for which a date for commencement of construction of the Works is stipulated in the Contract and/or a time for completion is stipulated in the Appendix to the Form of Tender.</p> <p>(2) General Conditions of Contract Clause 47 is amended by by adding the following :</p> <p>(3) Notwithstanding sub-clause (2) of this Clause, the Contractor shall commence the construction of Section ___ of the Works [][#].</p>	<p>Sectional commencement</p>	<p>WBTC No. 12/93</p> <p>The definition of "Section" in other SCC shall be deleted when this SCC 6 is used</p>
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[#]Insert wording appropriate to the circumstances e.g. "on the date set out in the Contract", "on a date as notified in writing by the Supervising Officer. Such date shall be within ___ days after the date of [specify the relevant event]", "on a date ___ days after the date for

commencement of construction of the Works notified by the Supervising Officer in accordance with sub-clause (2) of this Clause".

- (3) General Conditions of Contract Clause 49 is amended by :-
- (a) replacing the words "Clause 47" on line 3 of sub-clause (1) by "'Clause 47(2)".
- (b) referring to sub-clause (2) of the Clause as sub-clause (3) and inserting the following as sub-clause (2) :

(2) Notwithstanding sub-clause (1) of this Clause, Section ___ of the Works shall be completed within the time stated in the Contract calculated from and including the date for commencement of construction of the Works referred to in Clause 47(3) or such extended time as may be determined in accordance with Clause 50.

- (4) General Conditions of Contract Clause 21 is amended by replacing the words "Clause 47" on line 2 of sub-clause (1) by "Clause 47(2)".
- (5) General Conditions of Contract Clause 48 is amended by replacing the words "Clause 47" on line 5 of sub-clause (1) by "Clause 47(2)".

SCC 7	<p>(1) "Section Subject to Excision" means a Section of the Works which is identified as such with details in the []⁺, but the implementation of which has not been decided upon by the Employer at the time the tender documents are issued and which shall only be implemented upon a subsequent decision of the Employer, followed by a written instruction from the Supervising Officer.</p> <p>(2) The Contractor shall allow for the work within the Section Subject to Excision in his programme submitted in accordance with General Conditions of Contract Clause 16.</p> <p>(3) The Supervising Officer may, within the time stated in the Appendix to the Form of Tender for ordering the Section Subject to Excision (commencing from and including the date for commencement of the construction of the Works</p>	<p>Section Subject to Excision</p>	<p>LWBTC No. 6/89, WBTC No. 5/2000 & WBTC No. 18/2000 SCC7, SDEV's memo ref.(02B2H-01-5) in DEVB(W) 510/10/01 dated 9.3.2011.</p> <p>+ State the relevant contract provisions.</p> <p>D2 Officer's approval is required for contracts with Works subject to Excision</p>
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notified by the Supervising Officer in accordance with General Conditions of Contract Clause 47(2)), instruct the Contractor to proceed with the work within that Section.

- (4) Notwithstanding the provisions of General Conditions of Contract Clause 47, the Contractor shall not execute the work within the Section Subject to Excision without the Supervising Officer's instruction in writing in accordance with sub-clause (3) of this Clause, but upon receipt of the instruction:
 - (a) the Contractor shall execute and complete that work within the Section Subject to Excision within the time for completion of that Section stated in the Contract, or such extended time as may be determined in accordance with General Conditions of Contract Clause 50 or revised time as may be determined in accordance with General Conditions of Contract Clause 13 (if appropriate) or agreed in accordance with General Conditions of Contract Clause 60 and this time for completion commences from and includes the date for commencement of the construction of the Works notified by the Supervising Officer in accordance with General Conditions of Contract Clause 47(2); and
 - (b) the Contract shall thereafter be construed in every way as if work within the Section Subject to Excision had at all times formed part of the Works.
- (5) In the event that the Supervising Officer does not issue an instruction in accordance with sub-clause (3) of this Clause:
 - (a) without prejudice to the provisions of General Conditions of Contract Clause 60, the Contractor shall not thereafter be obliged to execute and complete the work within the Section Subject to

Excision;

- (b) the Contractor shall not be entitled to any payment or other compensation or relief in respect of or attributable to the work within the Section Subject to Excision;
- (c) the Contract shall thereafter be construed in every way as if the work within the Section Subject to Excision had not at any time formed part of the Contract and all references thereto shall have no effect;
- (d) the Contractor shall review the programme submitted in accordance with General Conditions of Contract Clause 16 and, where appropriate, submit a revised programme to the Supervising Officer in accordance with General Conditions of Contract Clause 16(2); and
- (e) the Contractor shall review each of the other documents submitted in accordance with the provisions of the Contract (including but not limited to the documents set out in Appendix [] to these Special Conditions of Contract) and, where appropriate, submit an amended or varied version of the same to the Supervising Officer.

SCC 8 General Conditions of Contract Clause 48 is amended by adding the following :

Delayed possession of Portions of the Site

WBTC 18/2000
SCC 8 - For contracts where delay in possession of the Site is envisaged

- (4) Notwithstanding sub-clause (2) of this Clause, with respect to prescribed Portions of the Site of which the Contractor is to be given possession from time to time, if the Contractor suffers delay from the failure on the part of the Employer to give possession of any Portion in accordance with the terms of the Contract and the Supervising Officer grants an extension of time for completion in accordance with General Conditions of

Contract Clause 50 in respect thereof, the Supervising Officer shall certify payment to the Contractor a sum calculated at the rate per day inserted by the Contractor in the breakdown of the Contractor's rates and prices (hereinafter referred to as "the specified rate"), the number of days for which payment is certified being equal to the number of days granted as an extension of time. If possession of part of any Portion is delayed the Supervising Officer shall reduce the specified rate for the affected Portion as he considers fair and reasonable having regard to all the circumstances.

- (5) Any extension of time granted in accordance with General Conditions of Contract Clause 50 and any payment made in accordance with sub-clause (4) of this Clause will be deemed to be in full compensation to the Contractor for any time lost and any expenditure incurred as a result of failure on the part of the Employer to give possession of any Portion or any part of any Portion.

SCC 9A General Conditions of Contract Clause 50 is amended as follows :

- (1) Sub-clauses (1)(b)(i), (ii) and (iii) are deleted.
(2) The following is added to sub-clause (1)(b) :

"or (xi) inclement weather (including without limitation Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences adversely affecting the progress of the Works occurring after the expiry of the time originally prescribed in the Contract for completion of the Works or the relevant Section, as the case may be, but before the Employer is entitled to recover liquidated damages in respect of the Works or the relevant Section, as the case may be,"

- (3) Sub-clause (1)(c) is amended by replacing the full stop at the end of sub-clause (v) by “, or” and adding the following:

(vi) inclement weather (including without limitation Black Rainstorm Warning and the hoisting of any tropical cyclone warning signal) and/or its consequences adversely affecting the progress of the Works occurring before the expiry of the time

Deletion of extensions of time for inclement weather

WBTC No. 26/98
&
WBTC No. 18/2000 SCC9

Approval from Head of Department required for deletion of GCC Clause 50(1)(b)(i) and/or (ii) and (iii), and details are to be submitted to SDEV for endorsement

originally prescribed in the Contract for completion of the Works or the relevant Section, as the case may be.

OR

SCC 9B General Conditions of Contract Clause 50 is amended as follows :

Deletion of extensions of time for inclement weather

- (1) Sub-clause (1)(b)(i) is deleted.
- (2) The following is added to sub-clause (1)(b) :
"or (xi) inclement weather (but not including Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences adversely affecting the progress of the Works occurring after the expiry of the time originally prescribed in the Contract for completion of the Works or the relevant Section, as the case may be, but before the Employer is entitled to recover liquidated damages in respect of the Works or the relevant Section, as the case may be,"
- (3) Sub-clause (1)(c) is amended by replacing the full stop at the end of sub-clause (v) by “, or” and adding the following:

(vi) inclement weather (but not including Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences adversely affecting the progress of the Works occurring before the expiry of the time originally prescribed in the Contract for completion of the Works or the relevant Section, as the case may be.

OR

- SCC 9C** (1) General Conditions of Contract Clause 50(1)(b)(i), (ii) and (iii) shall not apply to Section __ of the Works.
- (2) General Conditions of Contract Clause 50 is amended by adding the following to sub-clause (1)(b) :

Deletion of extensions of time for inclement weather (Sectional completion)

"or (xi) inclement weather (including without limitation Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences adversely affecting the progress of Section ___ of the Works occurring after the expiry of the time originally prescribed in the Contract for completion of Section ___ of the Works but before the Employer is entitled to recover liquidated damages in respect of Section ___ of the Works,"

- (3) General Conditions of Contract Clause 50 is amended by adding the following as sub-clause (1)(d) :

"(d) Notwithstanding the powers of the Supervising Officer under the provisions of this Clause to decide whether the Contractor is fairly entitled to an extension of time the Contractor shall not be entitled to an extension of time for completion of Section of the Works if the cause of the delay is inclement weather (including without limitation Black Rainstorm Warning and the hoisting of any tropical cyclone warning signal) and/or its consequences occurring before the expiry of the time originally prescribed in the Contract for completion of Section ___ of the Works."

OR

- | | | |
|---------------|--|---|
| SCC 9D | (1) General Conditions of Contract Clause 50(1)(b)(i) shall not apply to Section ___ of the Works. | Deletion of extensions of time for inclement weather (Sectional completion) |
| | (2) General Conditions of Contract Clause 50 is amended by adding the following to sub-clause (1)(b) : | |

"or (xi) inclement weather (but not including Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences adversely affecting the progress of Section ___ of the Works occurring after the expiry of the time originally prescribed in the Contract for completion of Section ___ of the Works but before the Employer is entitled to recover liquidated damages in respect of Section ___ of the Works,"

- (3) General Conditions of Contract Clause 50 is amended by adding the following as sub-clause (1)(d) :

"(d) Notwithstanding the powers of the Supervising Officer under the provisions of this Clause to decide whether the Contractor is fairly entitled to an extension of time the Contractor shall not be entitled to an extension of time for completion of Section ___ of the Works if the cause of the delay is inclement weather (but not including Black Rainstorm Warning and the hoisting of tropical cyclone warning signal No. 8 or above) and/or its consequences occurring before the expiry of the time originally prescribed in the Contract for completion of Section ___ of the Works."

SCC 10A General Conditions of Contract Clause 89 is deleted and replaced by the following :

"No adjustment shall be made to the Final Contract Sum on account of any contract price fluctuation."

Deletion of contract price fluctuations

ETWB TCW No. 21/2003
SDEV's memo ref. DEVB(PS) 107/3 dated 18.7.2008

Approval from Head of Department required for deletion of CPF.

OR

SCC 10B General Conditions of Contract Clause 89 is amended as follows :

Contract price fluctuations

- (1) The “Index Numbers of the Costs of Labour and selected Materials used in Public Sector Construction Projects” in lines 4 and 5 of GCC Clause 89(1) shall be deleted and replaced by the “Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003=100)”.

SCC 11

- (1) (a) Without limiting the Contractor's obligations and responsibilities under General Conditions of Contract Clause 21, the Contractor shall procure before the date for commencement of the construction of the Works in accordance with General Conditions of Contract Clause 47(2) in the joint names of the Contractor, the Employer and the Contractor’s sub-contractors of any tier (if sub-contractors are to be engaged) an insurance policy consistent with the terms in the specimen[@] in the Appendix to these Conditions and shall at least cover the risks stipulated therein. The Contractor shall also assess the value of Specialist Works. The insurance policy shall cover the period from the date for commencement of the construction of the Works until 28 days after the date of completion of the Works certified by the Supervising Officer in accordance with General Conditions of Contract Clause 53.
- (b) The Contractor shall lodge with the Employer through the Supervising Officer or the Supervising Officer's Representative the originals or certified true copies of the policy or policies of insurance and copies of the receipts for payment of the current premiums. Such insurance shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld).
- (c) In the event that through no fault of the Contractor it becomes impracticable for the Contractor to procure an insurance policy consistent with the terms in the specimen policy, the Employer may accept an insurance policy with modified terms as may be proposed by the

Care of the Works insurance

ETWB TCW No. 7/2005

This SCC corresponds to the Contractor Controlled Insurance Programme (CCIP) as detailed in ETWB TCW 7/2005.

The risk-based assessment on insurance procurement and the decision of a procurement method and insurance cover should be properly documented and endorsed by a D2 rank officer (refer to para. 7 to 9 and 17 of ETWB TC(W) No. 7/2005).

Contractor subject to the adjustment as may be agreed between the Employer and the Contractor or determined by the Supervising Officer in accordance with sub-clause (1)(d) of this Clause.

- (d) Any proposal submitted by the Contractor for modifications to the terms in specimen policy shall be accompanied with an adjustment to the rate for the corresponding insurance item entered in the breakdown of the Contractor's Rates and Prices. If the Employer agrees to the adjustment, the adjusted rate shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with General Conditions of Contract Clause 79(6). In the event of the Employer and the Contractor failing to reach agreement on the adjustment, the Supervising Officer shall fix the amount of such adjustment as shall in his opinion be reasonable and the adjusted rate shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with General Conditions of Contract Clause 79(6).
- (e) The Contractor shall, if so required in writing by the Employer at any time during the continuance of the Contract, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with sub-clauses (1)(a) to (c) of this clause, a replacement insurance policy with modified terms. In such an event, the Supervising Officer and the Contractor shall agree on an adjustment to the rate for the corresponding insurance item entered in the breakdown of the Contractor's Rates and Prices and failing such agreement the Supervising Officer shall determine the adjustment as shall in his opinion be reasonable and the adjusted rate as agreed between the Supervising Officer and the Contractor or, as the case may be, determined by the Supervising Officer shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with the General Conditions of Contract Clause 79(6).

- (2) The extent of the cover to be provided shall be :
- (a) the Works and Specialist Works to be full reinstatement value; and
 - (b) materials, Constructional Plant and other things brought on the Site by anyone so authorized to do so to the full value of such materials, Constructional Plant and other things.

*@ See Appendix B to ETWB TCW No. 7/2005 for specimen.
If third party insurance is not required (i.e. the SCC on third party insurance is not used), Section II (Liability to Third Parties) of the standard C.A.R. policy should be deleted from the specimen insurance policy to be appended to the Special Conditions of Contract.*

- | | | | |
|---------------|---|-----------------------|---------------------|
| SCC 12 | (1) Without limiting the Contractor's obligations and responsibilities under General Conditions of Contract Clause 22, the Contractor shall procure before the date for commencement of construction of the Works in accordance with General Conditions of Contract Clause 47(2), in the joint names of the Contractor, the Employer and the Contractor's sub-contractors of any tier (if sub-contractors are to be engaged), an insurance policy effective from the date for commencement of construction of the Works until the date of the issue of the maintenance certificate, against any damage, loss or injury which may occur to any property including that of the Employer (other than the Works), or to any person, by or arising out of or in consequence of the execution of the Works or in the carrying out of the Contract otherwise than due to the matters referred to in the proviso to the General Conditions of Contract Clause 22. | Third party insurance | ETWB TCW No. 7/2005 |
| | (2) (a) Such insurance shall be effected with an insurer for at least the amount stated in the Appendix to the Form of Tender and the insurance policy shall be consistent with the terms in the specimen [@] in the Appendix to these Conditions and shall at least cover the risks stipulated therein. | | |
| | (b) The Contractor shall lodge with the | | |

Employer through the Supervising Officer or the Supervising Officer's Representative the originals or certified true copies of the policy or policies of insurance and copies of the receipts for payment of the current premiums. Such insurance shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld).

- (c) In the event that through no fault of the Contractor it becomes impracticable for the Contractor to procure an insurance policy consistent with the terms in the specimen policy, the Employer may accept an insurance policy with modified terms as may be proposed by the Contractor subject to the adjustment as may be agreed between the Employer and the Contractor or determined by the Supervising Officer in accordance with sub-clause (2)(d) of this Clause.
- (d) Any proposal submitted by the Contractor for modifications to the terms in specimen policy shall be accompanied with an adjustment to the rate for the corresponding insurance item entered in the breakdown of the Contractor's Rates and Prices. If the Employer agrees to the adjustment, the adjusted rate shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with General Conditions of Contract Clause 79(6). In the event of the Employer and the Contractor failing to reach agreement on the adjustment, the Supervising Officer shall fix the amount of such adjustment as shall in his opinion be reasonable and the adjusted rate shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with General Conditions of Contract Clause 79(6).
- (e) The Contractor shall, if so required in writing by the Employer at any time during the continuance of the Contract, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with sub-clauses (1) and (2)(a) to (c) of this clause,

a replacement insurance policy with modified terms. In such an event, the Supervising Officer and the Contractor shall agree on an adjustment to the rate for the corresponding insurance item entered in the breakdown of the Contractor's Rates and Prices and failing such agreement the Supervising Officer shall determine the adjustment as shall in his opinion be reasonable and the adjusted rate as agreed between the Supervising Officer and the Contractor or, as the case may be, determined by the Supervising Officer shall be used by the Supervising Officer for the purpose of calculating the Final Contract Sum in accordance with the General Conditions of Contract Clause 79(6).

@ See Appendix B to ETWB TCW No. 7/2005 for specimen.

If Care of the Works insurance is not required (i.e. the SCC on Care of the Works is not used), Section I (Material Damage) of the standard C.A.R. policy should be deleted from the specimen insurance policy to be appended to the Special Conditions of Contract.

SCC 13	<p>(1) Any claim received by the Employer or the Supervising Officer in respect of matters for which the Contractor is required under the Contract to indemnify the Employer will be passed to the Contractor who shall likewise inform the Employer and the Supervising Officer of any such claim which is submitted directly to him by a claimant. The Contractor shall keep the Employer and the Supervising Officer informed as to the progress made towards settlement.</p> <p>(2) When a claim involves alleged damage to crops or property on agricultural lands the District Lands Officer shall be informed by the Supervising Officer's Representative and representative or representatives of the District Lands Office will be present at the negotiations and any payment in settlement of the claim shall be made through the District Lands Officer to the claimant. The Contractor shall do everything necessary including notifying his insurers, if any, of the claim received, to ensure that the claim is settled without delay.</p>	<p>Third party claims in respect of damage on and to agricultural lands</p>	<p>WBTC No. 28/92, 18/2000 SCC 13</p> <p>If this SCC is used together with the SCC on 'Third Party Insurance' in a particular contract, the procedure under sub-clause (2) of the SCC should be invoked only in relation to settlement of small claims. Claims substantially above the stated excess in the insurance policy should be left to the care of the</p>
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If in the opinion of the Employer the Contractor or his insurers, if any, are delaying settlement the Employer may make direct payment to the claimant in settlement of all outstanding amounts which in the opinion of the Employer are due to him and shall without prejudice to any other method of recovery have the right to deduct by way of set-off, in accordance with General Conditions of Contract Clause 83 the sums so paid.

insurers.

SCC 14A	<p>General Conditions of Contract Clause 4 is amended by adding the following :</p> <p>(9) (a) If the Contractor is not included in the "List of Approved Suppliers of Materials and Specialist Contractors for Public Works" maintained by the Employer for :-</p> <p><u>(list the type(s) of materials or specialist work and the Group(s), Category(ies) and Class(es) as appropriate)</u></p> <p>or the "List of Approved Contractors for Public Works" maintained by the Employer for :-</p> <p><u>(list the Group(s) and Category(ies) as appropriate)</u></p> <p>then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s), Category(ies) and, where appropriate, Class(es), for the execution of the respective part(s) of the Works. Provided that the Contractor shall not without the written consent of the Supervising Officer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group, Category and, where appropriate, Class.</p>	<p>Sub-contracting</p> <p>S for W's memo ref. WB(W) 209/32/110 dated 23.3.2001 & 2.5.2001</p> <p>Where part of the Works is to be supplied or done by a specialist [For use where both the List of Approved Suppliers of Materials and Specialist Contractors for Public Works and the List of Approved Contractors for Public Works are involved]</p>
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- (b) The Contractor shall notify the Supervising Officer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.

OR

SCC 14B	General Conditions of Contract Clause 4 is amended by adding the following :	Sub-contracting	S for W's memo ref. WB(W) 209/32/110 dated 23.3.2001 & 2.5.2001 Where part of the Works is to be supplied or done by a specialist [For use where only the List of Approved Suppliers of Materials and Specialist Contractors for Public Works is involved]
	<p>(9) (a) If the Contractor is not included in the "List of Approved Suppliers of Materials and Specialist Contractors for Public Works" maintained by the Employer for :-</p> <p><u>(list the type(s) of materials or specialist work and the Group(s), Category(ies) and Class(es) as appropriate)</u></p> <p>then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s), Category(ies) and Class(es), for the execution of the respective part(s) of the Works. Provided that the Contractor shall not without the written consent of the Supervising Officer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group, Category and Class.</p>		
	<p>(b) The Contractor shall notify the Supervising Officer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.</p>		

OR

SCC 14C	General Conditions of Contract Clause 4 is amended by adding the following :	Sub-contracting	S for W's memo ref. WB(W) 209/32/110 dated 23.3.2001 &
	<p>(9) (a) If the Contractor is not included in the</p>		

"List of Approved Contractors for Public Works" maintained by the Employer for :-

(list the Group(s) and Category(ies) as appropriate)

then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s), and Category(ies), for the execution of the respective part(s) of the Works. Provided that the Contractor shall not without the written consent of the Supervising Officer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group and Category.

- (b) The Contractor shall notify the Supervising Officer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.

2.5.2001

Where part of the Works is to be supplied or done by a specialist [For use where only the List of Approved Contractors for Public Works is involved]

SCC 15 (Not Used)

SCC 16 General Conditions of Contract Clause 1(1) is amended by adding the following :

"Establishment Works" means the regular inspections, cultivations and other operations specified to be performed during the period stated in the Contract for such inspections, cultivations and other operations.

"Landscape Hardworks" means paving, tree grilles, tree guards and tree rings and any other items identified as such in the Employer's Requirements.

Definitions (Landscape Works)

For contracts with Landscape Works

WBTC 18/2000
 SCC6

"Landscape Softworks" means all works of a horticultural nature and shall include placing, cultivation and preparation of topsoil and subsoil layer, supply and planting of trees, shrubs, grass and other plant materials and any work essentially associated with it.

"Landscape Works" means Landscape Softworks, Landscape Hardworks and Establishment Works.

NOTE : *Revision of General Conditions of Contract Clause 79(2) to allow the Supervising Officer to issue a certificate for interim payment for a sum less than the Minimum for Establishment Works is considered not necessary. Instead, a remark, "There shall be no minimum amount of interim certificates for the Establishment Works" should be put under "Minimum amount of interim certificates" in the Appendix to Form of Tender.*

SCC 17 (Not Used)

- | | | | | |
|---------------|-----|---|---|------------------------------------|
| SCC 18 | (1) | Notwithstanding the provisions of General Conditions of Contract Clause 53(5)(b), no certificate of completion will be given in respect of any part of the Landscape Softworks or in respect of any part of the Establishment Works. | Completion of Landscape Softworks and Establishment Works | For contracts with Landscape Works |
| | (2) | As soon as in the opinion of the Supervising Officer the Landscape Softworks shall have been completed, the Supervising Officer shall, notwithstanding the provisions of General Conditions of Contract Clause 47, notify the Contractor in writing of the date for commencement of the Establishment Works which shall be undertaken for the duration stated in the Contract. Such date for commencement shall be the day immediately following the date of completion of the Landscape Softworks. | Commencement of Establishment Works | |

NOTE : *When more than one portion of Establishment Works or Landscape Softworks has been identified in the Contract, the following alternative version shall be used :*

(1) Notwithstanding the provisions of General Conditions of Contract Clause 53(5)(b), no certificate of completion will be given in respect of any part in any of the following Portions of Establishment Works and Landscape Softworks :-

Completion of
Landscape
Softworks and
Establishment
Works

- * (i)
- (ii)
- (iii)

* *Fill in details of portions as appropriate. A Portion may be any part of the Works and not necessarily a whole Section or part of a Section.*

*e.g. Establishment Works in Area A
Landscape Softworks in Area A*

(2) As soon as in the opinion of the Supervising Officer any portion of Landscape Softworks identified in sub-clause (1) of this Clause shall have been completed, the Supervising Officer shall, notwithstanding the provisions of General Conditions of Contract Clause 47, notify the Contractor in writing the date for commencement of the corresponding portion of Establishment Works which shall be undertaken, notwithstanding the provision of General Conditions of Contract Clause 49, for the duration stated in the Contract. Such date for commencement shall be the day immediately following the date of completion of the corresponding portion of Landscape Softworks.

Commencement
of Establishment
Works

SCC 19

Notwithstanding the provision of Clause 82 of the General Conditions of Contract, if the Contractor shall fail to carry out any work required under Employer's Requirements Clause No. within a reasonable time, the Supervising Officer may give the Contractor _____ days' notice in writing to carry out such work. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work by his own workmen or by other contractors. Without prejudice to any other remedy, all additional expenditure reasonably incurred by the Employer in having such work carried out shall be recoverable by the Employer from the Contractor.

Refuse
containment
booms

WBTC
No. 10/92

SCC 20 (Not Used)

SCC 21 (Not Used)

SCC 22 These Special Conditions of Contract shall apply to works in the vicinity of the Kowloon-Canton Railway (Hong Kong) section, Tsim Sha Tsui Extension and Ma On Shan Rail as shown on the Drawings and shall be read in conjunction with the General Conditions of Contract.

Works in the vicinity of the Kowloon-Canton Railway (Hong Kong) section Tsim Sha Tsui Extension and Ma On Shan Rail

ETWB TCW No. 2/2005

This SCC is under reviewed in consultation with MTRC following the merging of KCRC and MTRC. Works Departments are advised to consult DEVB before adopting the SCC.

1 Further to Clause 1 of the General Conditions of Contract the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires :-

Definition

"Corporation" means the Kowloon-Canton Railway Corporation.

"Railway" means the Kowloon-Canton Railway (Hong Kong) section, Tsim Sha Tsui Extension and Ma On Shan Rail.

"Senior Director, Transport " means the Senior Director, Transport of the Kowloon-Canton Railway Corporation or his authorized representative.

"Restriction" means speed restriction, which is a limitation of the normal permitted speed of rail traffic over a specified length of the railway track.

"Possession " means possession of the track, which is the closing of a specified length of the railway track to commercial rail traffic.

"Isolation" means isolation of the electrical equipment, which is the disconnection of a section of such equipment from all sources of electricity supply.

2 (1) The Contractor shall have regard to the Particular Specification for work Compliance with requirements

within the vicinity of the Railway and shall comply strictly with the requirements as set out therein. The Contractor shall comply with any instructions given by the Senior Director, Transport through the Supervising Officer with regard to planning, method of working, safety requirements and on any other matters which may affect the operating of the Railway. Provided that if a situation occurs which in the opinion of either the Contractor or the Senior Director, Transport may give rise to or actually constitute an emergency and either the Contractor or the Senior Director, Transport considers that it is not practicable to communicate through the Supervising Officer, then the Contractor and the Senior Director, Transport may communicate direct and the Senior Director, Transport may give a direct instruction to the Contractor to carry out any remedial or other work or repair and such instruction shall be regarded for the purposes of this Contract as an instruction from the Supervising Officer.

- (2) Should the Contractor be unwilling or unable at once to comply with a direct instruction from the Senior Director, Transport under the provisions of this Clause, the Contractor shall not prevent and shall permit the Senior Director, Transport or a person authorized by the Senior Director, Transport to carry out the remedial work or other work or repair required by the direct instruction.

- (3) If the remedial or other work or repair referred to in Clause 2(2) of these Special Conditions of Contract is work which in the opinion of the Supervising Officer the Contractor was obligated to do under the Contract, all costs and charges which are in the opinion of the Supervising Officer properly incurred by the Corporation in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer.
 - (4) The Contractor shall notify the Supervising Officer as soon as possible of any direct instruction received from the Senior Director, Transport under the provisions of this Clause.
- 3
 - (1) Where any part of the Works has to be carried out during the period of a Restriction, Possession or Isolation and the period of such Restriction, Possession or Isolation is laid down in the Contract, the Contractor shall plan and execute that part of the Works so that such period is not exceeded and so that no further periods are required. Work on or near
Railway track
 - (2) If no such period is laid down, the Contractor shall before commencing any work hold discussions through the Supervising Officer with the Senior Director, Transport who will decide if any part of the Works is to be carried out during a period of a Restriction, Possession or Isolation. The decision of the Senior Director, Transport in the event shall be binding on the Contractor. No claim by the Contractor for extension of time or additional payment shall be allowed as a result of a decision made under this

sub-clause by the Senior Director, Transport.

- (3) After the method of carrying out the work has been agreed with the Senior Director, Transport (and taking into account any provisional arrangements which had been made), the Contractor shall in all cases other than for emergency works submit written notice of his programme of work, which shall include details of any Restriction, Possession or Isolation previously notified as being necessary by the Senior Director, Transport, to the Corporation at least ten weeks in advance of the proposed commencement of work within the Railway boundary.
- (4) Where an entry into the vicinity of the Railway, Restriction, Possession or Isolation is necessary, the Contractor shall be responsible for initiating the necessary action to obtain the requisite approval from the Senior Director, Transport. The Contractor shall be solely responsible for all delays caused through failure to submit the necessary application for approval, submission of inadequate information or late submission of any such application.

- (5) The Contractor shall organise the execution of the work during any period of Restriction and/or Possession and/or Isolation so that the Senior Director, Transport will be able to remove such Restriction, Possession or Isolation at the time laid down in the Contract or the time previously agreed by the Senior Director, Transport. Should the Contractor in the opinion of the Supervising Officer or the Senior Director, Transport not make sufficient or adequate arrangements (including the provision of standby plant) for completing the whole or any stage of the work within the time laid down in the contract or agreed with the Senior Director, Transport, the Senior Director, Transport may at his discretion cancel the Restriction and/or Possession and/or Isolation, or the Senior Director, Transport may employ labour, plant and materials to assist the Contractor to finish the work or carry out such work as is necessary to enable the Restriction, Possession and/or Isolation to end at the earliest possible moment.
- (6) A period of Restriction and/or Possession and/or Isolation cannot normally be extended, and if the Contractor fails to carry out the work during any such period, he shall be required to re-apply to the Senior Director, Transport for a further period of Restriction and/or Possession and/or Isolation.
- (7) All expenses which in the opinion of the Supervising Officer are properly incurred by the Corporation as a result of the Senior Director, Transport making necessary arrangements to assist the Contractor or carrying out any necessary work in accordance with sub-clause (5) of this Clause shall on demand be paid by the

Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer.

- 4 Further to Clause 22 of the General Conditions of Contract and the expenses incurred under Clauses 2(3) and 3(7) of these Special Conditions of Contract, any loss of revenue and/or additional expenditure which in the opinion of the Supervising Officer has been incurred by the Corporation by reason of the rescheduling of services by the Corporation due to the Contractor obstructing the tracks or interfering with the signalling system or overhead electrical equipment other than for a period when Restriction and/or Possession and/or Isolation has been given shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer. A guide to the method of determining the loss of revenue to the Corporation under this Clause is attached as an Annex# to these Special Conditions.
- 5 (1) The Senior Director, Transport shall have the right to cancel or alter the date and the timing of any Restriction, Possession or Isolation whether such is set out in the Contract or has been previously agreed, if in his opinion, it is necessary to do so for the safe and uninterrupted running of rail traffic. In such an event the Senior Director, Transport shall make alternative arrangements as soon as practicable.
- (2) If the Contractor suffers delay or incurs expense due to the Senior Director, Transport cancelling or altering at short notice the date or timing of any Restriction,
- Damages for delay
- # See Appendix A to ETWB TCW No. 2/2005.
- Cancellation of Restrictions, Possession or Isolations at short notice

Possession or Isolation laid down in the Contract or previously agreed to by the Senior Director, Transport, the Supervising Officer shall on application by the Contractor and following receipt from the Contractor of particulars, as full and detailed as possible, value and certify such sum, if any, as the Supervising Officer considers fair and reasonable.

- (3) General Conditions of Contract Clause 50(1)(b) is amended by adding the following: “(xi) cancellation or alteration by the Senior Director, Transport at short notice of the date or timing of any Restriction, Possession or Isolation laid down in the Contract or previously agreed to by the Senior Director, Transport.”

SCC 23	<p>(1) "Safety Plan" means the Safety Plan referred to in sub-clause (4) of this Special Condition of Contract, including any revised or updated version, setting out details of the safety management system that the Contractor will implement on the Site, together with any other measures and information required by the Contract to ensure safety and health in the execution of the Works.</p> <p>(2) The Contractor shall prepare a draft Safety Plan in accordance with the Particular Specification [and the Outline Safety Plan] and submit within 14 days of the date of the Employer's letter of acceptance of the Tender three copies of a draft Safety Plan to the Supervising Officer.</p>	<p>Safety Plan</p>	<p>App. II(a), Chapter 3, Construction Site Safety Manual This SCC is applicable to works contracts with Safety Plan requirement</p>
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- (3) Within 7 days from the submission of the draft Safety Plan, the Contractor shall arrange and hold an ad hoc meeting (or meetings if necessary) with the Supervising Officer's Representative to discuss the draft Safety Plan. Where the Supervising Officer is of the opinion that the draft Safety Plan does not meet the requirements of the Contract he shall request that the Contractor remedy the deficiency prior to submitting the Safety Plan to the Supervising Officer in accordance with sub-clause (4) of this Special Condition of Contract.
- (4) The Contractor shall submit within 35 days of the date of the Employer's letter of acceptance of the Tender six copies of the Safety Plan to the Supervising Officer.
- (5) The Contractor shall review the Safety Plan at monthly intervals and shall revise and update the Safety Plan if necessary.
- (6) The Contractor shall comply with the Safety Plan in the execution of the Works and ensure his employees and sub-contractors of all tiers comply with the Safety Plan. The Contractor shall provide any other party working on the Site including Specialist Contractors and utility undertakings with a copy of the Safety Plan and shall request those parties comply with it. The Contractor shall report any person who fails to comply with the Safety Plan to the Supervising Officer.
- (7) If the Supervising Officer is of the opinion that the Safety Plan does not meet the requirements of the Contract, the Supervising Officer may by notice in writing require the Contractor to revise or update the Safety Plan and the Contractor shall comply with that requirement within 7 days of the date of the notice.
- (8) The Contractor shall provide all facilities, access and assistance to the Supervising Officer to periodically verify that the Safety Plan is being properly and fully implemented. If the Supervising Officer is of the opinion that the Safety Plan is not being properly and fully implemented and

the failure may adversely affect the safety and health of any person or the safety of any property on or adjacent to the Site, the Supervising Officer may notify the Contractor in writing of such failure and the Contractor shall then take all necessary steps to rectify that failure immediately. For the avoidance of doubt, this Special Condition of Contract does not limit or take away from the Supervising Officer any power under the Contract including the power to suspend the progress of the Works or any part thereof pursuant to General Conditions of Contract Clause 54(1).

(9) This Special Condition of Contract shall not relieve the Contractor from any of his obligations or responsibilities under the Contract.

(10)# The Contractor shall be entitled to the sums set out in the Site Safety section of the Employer's Requirements, provided that the Contractor shall have complied to the extent specified for each item. Payment for Site Safety

Applicable only to Pay for Site Safety Scheme contracts.

SCC 24	(1) General Conditions of Contract Clause 1(1) is amended by adding the following :	Independent Safety Audit	WBTC No. 32/99
	"Council" means the Occupational Safety and Health Council established under the Occupational Safety and Health Council Ordinance (Cap. 398).	Definitions	
	"Safety Audit" means the safety audit carried out by the Safety Auditor using the Works Bureau Safety Auditing System (WBSAS) developed by the Council for the purpose of the Independent Safety Audit Scheme (ISAS).		
	"Safety Auditor" means a person accredited by the Council as an Accredited Safety Auditor and appointed in accordance with the Contract to carry out Safety Audits.		

- (2) The Contractor shall be deemed to have acquired detailed knowledge of the ISAS and WBSAS on the aspects to be audited and how these aspects will be assessed.
- (3) (a) After the acceptance of the Tender, the Supervising Officer shall propose three names from the Council's list of Accredited Safety Auditors to the Contractor for the appointment of the Safety Auditor. The Contractor shall :
- (i) select one from among the three names and advise the Supervising Officer of his selection within seven days from the date of proposal by the Supervising Officer; and
- (ii) confirm to the Supervising Officer that he has no conflict of interest with the Safety Auditor so selected.

Appointment of
Safety Auditor

The Safety Auditor shall be appointed by the Council.

- (b) The Contractor shall be under a continuing obligation to inform the Supervising Officer of any conflict of interest between him and the Safety Auditor which arises during the currency of the Contract.
- (4) The Contractor shall be responsible for liaising with the Council and the Safety Auditor on the carrying out of Safety Audits and shall provide all facilities, access and assistance to the Safety Auditor. The site agent and the Safety Officer of the Contractor shall attend all Safety Audits. The Contractor shall allow and assist the Safety Auditor to inspect all relevant documents and records and shall provide the Safety Auditor with copies if requested. The Contractor shall provide one copy each of the Safety Plan, including any updated or revised version, to the Council and the Safety Auditor. All works undertaken by the Contractor in preparation for or as a result of a Safety Audit shall be at the

Audit programme

Contractor's expense and shall not entitle the Contractor to any extension of time for completion of the Works.

- (5) Safety Audits shall be carried out according to a programme prepared by the Safety Auditor and agreed by the Supervising Officer. The first Safety Audit shall be carried out within three months from the date for commencement of the Works. Subsequent Safety Audits shall be carried out at quarterly intervals until the date of substantial completion of the Works. Safety Audits shall cease if the Supervising Officer informs the Council and the Contractor in writing that in his opinion most of the operations on the Site have been disengaged and the continuance of Safety Audits will unlikely serve any useful purpose.
- (6) If the Supervising Officer is of the opinion that the Safety Auditor has been unable to carry out the Safety Audit properly or that there is a real or apparent conflict of interest between the Safety Auditor and the Contractor, he shall advise the Council to remove the Safety Auditor. The Safety Auditor shall only be removed by a written notice by the Council served upon the Safety Auditor. The Supervising Officer shall within 14 days from the date of the written notice propose three names to the Contractor for the appointment of a replacement Safety Auditor in a similar manner as set out in sub-clause (3)(a) of this Clause. Removal of
Safety Auditor
- (7) On completion of a Safety Audit, the Safety Auditor shall prepare a Safety Audit report in accordance with the ISAS which shall then be submitted to the Council, the Contractor, the Employer and the Supervising Officer. The Safety Audit report is the property of the Employer. The Contractor shall regard the Safety Audit report as confidential and shall not disclose the Safety Audit report, whether in whole or in part, to any third party without the prior written consent of the Employer. Safety Audit
report

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|------|--|-------------------------------|
| (8) | Should the Safety Audit report identify any aspects of the Safety Plan not being fully and properly implemented or any inadequacy in the Safety Plan, the Contractor shall immediately take all necessary steps to rectify the identified aspects or revise the Safety Plan as appropriate. In addition, the Contractor shall prepare an action plan detailing any actions to be taken and actions which have been taken. The action plan shall be signed by the site agent and the Safety Officer and be submitted to the Supervising Officer, the Employer, the Council and the Safety Auditor within 14 days of the receipt of the Safety Audit report. | Action plan |
| (9) | Payment shall be made to the Contractor for the Safety Audit item in the breakdown of Contractor's Rates and Prices only if the Safety Audit report indicates that the Contractor's scores in both Part I - the Contractor's safety management system and Part II - the implementation of the Safety Plan on site are 70% or above. | Payment for Safety Audit item |
| (10) | The conduct of Safety Audits by the Safety Auditor, the contents of any Safety Audit report or any recommendations contained therein or payment of the Safety Audit item under the terms of the Contract, shall not absolve the Contractor from any of his duties, obligations, responsibilities and liabilities for site safety under the Contract. | |

SCC 25

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| (1) | General Conditions of Contract Clause 1(1) is amended by adding the following ; | Qualified Tradesmen and Intermediate Tradesmen | WBTC
No. 13/2002 & SDEV's memo ref. (01M97-01-4) in DEVB(PS)105/64 /
1 on 17.12.2007 |
| | “Intermediate Tradesman/Qualified Semi-skilled Workers” means: | | |
| (i) | a worker who has obtained the relevant intermediate trade test certificate issued either by the Construction Industry Council or Vocational Training Council; or | | |

- (ii) a registered semi-skilled worker or registered semi-skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).

"Qualified Tradesman/Qualified Skilled Workers" means :

- (i) a worker who has obtained the relevant trade test certificate issued either jointly or separately by the Construction Industry Council and the Vocational Training Council; or
 - (ii) a worker who has obtained the relevant certificate of completion of apprenticeship issued under the Apprenticeship Ordinance (Cap. 47); or
 - (iii) a worker who has obtained the relevant certificate of completion of apprenticeship issued by the Government of the Hong Kong Special Administrative Region; or
 - (iv) an electrician or electrical fitter who is a registered electrical worker registered under Section 30 of the Electricity Ordinance (Cap. 406); or
 - (v) a registered skilled worker or registered skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).
- (2) Further to General Conditions of Contract Clauses 18(1) and 39(1), the Contractor shall employ at least the minimum number of Qualified Tradesmen/Qualified Skilled Workers and Intermediate Tradesmen/Qualified Semi-skilled Workers of each of the specified trades as specified in the Contract.

SCC 27	General Conditions of Contract Clause 52 is amended by adding the following as sub-clause (5) :	Assessment of liquidated damages	ETWB TCW No. 4/2003
	(5) Notwithstanding the proviso to General Conditions of Contract Clause 52(2) the resulting rate per day of liquidated damages for the Works or any Section after reduction in accordance with that sub-clause shall not be less than the minimum rate per day of liquidated damages for the Works or, as the case may be, the relevant Section as stated in the Appendix to the Form of Tender.		
SCC 28	(Not Used)		
SCC 29	(Not used)		
SCC 30	General Conditions of Contract Clause 41 is deleted and replaced by the following:	Passes	D&B Admin. Procedures (ver1999) SCC33
	(1) The Supervising Officer shall arrange the issue of passes to the Contractor for the admission of workers to the Site or any part thereof and in such event any person who fails to show his pass on demand to any duly authorized person may be refused admission.		
	(2) If required by the Supervising Officer the Contractor shall submit a list of the names of all his workers requiring passes together with two photographs of each person and shall satisfy the Supervising Officer of their bona fides and identity.		
	(3) Any pass so issued shall be returned at any time on the demand of the Supervising Officer and in any case on completion of the Works or on the cessation of the bearer's employment in the execution of the Works.		

SCC 31

- (1) Where the Contractor is an incorporated joint venture it shall within fourteen (14) days of the acceptance of the Tender provide to the Employer a joint venture guarantee in the form set out in Appendix [][@] executed by all the shareholders of the Contractor. For the purposes of this Clause, the expressions “incorporated joint venture” and “shareholder” appearing herein shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.
- (2) Notwithstanding any other provision of the Contract, failure by the Contractor to provide a joint venture guarantee in strict accordance with sub-clause (1) of this Clause shall constitute a breach of the Contract entitling the Employer to damages and shall entitle the Employer to terminate the Contract forthwith by notice in writing to that effect and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.
- (3) The Contractor shall not make any changes to the following during the continuance of the Contract unless prior written consent from the Employer is obtained in accordance with sub-clause (4) of this Clause :-
- (a) The percentage participation of each participant or shareholder in a joint venture; and
- (b) The portion of the Works for which each participant or shareholder in a joint venture is responsible.
- (4) In the event that the Contractor considers a change to the details referred to in sub-clause (3)(a) or (b) of this Clause is necessary because
- (a) any participant or shareholder in a joint venture shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in

Contractors’
joint venture

ETWB TCW
No. 50/2002
(as amended in
SETW’s
memo ref.
(01656-01-3)
in ETWB(W)
511/34/01
dated
4.8.2006)

favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes or amalgamation or reconstruction); and

(b) satisfactory completion of the Works,

the Contractor shall write to the Employer with detailed substantiation requesting the Employer's consent before any changes are made. The Employer may in his absolute discretion accept or reject the request but shall within 14 days from the date of receipt of such request inform the Contractor in writing whether consent is given.

@ *[insert the relevant appendix to the tender documentation. See Appendix D of SETW's memo ref. (01656-01-3) in ETWB(W) 511/34/01 dated 4.8.2006 for the Form of Joint Venture Guarantee.*

SCC 32

(1)	For the purpose of this Special Condition of Contract -	Year 2000 warranty for Contract Computer Facilities	ETWB TCW No. 12/2004
(a)	"Contract Computer Facilities" means the Contract Computer Facilities defined in Clause **__ of the Employer's Requirements – General Obligation;		Mandatory for all contracts that incorporate provisions for contract
(b)	"Commencement Date" means the date on which the Contract Computer Facilities are delivered to the Supervising Officer's office;		computer facilities
	<i>Note – Two alternatives for sub-clause (1)(c):</i>		
* (c)	"End Date" means the expiry of the Maintenance Period or if there is more than one such period, the expiry of the latest Maintenance Period .		This sub-clause (1)(c) should be used if the computer facilities are to be returned to the Contractor upon the expiry of the Maintenance Period.
	<i>OR</i>		

- * (c) "End Date" means a date **__ calendar years from the expiry of the Maintenance Period or if there is more than one such period, the expiry of the latest Maintenance Period .
- (2) The Contractor shall warrant that the Contract Computer Facilities are Year 2000 compliant as specified in Clause **__ of the Employer's Requirements – General Obligation. The period of the warranty (the "warranty period") shall commence on the Commencement Date and shall subsist until the End Date.
- (3) Notwithstanding any provisions of the General Conditions of Contract, the Contractor shall during the warranty period and upon a notice regarding Year 2000 non-compliance given by the Supervising Officer promptly carry out necessary work to the Contract Computer Facilities so as to render the Contract Computer Facilities Year 2000 compliant. If the Contractor shall fail to carry out rectification work to render the Contract Computer Facilities Year 2000 compliant promptly, the Employer shall be entitled to engage his employees or agents or other contractors to carry out such work. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work carried out shall be recoverable by the Employer from the Contractor.
- (4) The liability of the Contractor under this Special Condition of Contract shall not in any way be affected by an independent inquiry or investigation into the Year 2000 compliance of the Contract Computer Facilities or any matter related thereto whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.

This sub-clause (1)(c) should be used if the computer facilities are to be transferred to the Government upon the expiry of the Maintenance Period.

- (5) For the avoidance of doubt, the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of this Special Condition of Contract.

****** *Provide details to suit the specific contract.*

SCC 33	(1) General Conditions of Contract Clause 12 is deleted.	Security or sureties	WBTC No. 10/97 and WBTC No, 10/97A. where a bond or cash security deposit is not required.
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OR

SCC 33	<p>(1) The Contractor is required to [obtain the guarantee/provide the cash security deposit]* referred to in Clause 12 of the General Conditions of Contract.</p> <p>(2) The Contractor shall provide the requisite [guarantee/cash security deposit]* to the Employer within [] days of the acceptance of the Tender.</p> <p>(3) Notwithstanding any other provision of the Contract :</p> <p style="padding-left: 20px;">(a) submission by the Contractor of the requisite [guarantee/cash security deposit]* in accordance with the foregoing provisions of this Clause shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract; and</p>	<p>This SCC is to be adopted where a bond or cash security deposit is required.</p> <p>Please refer to para 4 of WBTC No. 10/97 for guidance on compilation of</p>
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SCC 37	General Conditions of Contract Clause 81 is amended by replacing sub-clauses (5) and (6) with the following :	Interim certification after	WBTC No. 11/2001
	“(5) (a) If the Employer enters and expels the Contractor in accordance with this Clause, the Employer shall not be liable to pay the Contractor any money under the Contract (whether in respect of amounts certified by the Supervising Officer or otherwise) unless and until the Supervising Officer certifies that an amount is due to the Contractor under sub-clause (5)(b) of this Clause.	determination	Mandatory for use with all GCCs
	(b) The Supervising Officer shall certify the difference between :		
	(i) such sum as would have been due to the Contractor if he had duly completed the Works together with any proceeds of sale under sub-clause (1) of this Clause; and		
	(ii) the costs of completing the Works (whether or not the Works are completed under a separate contract), damages for delay (if any) and all other expenses properly incurred by the Employer.		
	(c) Such difference as is certified by the Supervising Officer under sub-clause (5)(b) of this Clause, subject to adjustment by the Supervising Officer to take account of the amount (if any) certified by the Supervising Officer under sub-clause (6) of this Clause, shall be a debt due to the Employer or the Contractor as the case may be and shall be paid by or to the Contractor as the case may be within 21 days of the date of certification by the Supervising Officer.		

(6) If the Supervising Officer is satisfied at any time prior to the completion of the Works that the whole or part of the costs, damages and other expenses referred to in sub-clause (5)(b)(ii) of this Clause exceeds such sum as calculated under sub-clause (5)(b)(i) of this Clause, he may issue an interim certificate to that effect and the amount of such excess as is certified by the Supervising Officer in the interim certificate shall be considered as a debt due from the Contractor to the Employer and shall be paid by the Contractor within 21 days of the date of interim certification by the Supervising Officer.”

SCC 38A	<p>(1) General Conditions of Contract Clause 1(1) shall be amended by adding the following: “completion” and “substantial completion”, when used in relation to completion or substantial completion of the Works or any Section or part thereof, include satisfactory passing of any final test prescribed by the Contract in respect of the Works or, as the case may be, the relevant Section or part and any grammatic variations and cognate expressions of such term shall be construed accordingly.</p> <p>(2) General Conditions of Contract Clause 53(1) shall be amended by deleting “and have satisfactorily passed any final test (including the Commissioning Tests) that may be prescribed by the Contract” in line 1 to line 2.</p> <p>(3) General Conditions of Contract Clause 53(2) shall be amended by deleting “and satisfactorily passed any final test (including the Commissioning Tests) which may be prescribed by the Contract” in line 2 to line 3.</p> <p>(4) General Conditions of Contract Clause 50(1)(a) shall be replaced by the following:</p>	<p>Completion date of certificate of completion – Tests on completion of the Works</p> <p>S for W’s memo ref. WB(W) 250/32/32 dated 6.7.2001</p> <p>Optional</p> <p>For contract where passing of final test prescribed by that contract is required before the Works can be considered as having achieved substantial completion</p>
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50(1)(a) As soon as practicable but in any event within 28 days after the cause of any delay to the progress of the Works or any Section thereof (including any delay to the carrying out of any final test (including the Commissioning Tests) that may be prescribed by the Contract) has arisen, the Contractor shall give notice in writing to the Supervising Officer of the cause and probable extent of the delay.

Provided that as soon as the Contractor can reasonably foresee that any order or instruction issued by the Supervising Officer is likely to cause a delay to the progress of the Works or any Section thereof (including a delay to the carrying out of any final test (including the Commissioning Tests) that may be prescribed by the Contract) the Contractor shall forthwith give notice in writing to the Supervising Officer and specify the probable effect and extent of such delay. Such notice shall not in any event be given later than 28 days after the Supervising Officer has issued the relevant order or instruction.

OR

SCC 38B	<p>(1) The definition of “Maintenance Period” in General Conditions of Contract Clause 1(1) shall be amended by adding “or such extended period as may be determined in accordance with Clause 53(3A)” after “Clause 53”.</p> <p>(2) General Conditions of Contract Clause 21(1) shall be amended by deleting “until 28 days after” and replacing by “until, except if the Supervising Officer shall otherwise instruct in accordance with Clause 53(3A), 28 days after”.</p>	<p>Completion date of certificate of completion – Tests on completion of the Works</p>	<p>Optional</p> <p>For contract where SCC 38A is not used and where it can be foreseen that the Contractor may not be able to carry out any final test prescribed by that contract</p>
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- (3) The first proviso to General Conditions of Contract Clause 21(1) shall be amended by deleting “shall cease to be responsible” and replacing by “shall, subject to Clause 53(3A), cease to be responsible”.
- (4) General Conditions of Contract Clause 53 shall be amended by adding the following as sub-clause (3A):
- (3A Notwithstanding sub-clause (1) of this) Clause if, due to any reason other than the default of the Contractor, any final test (including the Commissioning Tests) or tests that may be prescribed by the Contract cannot be carried out and the Works are otherwise substantially completed, then the Supervising Officer may issue a certificate of completion and such final test or tests shall become outstanding work to be carried out during the Maintenance Period. When issuing a certificate of completion in circumstances described in this sub-clause the Supervising Officer may instruct the Contractor to continue to be fully responsible for the care of the Works under Clause 21 until the satisfactory passing of such final test or tests. If such final test or tests are carried out during the Maintenance Period the Supervising Officer may extend the Maintenance Period for any period up to the length of time which has elapsed between the day following the date of completion stated in the certificate of completion and the date of satisfactory passing of such final test or tests. Any additional work carried out by the Contractor as the result of the exercise by the Supervising Officer of powers contained in this sub-clause shall be valued pursuant to Clause 61.
- (5) General Conditions of Contract Clause 53(4) shall be amended by deleting “sub-clauses (1), (2) and (3)” and replacing by “sub-clauses (1), (2), (3) and (3A)”.
- until some time after expiry of the 28-day period referred to in GCC Clause 21(1)

SCC 39

General Conditions of Contract Clause 46(3) is deleted and replaced by the following:

Power to accept unremedied defect

S for W's memo ref. WB(W) 250/32/32 dated 12.9.2001

“(3) Where the rectification of any work or replacement of any material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Supervising Officer may but shall not be obliged to either:

Mandatory for use with all GCCs

(a) give directions for a variation of the Works in lieu of such removal and re-execution at no additional expense to the Employer provided that if in the opinion of the Supervising Officer such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Supervising Officer shall value such excess in accordance with Clause 61 and shall certify in accordance with Clause 79; or

(b) with the prior agreement in writing of the Employer, accept any work which, in respect of materials or workmanship, is not in accordance with the Contract and without requiring rectification and replacement or removal and re-execution, in which event the Contract Sum shall be reduced by such amount as may be determined by the Supervising Officer in respect of any loss or damage suffered or likely to be suffered by the Employer or any saving in Cost to the Contractor in carrying out the work which is not in accordance with the Contract, whichever is the greater.

Provided that the amount of reduction referred to in (b) above shall be agreed between the Supervising Officer and the Contractor. In the event of the Supervising Officer and the Contractor failing to reach agreement then the Supervising Officer shall determine the amount of such reduction but in no event shall the amount of such reduction exceed the cost of removal and re-execution of the original permanent work.”

SCC 40	<p>(1) Notwithstanding the General Conditions of Contract Clause 8(2) but subject to (3) below, any contract rates or related information provided by the Contractor in connection with the Contract may be used by the Employer for the sole purpose of cost estimation or cost analysis for his other works which may or may not be connected with the Contract.</p> <p>(2) Subject to (3) below, the Employer may also furnish such information to any third party engaged by the Employer for the sole purpose of cost estimation or cost analysis provided that he shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.</p> <p>(3) In connection with the use and/or furnishing of the contract rates and related information under (1) and/or (2) above, the Employer shall ensure that the Contract number, title and the Contractor’s name are not used or furnished.</p>	<p>Contract information to be used for cost estimation or cost analysis for the Employer’s other works</p>	<p>WBTC No. 3/2002</p>
SCC 41	<p>(1) “Public Cleaning Areas” means those public areas of the Site where no work is to be carried out other than cleaning by the Contractor and which have to be maintained open to the general public throughout the progress of the Works, the extent of which is specified in Appendix [] to Part [] of the Employer’s Requirements Clause No. [] “Site Cleanliness and Tidiness – Daily Cleaning and Weekly Tidying. <i>[The Sample Particular Specification clause in Appendix B(a) of DEVB TCW No. 8/2010.]</i> For the avoidance of doubt, Site includes Public Cleaning Areas.</p> <p>(2) “Daily Cleaning” means daily cleaning and tidying up of the Site in accordance with Appendix [] to Part [] of the Employer’s Requirements Clause No. [] “Daily Cleaning” .</p> <p>(3) “Weekly Tidying” means weekly overall cleaning and tidying up of the Site in accordance Appendix [] to Part [] of the Employer’s Requirements Clause No. []</p>	<p>Site cleanliness and tidiness</p> <p>Public Cleaning Areas</p>	<p>DEVB TCW No. 8/2010</p> <p>Mandatory for use with all GCCs</p>

“Weekly Tidying” .

- (4) “Cleaning Day” means a day on which “Daily Cleaning” is to be carried out. Cleaning Day
- (5) “Cleaning Week Day” means a day on which “Weekly Tidying” is to be carried out. Cleaning Week Day
- (6) From the date for commencement of the Works to the date for completion of the Works, or the relevant Section, as the case may be, the Contractor shall, unless otherwise instructed by the Supervising Officer (except on a General Holiday) carry out either Daily Cleaning or Weekly Tidying. The time for commencing Weekly Tidying and the day of every week for the Cleaning Week Day shall be agreed with the Supervising Officer’s Representative within seven days after the date for commencement of the Works. If a day on which the Weekly Tidying is scheduled falls on a General Holiday, then it shall be carried out on the day following which is not a General Holiday. Site Cleanliness and Tidiness
- (7) The Supervising Officer has absolute discretion to instruct the Contractor to cease or suspend all or part of the Daily Cleaning and/ or Weekly Tidying of the Site at any time during the Contract. Such instruction shall not constitute a variation under Clause 60 of the General Conditions of Contract and the Contractor shall not be entitled to be reimbursed of any expenses arising out of or in relation thereto the instruction.
- (8) The Supervising Officer’s Representative has the power to instruct the Contractor to clean and tidy up the areas around the Site if to the judgment of the Supervising Officer’s Representative, the rubbish and debris are likely connected with the Works or disposed of by the persons working on the Site, and the Contractor shall not be entitled to claim for any additional cost due to such cleaning and tidying up work performed outside the Site boundary.
- (9) The Contractor shall only be entitled to payment for only one day of “Daily Cleaning” or “Weekly Tidying”, but

not more of either, for the cleaning and tidying up work carried out by the Contractor on any one Cleaning Day or Cleaning Week Day.

- (10) The Contractor shall not be entitled to any payment for Daily Cleaning or Weekly Tidying carried out if in the opinion of the Supervising Officer, such work has not been satisfactorily performed on the relevant working day.

SCC 42 General Conditions of Contract Clause 16 is deleted and replaced by the following:

Works
Programmes and
Monthly progress
reports

WB's Library
of SCC for
D&B Contracts
Clause 27
(version 1999)

- (1) "Works Programme" means the programme in the form and content prescribed by the Employer's Requirements, or any amended or varied version thereof, as submitted by the Contractor and approved by the Supervising Officer in accordance with this Clause.

"Monthly Progress Report" means the report to be prepared by the Contractor in the form and detail prescribed in the Employer's Requirements and submitted monthly in accordance with sub-clause 10 of this Clause.

"Key Date" means the dates for achieving completion of the Works or Section of the Works as described in the Employer's Requirements.

- (2) Within 7 days of notification of acceptance of the Tender, the Contractor shall submit to the Supervising Officer the Contractor's draft Works Programme in the form and content prescribed by the Employer's Requirements.
- (3) The Supervising Officer shall, within 14 days of receipt of the draft Works Programme notify the Contractor in writing:

- (a) that the Works Programme is approved, or
- (b) that the Works Programme is not approved, in which case reasons for such rejection shall be given, or
- (c) that he requires further information to clarify or substantiate the draft Works Programme or to satisfy the Supervising Officer of its reasonableness.

Provided that if none of the above actions is taken within the said period of 14 days, the Supervising Officer shall be deemed to have approved the Works Programme.

- (4) The Contractor shall within 7 days of receiving notification under sub-clause (3)(c) of this Clause or within such further period as the Supervising Officer may allow in writing, provide the further information requested failing which the Works Programme shall be deemed to have been rejected. The Supervising Officer shall within 7 days of receipt of such further information approve or reject the Works Programme in accordance with sub-clause (3) of this Clause.
- (5) In the event of a Works Programme being rejected under sub-clause (3)(b) of this Clause or deemed to have been rejected under sub-clause (4) of this Clause, the Contractor shall within 7 days thereafter submit a revised Works Programme taking account of the reasons given for the rejection or incorporating the further information requested by the Supervising Officer, as the case may be.
- (6) (a) The Contractor may at any time following approval of the Works Programme submit to the Supervising Officer an amended or varied version thereof.
 - (b) The Contractor shall review the Works Programme in the event that:
 - (i) the Supervising Officer grants an extension of time in accordance with Clause 50 of the General Conditions of

Contract, or

(ii) the Supervising Officer instructs a Variation under Clause 60 of the General Conditions of Contract, or

(iii) the Contractor considers for any reason that there is or may be a significant deviation between the actual or anticipated progress of the Works and the Works Programme, or

(iv) the Supervising Officer requests the Contractor in writing to reflect or incorporate any other matter in the Works Programme; and shall within 14 days of such event either submit an amended or varied Works Programme to the Supervising Officer for approval under sub-clause (3) of this Clause or inform the Supervising Officer in writing of the reasons why the Contractor considers that such a submission is inappropriate.

(7) Should it appear to the Supervising Officer at any time that there is or may be a significant deviation between the actual or anticipated progress of the Works and the Works Programme, the Supervising Officer shall be entitled by written instruction to require the Contractor to produce a revised version showing such modifications to the Works Programme as may be necessary to ensure or to be consistent with substantial completion of the Works or Section of the Works by the Key Dates. The Contractor shall submit such revised Works Programme within 14 days of the Supervising Officer's instruction or within such other time as the Supervising Officer shall allow in writing.

(8) (a) Unless and until an amended version is approved by the Supervising Officer in accordance with sub-clause (3) of this Clause, the Works

Programme previously approved by the Supervising Officer shall remain as the Works Programme for all purposes of the Contract.

- (b) Approval by the Supervising Officer of a Works Programme in accordance with sub-clause (3) of this Clause shall not relieve the Contractor of any of its duties or responsibilities under the Contract nor bind or create any obligation or liability on the part of the Employer nor, in any event that a Works Programme indicates that a Key Date has not or will not be met, constitutes any form of acknowledgement that the Contractor is or may be entitled to any extension of time in relation to such Key Date
- (9) Within 14 days of notification of acceptance of the Tender, and thereafter at the end of each calendar month, the Contractor shall submit to the Supervising Officer the Contractor's three month rolling Works Programme in the form and detail prescribed by the Employer's Requirements setting out the work to be carried out during the following three months.
- (10) (a) The Contractor shall submit to the Supervising Officer by the end of each calendar month a Monthly Progress Report which shall, amongst other things, highlight actual or potential departures from the Works Programme and state the measures which the Contractor proposes to take in order to make good or reduce any delays.
- (b) If requested by the Supervising Officer, the Contractor shall submit to the Supervising Officer at weekly intervals a written report as to the progress of off-Site manufacture of Plant and materials.

- (c) The Contractor shall also submit to the Supervising Officer such other reports as may be reasonably be required by any relevant authority or public body.

SCC 43	CAD drawings shall be prepared conforming to the CAD Standard for Works Projects version [] [@] (or later versions as agreed between the Employer and the Contractor from time to time) as posted on the Development Bureau's web site: http://www.devb.gov.hk/en/construction_sector_matters/electronic_services/cad_standard/computer_aided_drafting/cad/index.html	Computer aided drafting standard for Works Projects	ETWB TCW Nos. 38/2002 & 38/2002A Mandatory for use with all GCCs
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[@] *Insert the latest version number.*

SCC 44	General Conditions of Contract Clause 4 is amended by adding the following:	Management of Sub-contractors	ETWB TCW No. 47/2002
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⁷ (a)	Notwithstanding the foregoing sub-clauses of this Clause, the Contractor shall within 30 days of the Employer's letter of acceptance of the Tender submit a Sub-contractor Management Plan (SMP) to the Supervising Officer for information and comments, if any.		as modified by "Enhancement Measures for Subcontractor Management Plan (SMP)" in
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^(b)	The Contractor shall then submit quarterly the updated SMP till the issuance of the certificate of completion or where there is more than one such certificate, the issuance of the last certificate of completion to the Supervising Officer for information and comments, if any. Should there be any major changes in the Contractor's sub-contracting arrangement during the period before the next quarterly reporting, the Contractor should notify immediately such changes to the Supervising Officer in writing. The quarterly updated SMP required under this paragraph (b) shall be submitted within one month from each quarterly period. For the avoidance of doubt, the first quarterly period shall commence from the date of submission of the SMP by the Contractor pursuant to paragraph (a) of this sub-clause. Any interim notification of changes by the Contractor shall not affect his obligation to submit the quarterly updated SMP. In case there is no change to the previous		SDEV's memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19.12.2008
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Mandatory for use with all GCCs

SMP, the Contractor shall declare such status in writing instead of submitting the same SMP again.

- (c) The SMP submitted under paragraphs (a) and (b) of this sub-clause shall contain detailed information as required by the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x] to these Special Conditions of Contract.
- (d) The Supervising Officer may upon receipt of the SMP comment on the SMP and notify the Contractor of such comments in writing. If the Supervising Officer is of the opinion that the SMP submitted under paragraphs (a) and (b) of this sub-clause does not meet the requirements of the Contract, the Supervising Officer may, by written notice, require the Contractor to revise or update the SMP and the Contractor shall comply with that requirement within 14 days of the date of the notice. No approval of the SMP is required from the Supervising Officer.
- (e) Subject to the provisions of other Special Conditions of Contract stating to the contrary, the Contractor shall ensure that his sub-contractors shall not sub-contract the whole of the works sub-contracted to them.
- (f) The Contractor shall employ his own staff to manage and supervise his sub-contractors.
- (g) For the purpose of this clause and the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x] to these Special Conditions of Contract, the term 'sub-contractor' means all types of sub-contractor including without limitation Nominated Sub-contractor and Specialist Sub-contractor.

- (h) The Contractor shall, upon written request by the Supervising Officer (which may be issued by the Supervising Officer from time to time or at any time), produce to the Supervising Officer documentary proof to demonstrate to the satisfaction of the Supervising Officer that the Contractor has complied with all the provisions in the latest SMP submitted under paragraphs (a) and (b) of this sub-clause. Such documentary proof includes, but is not limited to, documents of sub-contracts, reports from sub-contractors on their further sub-contracting arrangement and daily attendance records of site workers. For the purpose of determining the extent of documentary proof, the Supervising Officer shall made reference to the Guidelines on documentary proof to demonstrate the compliance of the provisions in the SMP at Appendix [y] to these Special Conditions of Contract. The Supervising Officer may make as many separate written requests as he thinks fit. The provisions of this sub-clause shall be without prejudice to sub-clause (7) of this Clause.

[^] *The numbering of this added sub-clause may vary depending on whether there is other SCC in the contract which also amend GCC Clause 4.*

[x] *insert Appendix [x] in SDEV's memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19 Dec 2008.*

[y] *insert Appendix [y] in SDEV's memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19 Dec 2008.*

SCC 44A	The Contractor shall be entitled to the sums set out in the Sub-contractor Management Plan section of the breakdown of Contractor's Rates and Prices provided that the Contractor has complied with the requirements specified in the Contract.	Payment for Sub-contractor Management Plan	ETWB TCW No. 47/2002 as modified by "Enhancement Measures for Subcontractor Management Plan (SMP)" in SDEV's memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19.12.2008 Mandatory for use with all GCCs
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SCC 45	<p>(1) Where the Contractor is a partnership or an unincorporated joint venture, the liability of each partner of the partnership or participant of the unincorporated joint venture under the Contract shall be joint and several.</p> <p>(2) In relation to such Contractor only, the Articles of Agreement referred to in General Conditions of Contract Clause 11 shall mean []*, with such modification as may be necessary.</p> <p>(3) For the purpose of this Clause, the expression "unincorporated joint venture" and "participant" shall bear the same meanings as those given in paragraph 6(a) of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors' Joint Venture.</p>	Joint and several liability of partners and unincorporated joint venture participants	ETWB TCW No. 5/2003 Mandatory for use with all GCCs
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* *Specify the Articles of Agreement, which is "the Articles of Agreement as shown in Appendix E to the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors' Joint Venture" when this Circular is issued and is subject to change.*

SCC 46 (1)

General Conditions of Contract Clause 1(1) is amended by adding the following :

“ Cost Centre” means a group of activities identified as such in the Employer’s Requirements or, as the case may be, the group of activities identified by the Supervising Officer in accordance with Clause 78(3)(iii).

“Cost Centre Value” means the value allocated to each Cost Centre as set out in the Employer’s Requirements or, as the case may be, the value revised by the Supervising Officer in accordance with Clause 78(3)(ii).

“Item Value” means the value allocated to each Item comprising a Cost Centre or, as the case may be, the value revised by the Supervising Officer in accordance with Clause 78(3)(ii).

“Milestone” means the completion of a group of Cost Centres described in the Schedule of Milestones comprising Cost Centres in whole and/or in part in accordance with the percentages stipulated in the Schedule of Milestones.

“ Milestone Certificate” means the certificate to be issued by the Supervising Officer pursuant to Clause 78(3) in relation to the achievement or otherwise of Milestones.

“ Payment Schedule” means the schedule included in the Contract setting out the Cost Centre Value or, as the case may be, the schedule revised by the Supervising Officer in accordance with Clause 78(3)(ii).

“Schedule of Milestones” means the schedule included in the Contract describing the Milestones which are to be achieved before the Contractor is entitled to any payment in accordance with the Contract in respect of any Cost Centre.

(2) General Conditions of Contract Clause

Milestone Payment D&B Admin
Procedures
(ver1999)
SCC28 & 29

79(1), 79(2), 79(3), 79(4) and 79(5) are deleted, and General Conditions of Contract Clause 78 is deleted and replaced by the following :

78 (1) The Contractor shall, for the purpose of application for interim payment, deliver to the Supervising Officer within 7 days of receipt of a Milestone Certificate issued by the Supervising Officer pursuant to sub-clause 3(v) of this Clause a statement showing : -

(i) the amount claimed to be payable in accordance with sub-clause (4) of this Clause, including the amount of the relevant Cost Centre Value either in whole or in part according to the Payment Schedule and the Schedule of Milestones, and/or, where a Milestone Certificate has been issued in accordance with sub-clause (3)(iv) of this Clause for non-achieved Milestone, the amount of the reduced value of the relevant Cost Centre Value and Item Value(s) determined by the Supervising Officer in accordance with sub-clause (3)(ii) and (iii) of this Clause; and

(ii) all further estimated sums which the Contractor considers to be due to him under the Contract up to the end of such period.

As a condition precedent to consideration by the Supervising Officer of an application for interim payment due to the Contractor, each such application shall be accompanied by the Milestone Certificate issued for such period by the Supervising Officer in accordance with sub-clause (3)(v) of this Clause in

respect of the amount claimed pursuant to sub-clause (1)(i) of this Clause.

- (2) The statement referred to in sub-clause (1) of this Clause shall be prepared on a form supplied by and at the expense of the Contractor and the style and number of copies shall be as the Supervising Officer shall determine. The Contractor shall complete the required number of copies of the statement and deliver them to the Supervising Officer for checking and, if necessary, correction in accordance with sub-clause (4) to (8) of this Clause. One corrected copy shall be returned to the Contractor.
- (3)
 - (i) Save in so far as prescribed in sub-clause (3)(vi) of this Clause, the Contractor's payment application in respect of a particular Milestone shall not be considered by the Supervising Officer unless that Milestone has been achieved and that the Contractor's payment application has been made in accordance with sub-clause (1) of this Clause.
 - (ii) The Payment Schedule together with the Cost Centre Values and Item Values therein shall be revised by the Supervising Officer :
 - (a) upon a valuation pursuant to General Conditions of Contract Clause 61, by adding to or deducting from the relevant Cost Centre Value and Item Value(s) the amount or allowance as valued, and/or;
 - (b) upon any other

valuation by the Supervising Officer of an amount or allowance due to the Contractor under the Contract which has not been or will not be the subject of an interim payment under sub-clause (4)(ii) of this Clause by adding to or deducting from the relevant Cost Centre Value and Item Value(s) the amount or allowance as valued.

(iii) The Supervising Officer when revising the Payment Schedule together with the Cost Centre Values and Item Values therein in accordance with sub-clause (3)(ii) of this Clause shall select and identify the relevant Cost Centre for that purpose. Where the Supervising Officer is unable to identify a relevant Cost Centre in the Contract for that purpose, the Supervising Officer may identify a new group of activities and create a new Cost Centre as shall in his opinion be reasonable and notify the Contractor in writing accordingly.

(iv) The Contractor shall not be entitled to payment in respect of any Milestone until a Milestone Certificate has been issued pursuant to sub-clause (3)(v) or (3)(vi) of this Clause by the Supervising Officer.

(v) At the end of each period of interim certificate stated in the Appendix to the Form of Tender, the Supervising Officer shall issue to the Contractor a Milestone Certificate certifying, as appropriate, for the preceding period of interim certificate the achievement or otherwise of any Milestone during that period.

(vi) Notwithstanding sub-clause (3)(v) of this Clause the Supervising Officer may

issue a Milestone Certificate where the relevant Milestone is not achieved if :

- (a) the failure to achieve the Milestone is not wholly or partly the fault of the Contractor; and
- (b) in his opinion the outstanding work necessary to achieve the Milestone in full will be completed by the end of the current period of interim payment certificate.

Where a Milestone Certificate has been issued in accordance with this sub-clause for a non-achieved Milestone, then the relevant Cost Centre Values and Item Values included in the non-achieved Milestone shall be reduced in the proportion which the value of the completed activities of the relevant Cost Centre bears to the whole relevant Cost Centre Values included in the non-achieved Milestone. The value of the completed activities of the relevant Cost Centre included in the non-achieved Milestone shall be the value of such completed activities at the date of issue of the Milestone Certificate determined by the Supervising Officer.

- (c) The Milestone Certificate issued by the Supervising Officer under this sub-clause shall state that it is issued pursuant to sub-clause 3(vi) of this Clause.
- (4) Within 7 days of the date of delivery to the Supervising Officer of the Contractor's statement in accordance with sub-clause (1) of this Clause, the Supervising Officer shall value and certify interim payment and within a further 21 days the Employer shall pay to the Contractor after deducting previous payments on account, if any, and any other sum deductible by the Employer under the Contract the sum which in the opinion of the Supervising Officer is due, in respect of the following :
- (i) the amounts shown to be due by reference to the Payment Schedule and the Schedule of Milestones in respect of any Cost Centre Value and Item Value included in the interim payment and/or the amount of the reduced value of the Cost Centre Value and Item Value determined by the Supervising Officer in accordance with sub-clause (3)(vi) of this Clause where a Milestone Certificate has been issued for non-achieved Milestones.

Provided that any amount payable in respect of any Specialist Sub-contractor shall not be included unless supported by a written statement by the Specialist Sub-contractor concerned as specified in sub-clause (9) of this Clause; and

(ii) the amounts determined by the Supervising Officer to be due in respect of : -

(a) Cost incurred pursuant to any provision of the Contract; and

(b) works executed on a daywork basis, pursuant to Special Conditions of Contract Clause SCCxx; and

(c) any other amount or allowance to which the Contractor is entitled under the Contract save in so far as account has been or will be taken of such amount or allowance by way of a revision of any Cost Centre Value or the creation of a new Cost Centre under sub-clause (3)(iii) of this Clause; and

(d) the adjustment on account made, if any, for the Adjustment Item in the proportion that the total amount referred to in sub-clause (4)(i) and (4)(ii)(a) to (c) bears to the Contract Sum excluding the Contingency Sum and the Adjustment Item. The aggregate of the adjustment on account shall not exceed the Adjustment Item.

Provided that the total certified sum shall be adjusted by the Supervising Officer to take into account :

(a) the amount retained by the Employer in respect of the total certified sum calculated at the percentage stated in the Contract until the amount retained reaches the limit of Retention Money stated in the

Appendix to the Form of
Tender; and

- (b) any adjustment to be made for fluctuations in the cost of labour and materials in accordance with Clause 89.

Provided further that the Supervising Officer may refuse to issue a certificate for an interim payment in the event of failure by the Contractor to supply to the Supervising Officer, when prescribed in the Employer's Requirements, all the Check Certificates relating to the design of the Works in accordance with the Design Checking Procedures or to submit to the Supervising Officer the Works Programme or any of its subsequent revisions in accordance with Special Conditions of Contract Clause SCC 42.

- (5) The Supervising Officer may refuse to issue a certificate for an interim payment for a sum less than the minimum payment for interim certificates stated in the Appendix to the Form of Tender, but nothing in this Clause shall prevent the Supervising Officer from issuing a certificate at any time for any sum if in the opinion of the Supervising Officer it is desirable to do so.
- (6) Within 14 days of the date of issue by the Supervising Officer of the maintenance certificate in accordance with Clause 80, the Supervising Officer shall issue a certificate for the payment of Retention Money, subject to Clause 83, the Employer shall pay such Retention Money to the Contractor within 21 days of the

date of such certificate.

- (7) (i) In the event of failure by the Employer to pay the Contractor in compliance with the provisions of this Clause, the Employer shall pay to the Contractor interest at one percent below the judgement debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from and including the date on which the same should have been made.
- (ii) The Employer shall not under any other circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether upon the certificate of the Supervising Officer or otherwise, at a rate in excess of one percent below the said judgement debt rate.
- (8) The Supervising Officer shall have the power to omit from any certificate the value of any work done, material supplied or services rendered with which the Supervising Officer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Supervising Officer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.
- (9) (i) The Contractor shall also deliver to the Supervising Officer at each application during the period for interim payment a statement showing the estimated contract value of work done by any Specialist Sub-contractor.

Such estimated contract value shall be supported by a written statement by any Specialist Sub-contractor on the percentage of work confirmed to have been done to date on the headed paper of the Specialist Sub-contractor concerned.

- (ii) Within 7 days of receiving payment from the Employer in accordance with sub-clause (4) or (6) of this Clause the Contractor shall submit to the Supervising Officer a certificate stating that the sum payable to the Specialist Sub-contractor under the terms of the Specialist Sub-contract has been paid. Such certificate should be supported by written acknowledgement of payment from the Specialist Sub-contractor made on headed note paper of the Specialist Sub-contractor concerned.

(iv) In the event of failure by the Contractor to submit the certificate in sub-clause (9)(ii) of this Clause, the Supervising Officer may, in writing, demand from the Contractor a written statement explaining the reason for failure to make such submission to be submitted to the Supervising Officer with 14 days of the written demand.

- (3) General Conditions of Contract Clause 46 is amended by :
 - (i) replacing the words “Clause 79” on line 8 of sub-clause (3) by “Clause 78”; and
 - (ii) replacing the words “Clause 79” on line 5 of sub-clause (4) by “Clause 78”.
- (4) General Conditions of Contract Clause

48(2) is amended by replacing the words
 “Clause 79” on line 6 by “Clause 78”.

- (5) General Conditions of Contract Clause 52(3) is amended by replacing the words “Clause 79(4)” on line 7 by “Clause 78”.
- (6) General Conditions of Contract Clause 56(3) is amended by replacing the words “Clause 79” on line 7 by “Clause 78”.
- (7) General Conditions of Contract Clause 58(3) is amended by replacing the words “Clause 79” on line 3 by “Clause 78”.
- (8) General Conditions of Contract Clause 63 is amended by replacing the words “Clause 79” on line 19 by “Clause 78”.
- (9) General Conditions of Contract Clause 88(1) is amended by replacing the words “Clause 79” on line 2 by “Clause 78”.

SCC 47	<p>(1) The Contractor shall employ at least the minimum number of technician apprentices and building or civil engineering graduates as specified in the Contract.</p>	<p>Employment of Technician Apprentices & Building and Civil</p>	<p>ETWB TCW No. 12/2003</p> <p>Mandatory for capital works</p>
	<p>(2) Where the Contractor employs the technical apprentice(s) pursuant to sub-clause (1) of this Clause, the Contractor shall ensure that all employed technician apprentice(s) attend a course of instruction at an approved technical institution leading to the award of either a Higher Certificate in Building Studies, Civil Engineering, Building Services or other comparable alternative qualification.</p>	<p>Engineering Graduates</p>	<p>contracts exceeding \$50M</p>
	<p>(3) Where the Contractor employs the building or civil engineering graduate(s) pursuant to sub-clause (1) of this Clause, the Contractor shall ensure that all employed graduate(s) are provided with practical training on site for a minimum of 12 months or 70% of the time for completion of the Works as stipulated in the Appendix to the Form of Tender, whichever is longer, and follow established training guidelines for the relevant disciplines as far as possible.</p>		

SCC 48 (1) For the purpose of this Clause and except when the context otherwise requires,

“Authority” means the Authority referred to in the Ordinance.

“Economic Cost” means the economic costs referred to in Schedule 3 of the Ordinance.

“Excavation Permit” means any excavation permit issued by the Authority in respect of the Works or any part thereof under the Ordinance, including any extension and amendment of the excavation permit.

“Nominated Permittee” has the same meaning as “nominated permittee” defined in the Ordinance.

“Ordinance” means the Land (Miscellaneous Provisions) Ordinance, Cap. 28.

“Permittee” has the same meaning as “permittee” defined in the Ordinance.

“Street Maintained by the Highways Department” has the same meaning as “street maintained by the Highways Department” defined in the Ordinance.

- (2) (a) Where excavation in Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance is required for execution of the Works or any part thereof, the Contractor shall request the Employer to apply for an Excavation Permit from the

Permit for excavation works under Land (Miscellaneous Provisions) Ordinance, Cap. 28

SDEV’s memo ref. (02B0P-01-7) in DEVB(W) 510/70/01 dated 18.3.2011

Authority. The Employer shall be the Permittee and the Contractor shall be nominated by the Employer as the Nominated Permittee of the Excavation Permit. The Contractor shall not withhold his consent to the nomination and agreement to comply with the conditions in the Excavation Permit or, in the case where such consent and agreement have been given, shall not withdraw his consent to the nomination and agreement to comply with the conditions in the Excavation Permit. The Contractor shall take all necessary actions to comply with the conditions stipulated in the Excavation Permit including those conditions applicable to the Permittee and shall use his best endeavours to assist the Employer and his agents, employees or workers to comply with the same.

- (b) Where excavation in land other than Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance is required for execution of the Works or any part thereof, the Contractor shall apply to the Authority for an Excavation Permit or for an exemption under section 10B of the Ordinance as the case may be for the Works or the relevant part and, where an Excavation Permit has been applied for, the Contractor shall be the Permittee.
- (3) General Conditions of Contract Clause 81(1) is amended by adding “or” at the end of item (g) and adding the following after item (g):
- (h) has unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit for excavation in Street Maintained by the Highways Department

required for execution of the Works
or any part thereof, or

- (i) has failed to obtain the approval to be a Nominated Permittee from or has his approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required for the execution of the Works or any part thereof,
- (3A) Notwithstanding sub-clause (3) of this Clause, if the Contractor shall have unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of any part of the Works, or if the Contractor shall have failed to obtain the approval to be a Nominated Permittee from or have his approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required for the execution of any part of the Works, the Supervising Officer may give the Contractor 14 days' notice to rectify such situation. If the Contractor fails to comply with such notice, the Employer may but shall not be obliged to carry out such works by its own workers or to nominate other contractors to be the Nominated Permittee and shall have such works carried out by those other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such works carried out shall be recoverable by the Employer from the Contractor.
- (4) In relation to any Excavation Permit referred to in sub-clause (2)(a) of this Clause or any extension in respect thereof,

- (a) save as expressly provided elsewhere in the Contract, the Employer shall pay all prescribed fees under the Ordinance except that the Employer shall be entitled to recover from the Contractor the prescribed fees for such Excavation Permit as may be required for carrying out any maintenance work including any work of repair or rectification, or making good any Defect/defect, imperfection, shrinkage, settlement or other fault and the necessity for such work is, in the Supervising Officer's opinion, due to the use of Plant, materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract as specified in the General Conditions of Contract Clause 56(3);
- (b) the Supervising Officer shall notify the Contractor when an Excavation Permit has been obtained. If during the course of the Works or during the continuance of the Contract a revision to an Excavation Permit has become necessary, the Contractor shall notify the Supervising Officer immediately;
- (c) the Contractor shall, when required by the Supervising Officer in writing and before the commencement of any part of the Works covered by the Excavation Permit, send to the Authority pursuant to section 10I of the Ordinance a notice in writing using the prescribed form enclosed in Appendix [] to these Special Conditions of Contract or, if so required by the Supervising Officer, using such

other form as may be required by the Supervising Officer, giving his consent to be the Nominated Permittee of the Excavation Permit and agreement to comply with the conditions in the Excavation Permit;

- (d) the Contractor shall advise the Supervising Officer promptly the need for an extension to an Excavation Permit and request the Employer to apply for such extension for the satisfactory completion of the Works;
- (e) the Contractor shall render all necessary assistance to the Employer in the process of any application for an Excavation Permit or any extension in respect thereof, including supply of all necessary information to the Supervising Officer;
- (f) the Employer shall not be liable in any way for failing to submit application for any Excavation Permit and/or any extension in respect thereof unless the Contractor shall have complied with his obligation under sub-clause (2)(a) and sub-clause (4)(a), (b), (c), (d) and (e) of this Clause and shall have allowed the Employer sufficient time to prepare the application; and
- (g) the Employer shall be entitled to recover from the Contractor any fees including Economic Cost paid by the Employer for an extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance and may but shall not be bound to deduct the amount either in whole or in part in accordance with the provisions of Clause 83 of the General Conditions of Contract.

Provided that the Employer shall return to

the Contractor any refund from the Authority of any fees including Economic Cost so recovered or deducted. The Contractor shall provide all necessary assistance or information to the Employer to assist him in applying to the Authority for any review under the Ordinance for the purpose of refund of fees including Economic Cost.

Provided further that on application of the Contractor, the Supervising Officer is of the opinion that the need for such extension is partly or wholly caused by :

- (i) the progress of the Works or any part thereof being materially affected by any Variation ordered under Clause 60 of the General Conditions of Contract (other than a Variation where the relevant lump sum quotation submitted in accordance with sub-clause (3) or (4) of Clause 60 of the General Conditions of Contract has been accepted by the Supervising Officer or a Variation ordered under sub-clause (5) of Clause 60 of the General Conditions of Contract); or
- (ii) an instruction issued under Clause 6(1) of the General Conditions of Contract; or
- (iii) a disturbance for which the Employer, the Supervising Officer or a person or company, not being a utility undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works is responsible,

the Supervising Officer shall determine a fair share of the fees including Economic Cost to be borne by the Employer who shall return such share to the Contractor.

For the avoidance of doubt, the opening up for inspection in accordance with General Conditions of Contract Clause 45 of any work covered up or put out of view after compliance with the requirements of General Conditions of Contract Clause 44, or the testing of Plant, materials or workmanship not required by the Contract but directed by the Supervising Officer or the Supervising Officer's Representative in accordance with General Conditions of Contract Clause 42(1) shall not be regarded as disturbance within the meaning of paragraph (iii) in the last proviso to this sub-clause (4)(g) unless the inspection or test showed that the Plant, work, materials or workmanship were in accordance with the Contract.

- (5) In relation to any Excavation Permit under sub-clause (2)(b) of this Clause or any extension in respect thereof, the Contractor shall pay all prescribed fees under the Ordinance.

- (5A) In relation to any Excavation Permit under sub-clause (2)(a) or (2)(b) of this Clause and without prejudice to Clause 30 of the General Conditions of Contract, the Contractor shall conform in all respects with the conditions stipulated in any Excavation Permit which are applicable to any Works to the extent that such conditions are to be observed by the Contractor under the Ordinance or under the Contract and shall indemnify and keep indemnified the Employer, his agents, employees and workers against all penalties or liabilities of every kind for breach of any such conditions stipulated in any Excavation Permit, whether such conditions are stipulated in the Excavation Permit to be observed by the Permittee, the Nominated Permittee or both the Permittee and the Nominated Permittee if and to the extent that such breach is attributable to the act, default or neglect of the Contractor, his agents, employees or workers, his sub-contractors at all tiers, or the agents, employees or workers of his sub-contractors at all tiers.

- (6) The Contractor shall continue to be

responsible for liaising with utility undertakings and other relevant parties identified in the Contract in connection with the execution of the Works, including without limitation coordinating and agreeing a programme with the relevant utility undertakings or other parties where such is applicable.

- (7) It is incumbent upon the Contractor to plan and programme his Works to cater for any restrictions imposed by the Authority.
- (8) The Contractor shall allow for in his plan and programme his obligation to comply with this Clause (including without limitation sub-clause (2)(a) and (b) and sub-clause (4)(a), (b), (c), (d) and (e) and sub-clauses (5A), (6) and (7) of this Clause) and the time that may be taken by the Authority to process the application for an Excavation Permit and any extension in respect thereof.
- (9) Notwithstanding sub-clause (2)(a) of this Clause, the Employer may apply for an Excavation Permit for the execution of the Works in the absence of a request to do so from the Contractor. For the avoidance of doubt, the obligations of the Contractor under this Clause remain unchanged (with the exception of making request to the Employer in respect of application for the Excavation Permit) if the Employer chooses to apply for an Excavation Permit out of his own volition whether before, on, or after the date of acceptance of the Tender.

SCC 49	General Conditions of Contract Clause 8 is amended by adding the following as sub-clause (3) :	Confidentiality clauses	ETWB TCW No. 29/2003
	“(3) Notwithstanding sub-clause (2) of this Clause, but subject to the following provisions, the Employer may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Contractor or the outcome of the arbitration or any other means of resolution of dispute to the Public		Mandatory for use with all GCCs

Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Employer shall inform the Contractor. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Contractor but such consent shall not be unreasonably withheld. The Contractor shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Contractor may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Contractor's request, the Employer shall convey the request to the said Committee for its consideration."

SCC 50 Replace sub-clause (1) of Clause 8 of the General Conditions of Contract by the following sub-clause: Information not to be divulged ETWB TCW No. 3/2004

“8(1) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer, the Supervising Officer or the Supervising Officer's Representative in the Contract or in any subsequent correspondence or documentation. Any disclosure to any person or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-contractor. The Contractor shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his employees, agents or sub-contractors.”

Mandatory for use with all GCCs

SCC 51 Re-number Clause 37 of the General Conditions of Contract as 37(1) and add the following sub-clauses at the end of the Clause: Ethical commitment TC(W) No. 3/2004

(2) The Contractor shall prohibit his employees, agents, consultants and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.

(3) The Contractor shall require his employees, agents, consultants and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential

Mandatory for use with all GCCs

conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

- (4) The Contractor shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall also require their consultants, sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.
- (5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents, consultants and sub-contractors are aware of the prohibitions in this clause.

SCC 52

Add the following sub-clause at the end of Clause 78 of the General Conditions of Contract:

- (4) The Contractor shall also submit a signed declaration in a form prescribed or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in Clauses SCC 50 and SCC 51 of these Special Conditions of Contract as part of the Contractor's interim statement at a frequency of once every [][^] months. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under General Conditions of Contract Clause 78(7)(i) in that period.

Contractor's interim statements

TC(W)
No. 3/2004

Mandatory for use with all GCCs

^ *Frequency to be specified by the department.*

SCC 53	The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents, consultants or sub-contractor who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention and Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.	Acknowledgement of being notified of the ethical requirements	TC(W) No. 3/2004 Mandatory for use with all GCCs
SCC 54	<p>(1) The submissions on technical resources and technical proposals made by the Contractor in the Tender in accordance with [paragraph / section _____ of the Employer's Requirements / Clause _____ of the General / Special Conditions of Tender (a copy of which is at Appendix ___ to these Conditions)]* shall form part of the Contractor's Proposals. The Contractor shall, subject to General Conditions of Contract Clauses 5 and 6 and sub-clauses (4), (5)#, (6), (7), (8), (12) and (13) of this Clause, execute the Works in accordance with the said submissions.</p> <p>(2) Without prejudice to the generality of the General Conditions of Contract Clause 17, the Contractor shall provide a management and design team including on and off Site suitably experienced staff as submitted by the Contractor in his Tender submissions on technical resources or necessarily inferred therefrom.</p> <p>(3)# Without prejudice to the generality of the General Conditions of Contract Clause 10, the Contractor shall provide all plant and equipment including but not limited to those as submitted by the Contractor in his Tender submissions on technical resources or necessarily inferred therefrom which are necessary or desirable for the satisfactory execution and timely completion of the Works or any Section thereof.</p> <p>(4) In the event the Contractor is unlikely to provide or maintain any staff of the</p>	Marking Scheme in Tender Evaluation	<p>New SCC</p> <p>Mandatory for use in relation to D&B contracts [which have adopted a marking scheme for tender evaluation]*</p> <p>*In relation to some simple D&B contracts, formula approach (as opposed to marking scheme) may be adopted for tender evaluation.</p>

management and design team submitted by the Contractor in his Tender submissions on technical resources or necessarily inferred therefrom, he shall report to the Supervising Officer as soon as practicable and propose for the Supervising Officer's approval a substitute staff having experience and qualification comparable with the staff who is leaving the management and design team. The Supervising Officer shall determine any savings of cost to the Contractor, if any, due to the aforesaid changes. The savings of cost to the Contractor as determined by the Supervising Officer shall be deducted from the Contract Sum.

- (5)# In the event the Contractor is unlikely to provide or maintain any plant or equipment submitted by the Contractor in his Tender submissions on technical resources or necessarily inferred therefrom, he shall report to the Supervising Officer as soon as practicable and propose for the Supervising Officer's approval modifications or amendments to the Tender submissions on technical resources. The Supervising Officer shall determine any savings of cost to the Contractor, if any, due to the aforesaid changes. The savings of cost to the Contractor as determined by the Supervising Officer shall be deducted from the Contract Sum.
- (6) If it is legally or physically impossible for the Contractor to execute the Works in accordance with the technical proposals of his Tender submissions, the Contractor shall make necessary modifications or amendments to the technical proposals for the execution of the Works and shall inform the Supervising Officer in writing. Any such modifications or amendments to the technical proposals shall conform to the Employer's Requirements.
- (7) If the Contractor shall decide not to execute the Works in accordance with the technical proposals of his Tender submissions for any other reasons, the Contractor shall make necessary modifications or amendments to the

- technical proposals of his Tender submissions for the execution of the Works and shall inform the Supervising Officer in writing. Any such modifications or amendments to the technical proposals shall conform to the Employer's Requirements.
- (8) In the execution of the Works in accordance with the technical proposals or the technical proposals modified or amended as provided in sub-clause (6) or (7) of this Clause, the Contractor shall strictly comply with the Contract to the satisfaction of the Supervising Officer and shall strictly comply with and adhere to the Supervising Officer's instructions on any matter relating to the technical proposals or the modified or amended technical proposals as provided in sub-clause (6) or (7) of this Clause.
- (9) The Contractor shall within 21 days when so requested by the Supervising Officer give detailed information on the estimated cost of execution in accordance with the technical proposals and the cost of execution in accordance with the technical proposals modified or amended as provided in sub-clause (6) or (7) of this Clause. The Supervising Officer shall determine the savings of cost to the Contractor arising from the modified or amended technical proposals referred to in sub-clause (6) or (7) based on the information so provided by the Contractor. The savings of cost to the Contractor as determined by the Supervising Officer shall be deducted from the Contract Sum.
- (10) The Contractor shall not be entitled to, except and to the extent that the Contractor is in compliance with a Variation ordered by the Supervising Officer under Clause 60 of the General Conditions of Contract, any additional payment or extension of time for completion for the execution of the Works in a manner which differs from his Tender submissions on technical resources or technical proposals (including the technical proposals

modified or amended as provided in sub-clause (6) or (7) of this Clause) or both.

- (11) General Conditions of Contract Clause 15 is amended by replacing "(except where the physical impossibility arises from the Contractor's design of the Works)" in lines 1 and 2 by "(except where the legal or physical impossibility arises from the Contractor's design of the Works and/or the Contractor's technical proposals in the Tender)".
- (12) Any provision in the Tender submissions on technical resources and technical proposals purporting to impose any obligation on the Employer or the Supervising Officer which is not an obligation of the Employer or, as the case may be, the Supervising Officer under the other documents forming part of the Contract shall have no effect and shall not be binding on the Employer or, as the case may be, the Supervising Officer.
- (13) Any provision in the Tender submissions on technical resources and technical proposals purporting to confer any right or option on the Contractor which is not a right or option of the Contractor under the other documents forming part of the Contract shall have no effect.
- (14) General Conditions of Contract Clause 1(1) is amended by replacing the definition of "Tender" with the following :
- "Tender" means the Contractor's tender for the Contract, including for the avoidance of doubt the submissions on technical resources and technical proposals made by the Contractor in accordance with [paragraph / section _____ of the Employer's Requirements / Clause _____ of the General / Special Conditions of Tender (a copy of which is at Appendix ___ to these Conditions)][†]* as part of the Contractor's Proposals.
- (15) General Conditions of Contract Clause 5 is deleted and replaced by the following:

“5 (1) The several documents forming the Contract shall, subject to sub clause (2) of this Clause, be construed according to the following order of precedence:

- (a) The Special Conditions of Contract (if any);
- (b) These General Conditions of Contract;
- (c) Employer's Requirements;
- (d) Other documents forming part of the Contract.

(2) In the event of conflict between the submissions on technical resources and technical proposals made by the Contractor in the Tender and any other document forming part of the Contract, the submissions on technical resources and technical proposals shall prevail only in the case where such submissions impose higher requirements in terms of quality or quantity than those specified under or pursuant to the other document forming part of the Contract or impose requirements on the part of the Contractor more onerous than those specified under or pursuant to the other document forming part of the Contract and in all other cases the other document forming part of the Contract shall prevail.

(16) A reference to technical proposals in any provision of this Clause shall, for the purposes of this Clause, be deemed to include the design in the Contractor's Tender submissions.

⁺ *If a tender addendum is issued to amend this GCT/SCT prior to tender closing, the copy of this GCT/SCT at Appendix ___ hereto should also be amended in the same manner by the same tender addendum.*

^{*} *Project Office should check to ensure that it is also clearly stipulated in the Employer's Requirements and Conditions of Tender that the relevant submissions on technical resources and technical proposals at tender stage which are to be assessed and marked will form part of the Contractor's Proposals (and thus will be contractually binding).*

Sub-clauses (3) and (5) should only be included where tenderers are required to submit a proposal on plant and equipment as part of the Contractor's Proposals which is to be assessed and marked.

SCC 55

General Conditions of Contract Clause 86 is deleted and replaced by the following:

Settlement of disputes

() in
DEVB(W)51
0/10/01 dated
4.12.2014

- “86 (1) Any and all disputes shall be settled in accordance with the provisions of this Clause 86.
- (2) For the purpose of this Clause, dispute means any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under, out of or in connection with the Contract or the carrying out of the Works including any dispute as to any decision, instruction, opinion, order, direction, certificate or valuation by the Supervising Officer whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract.
- (3) For the purpose of this Clause 86 and notwithstanding sub-clause (2) of this Clause, a dispute shall be deemed to arise when either the Contractor or the Employer serves on the Supervising Officer and the other party a notice in writing stating the nature of the dispute.
- (4) The Supervising Officer shall within 28 days of receipt of the notice referred to in sub-clause (3) of this Clause decide the dispute and notify the Employer and the Contractor in writing of his decision. Such decision shall be final and binding upon the Employer and the Contractor unless and until the same shall be revised in mediation or arbitration as hereinafter provided.
- (5) Unless the Contract shall have been already terminated or abandoned the Contractor shall in every case continue to

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for use with
all GCC

proceed with the Works with all due diligence and he shall give effect forthwith to every such decision of the Supervising Officer unless and until the same shall be revised in mediation or arbitration as hereinafter provided.

(6) If the Supervising Officer shall fail to give such decision in accordance with sub-clause (4) of this Clause or if either the Employer or the Contractor is dissatisfied with such decision then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiration of the said decision period of 28 days, as the case may be, request that the dispute be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(7) If the dispute cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the dispute to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the dispute shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or

(d) the abandonment of the mediation,
or

(e) where the Supervising Officer has failed to give a decision within the 28 days allowed under sub-clause (4) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or

(f) where the Supervising Officer has given a decision within the 28 days allowed under sub-clause (4) of this Clause, the expiry of the period of 28 days after receipt of the notice of the Supervising Officer's decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(8) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 46(3) not to order a Variation), instruction, opinion, order, direction, certificate or valuation by the Supervising Officer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Supervising Officer for the purpose of obtaining his decision referred to above. Save as provided for in sub-clauses (9) and (9A) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

(a) the giving of a certificate of completion in accordance with Clause 53 shall not be a condition precedent to the taking of any step in such reference;

(b) no decision given by the Supervising Officer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute so referred to the arbitrator as aforesaid.

(9) In the case of any dispute as to the exercise of the Supervising Officer's powers under Clause 81(1) the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(9A) In the case where the Contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(10) (a) Subject to paragraphs (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(c) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

"20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator.

Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

- (a) are necessary for implementation or enforcement;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the

Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration. "

(11) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

(12) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modifications thereof for the time being in force. "

* *Delete as appropriate.*

SCC 56

General Conditions of Contract Clause 74 is deleted and replaced by the following:

“ (1) In respect of any item of Constructional Plant brought onto the Site, the Contractor shall upon written request by the Supervising Officer (which may be issued by the Supervising Officer from time to time or at any time during the continuance of the Works) produce to the Supervising Officer proof of ownership of such item or items of Constructional Plant to the satisfaction of the Supervising Officer or, where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form approved by the Employer, from the owner of the relevant item of Constructional Plant to the Employer that:

Hired and hire-
purchase
Constructional
Plant

TC(W)
No. 9/2004

Mandatory for
use with all
GCCs

- (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the determination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works; and
- (b) subject to any assignment under paragraph (a) of this sub-clause, the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works

The Supervising Officer may make as many separate written requests as he thinks fit during the continuance of the Works.

(2) In the event that the Supervising Officer shall certify in writing to the Employer that the Contractor has failed to comply with any written request referred to in sub-clause (1) of this Clause within 28 days of the date of issue of the written request and without prejudice to any other rights or remedies available to the Employer, the Employer may, subject to the proviso to this sub-clause, withhold a sum equal to 5 percent of the total certified sum referred to in [the first proviso to Clause 79(1)]# from each interim payment otherwise due to the Contractor in accordance with the Contract until such time as such failure to comply with the relevant written request is rectified to the satisfaction of the Supervising Officer or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the Contractor in accordance with the provisions of the Contract, whichever is the earlier and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment. Provided that the total sum withheld by the Employer on the ground of failure to comply with any written request referred to in

To be replaced by [Clause 78 as amended by Special Conditions of Contract Clause SCC 46] if SCC 46 is adopted.

sub-clause (1) of this Clause shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item or items of Constructional Plant as determined by the Supervising Officer and notified in writing by the Supervising Officer to the Employer and the Contractor.

(3) The application of sub-clauses (1) and (2) of this Clause is limited to items of Constructional Plant which, in the Supervising Officer's opinion, are essential to the completion of the Works and are difficult to replace in the event of determination of the Contractor's employment under Clause 81."

SCC 57 (Not Used)

SCC 58 General Conditions of Contract Clause 50 is amended by adding following after sub-clause (1)(b)(ix) :

“(ixa) Any utility work directly connected with but not forming part of the Works and which in the opinion of the Supervising Officer could not have been foreseen by an experienced contractor based on the information available as at the tender closing date, or”	utility work	TC(W) No. 17/2004 Mandatory for use with all GCCs
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SCC 59 (1) Notwithstanding the provisions of any other clause in the Contract, the Employer shall, in addition to any other power enabling it to terminate the Contract, have power to terminate the Contract at any time by notice in writing to the Contractor and the termination shall take effect on a date specified in the notice but without prejudice to the claims of either party in respect of any antecedent breach thereof. Upon receipt of the notice of termination the Contractor shall, unless directed by the Supervising Officer pursuant to sub-clause (4) hereunder, suspend all the work and stop incurring further expenditure with respect to any work under the Contract except for work which is necessary for the protection of life or property or for the safety of the Works.	Right of Government to terminate for convenience	TC(W) No. 23/2004 Mandatory for use with all GCCs
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- (2) Except as provided in sub-clause (3) of this Clause, the Employer shall not terminate the Contract under this Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.
- (3) The Employer is entitled to terminate the Contract under this Clause and thereafter to execute the Works himself or to arrange for the Works to be executed by another contractor if the Supervising Officer shall certify in writing to the Employer that in his opinion the completion of the Works will be delayed by a period of not less than one year due to interfacing problems or programme slippages of associated works outside the scope of the Contract.
- (4) After the issue of the notice of termination to the Contractor under sub-clause (1), the Supervising Officer shall as soon as practicable and in any case not later than the date of termination specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:
 - (a) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works;
 - (b) the protection of work executed under the Contract or any work required to leave the Site in a clean and safe condition;
 - (c) the removal of all Constructional Plant, Temporary Works and temporary buildings from the Site;
 - (d) the removal of materials placed on the Site;
 - (e) the removal of any debris or rubbish and the clearing and making good of the Site;

- (f) the termination or assignment of any sub-contracts and contracts, including those for the hire of plant, services and insurance, entered into by the Contractor for the purposes of or in connection with the Contract;
 - (g) the assignment of warranties for materials placed on the Site ; and
 - (h) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.
- (5) All Constructional Plant, Temporary Works, temporary buildings and materials properly brought on to the Site shall be removed by the Contractor as and when they cease to be required in accordance with directions given by the Supervising Officer under sub-clause (4). The Constructional Plant, Temporary Works, temporary buildings and materials which have become the property of the Employer under Clauses 71 and 72 of the General Conditions of Contract shall upon such removal re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Temporary Works, temporary buildings or materials as aforesaid, the Employer may

- (a) sell any such Constructional Plant, Temporary Works, temporary buildings or materials which has become the property of the Employer under Clauses 71 and 72 of the General Conditions of Contract and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale shall pay the balance, if any, to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provisions of Clause 83 of the General Conditions of Contract; or
- (b) dispose the same in a manner which the Employer considers most appropriate and any costs, charges and expenses so incurred shall be recoverable by the Employer from the Contractor in the manner aforesaid.

Provided that in the event of any such Constructional Plant not solely owned by the Contractor and the Contractor fails to remove such Constructional Plant, the Employer may return such Constructional Plant at the expense of the Contractor to the person, firm or company from whom such Constructional Plant was held by the Contractor and any expense so incurred may be recovered by the Employer from the Contractor in the manner aforesaid.

Provided further that the Employer shall not at any time be liable for the loss of or damage to any Constructional Plant, Temporary Works, temporary buildings or materials which the Contractor shall fail to remove from the Site under this sub-clause.

- (6) If-

- (a) the Contractor is unable or unwilling with all reasonable despatch to carry out any work or other matter specified in directions given to him by the Supervising Officer in terms of sub-clause (4), or
- (b) the Employer considers that any other urgent work not specified in directions given to the Contractor under sub-clause (4) shall be carried out by a person other than the Contractor,

the Supervising Officer may authorize the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Supervising Officer, the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provisions of Clause 83 of the General Conditions of Contract.

- (7) In the event of termination of the Contract under this Clause the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination to be valued in accordance with the Contract and in addition, subject to sub-clause (8) :
 - (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion, as certified by the Supervising Officer, of all such items the work or service comprised therein has been partially carried out or performed;

- (b) the cost of materials ordered for the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery or any advanced payment made for materials ordered for the Works, such materials becoming the property of the Employer upon such payment being made by the Employer;
- (c) a sum to be certified by the Supervising Officer being any Cost reasonably incurred by the Contractor for the purpose of completing the Works in so far as such Cost shall not have been paid in accordance with any other sub-clause of this Clause or any other Clause under the Contract.
- (d) the additional cost of removal, as compare to removal if the contract had been performed to completion, under sub-clause (5) of all Constructional Plant, Temporary Works, temporary buildings and materials from the Site and, if required by the Contractor, return thereof to the Contractor's country of origin or to any other destination at no greater cost and certified by the Supervising Officer as reasonable;
- (e) a sum to be certified by the Supervising Officer being any reasonable sum expended by the Contractor because of the termination of the Contract in respect of
 - (i) the uncompleted part of any sub-contract and other contracts (including those for the hire of plant, services and insurance), and
 - (ii) the curtailment of any contract of employment,entered into exclusively in connection with the Contract.

Provided always that against any payments due from the Employer under this sub-clause the Employer shall be entitled to be credited with rebates from insurance, credit value of plant/equipment for the Supervising

Officer's use prematurely re-delivered to the Contractor and any outstanding balances due from the Contractor for advances in respect of plant and materials and any sum paid in advance by the Employer to the Contractor in respect of the execution of the Works.

- (8) The Contractor shall, in any sub-contract or contract made by him in connection with or for the purposes of the Contract, reserve the power to determine such sub-contract or contract in the event of the termination of the Contract by the Employer in accordance with the provisions of this Clause upon terms similar to the terms of this Clause. The Contractor shall not be entitled to compensation of any expenditure resulting from non-compliance with this requirement.
- (9) Within 90 days after the date of issue of the notice of termination under sub-clause (1), the Contractor shall submit to the Supervising Officer a statement of account and supporting documentation showing in detail the value in accordance with the Contract of the work done as of the date of termination together with all further sums which the Contractor considers to be due to him under this Clause. Within 90 days after receipt of the final account and of all information reasonably required for its verification, the Supervising Officer shall issue a payment certificate stating the sum which in his opinion is finally due to the Contractor on termination under this Clause. The sum shall be paid to the Contractor by the Employer within 21 days of the date of the certification.
- (10) Payment to the Contractor under sub-clause (7) shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Contract under this Clause.
- (11) This Clause shall survive and remain in force after termination of the Contract in accordance with this Clause.

(12) General Conditions of Contract clause 7 is amended by adding “or Special Conditions Contract SCC59 after “Clause 84” on line 3 of sub-clause (2).

SCC 60

(1) General Conditions of Contract Clause 1(1) is amended by adding the following definition :

““Change in Law” means any addition or amendment to any enactment, regulations, bye-laws or rules listed in Appendix []¹ to these Special Conditions Contract

- (a) made on or after the date 10 days prior to the tender closing date; or
- (b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date and the Contract does not expressly provide for the parties’ respective rights and obligations in relation to compliance with such addition or amendment upon its commencement.”

(2) General Conditions of Contract Clause 29 is deleted and replaced by the following:

“29. The Contractor shall give all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulations or bye-laws of any local or other duly constituted authority in relation to the execution of the Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the Works, including any new fee and any change in existing fees

- (a) made on or after the date 10 days prior to the tender closing date; or
- (b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date.”

Changes in Law

TC(W)
 No. 23/2004
 and SDEV’s
 memo ref.
 DEVB(W)
 510/10/01
 dated
 20.12.2012

Mandatory for
 use with all
 GCCs

- (3) General Conditions of Contract Clause 30(1) shall be amended by replacing “and any additions or amendments theretoany such enactment, regulations, bye-laws or rules” by the following :

“and any additions or amendments thereto or any new enactment, regulations, bye-laws or rules made during the continuance of the Works, which are applicable to the Works, and shall be responsible for the payment of all penalties and fines and discharge of all liabilities under such enactment, regulations, bye-laws or rules and shall keep the Employer indemnified against all penalties and fines and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules. For the avoidance of doubt, the Contractor shall, under no circumstances, be paid by the Employer for any penalties, fines and liabilities under such enactment, regulations, bye-laws or rules nor shall the Final Contract Sum be adjusted for that purpose.”

- (4) General Conditions of Contract Clause 30(2) is deleted and substituted by the following:

“(2) Notwithstanding the Contractor’s obligations under Clause 30(1) and the definition of “Variation” in Clause 1(1), in the event that there is any Change in Law, Clause 30(3) or Clause 30(4) or both may be applicable.

(3) If in the opinion of the Supervising Officer the Employer’s Requirements are precluding conformity with such Change in Law, the Supervising Officer shall order a Variation to ensure conformity with such Change in Law and such Variation shall be valued in accordance with Clause 61.

(4) If, irrespective of whether a Variation has been ordered under Clause 30(3), the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in decrease in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution

of the Contract resulting from any Change in Law or upon written application by the Contractor to the Supervising Officer, the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change in Law, the Supervising Officer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with Clause 79. The Final Contract Sum shall be adjusted to take into account any decrease or increase in Cost (excluding overheads whether on or off site) to the Contractor in the execution of the Contract resulting from any Change in Law.

(5) Where a Variation has been ordered in accordance with Clause 30(3) in respect of any Change in Law, the Supervising Officer when valuing the decreased Cost (excluding overheads whether on or off the Site) or, as the case may be, ascertaining the increased Cost (excluding overheads whether on or off the Site) resulting from such Change in Law in accordance with Clause 30(4) shall take into account the adjustment to the Final Contract Sum already made under any provision in the Contract as a result of the Variation.”

- (5) General Conditions of Contract Clause 50 is amended by:-
- a) Adding the following as sub-clause (1)(b)(ixb) before sub-clause (1)(b)(x):

“(ixb) any Change in Law , or”

¹ *Insert appropriate Appendix reference. Refer to Appendix A1 of ETWB TC(W) No. 23/2004.*

SCC 61A	(1) General Conditions of Contract Clause 4 is amended by adding the following:	Subcontracting for Type A	DEVB TCW No. 10/2013 and the Cyber Manual for
	() If the Contractor is not included in the		

“List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer, the Contractor shall enter into a written sub-contract with a specialist contractor to carry out the arboricultural work to trees within the Site, including but not limited to planting, replanting, transplanting, tree surgery work and control of pest and disease. Unless otherwise agreed by the Supervising Officer, such specialist contractor shall be selected from the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer. Provided that the Contractor shall not without the written consent of the Supervising Officer enter into a written sub-contract with a specialist contractor on the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in that category. The Contractor shall submit details of the specialist contractor to the Supervising Officer for checking of compliance with this Clause at least seven (7) days prior to entering into a written sub-contract with the specialist contractor.

Greening
under ETWB
TC(W) No.
11/2004

Provisions for
preservation
of existing
trees (where
there are no
old and
valuable trees)

[Notes for Type A:

- (i) Type A is used where there are existing trees requiring preservation and protection. A separate set of Special Conditions of Contract SCC 61B should be prepared for preservation and protection of Registered Old and Valuable Trees.*
- (ii) Where it is anticipated that the Works include arboricultural work for the preservation and protection of existing trees, including but not limited to planting, replanting, transplanting, tree surgery work and control of pest and disease to the trees, the above SCC 61A shall be added to the Special Conditions of Contract. The above SCC 61A is developed based on SCC 14B in the Library of Special Conditions of Contract on sub-contracting which is for use where only the List of Approved Suppliers of Materials and Specialist Contractors for Public Works is involved.]*

OR

by adding the following:

- () If the Contractor is not included in the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer, the Contractor shall enter into a written sub-contract with a specialist contractor to carry out the arboricultural work to trees within the Site, including but not limited to planting, replanting, transplanting, tree surgery work and control of pest and disease. Unless otherwise agreed by the Supervising Officer, such specialist contractor shall be selected from the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer. Provided that the Contractor shall not without the written consent of the Supervising Officer enter into a written sub-contract with a specialist contractor on the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in that category. The Contractor shall submit details of the specialist contractor to the Supervising Officer for checking of compliance with this Clause at least seven (7) days prior to entering into a written sub-contract with the specialist contractor.

contracting for 10/2013 and the Type B Cyber Manual for Greening under ETWB TC(W) No. 11/2004

Provisions for preservation of existing trees (where there are old and valuable trees)

[Notes for Type B:

(i) *Where it is anticipated that the Works include arboricultural work for the preservation and protection of existing trees, including but not limited to planting, replanting, transplanting, tree surgery work and control of pest and disease to the trees, the above clause SCC 61B shall be added to the Special Conditions of Contract. Clause SCC 61B is developed based on SCC 14B in the Library of Special Conditions of Contract on sub-contracting which is for use where only the List of Approved Suppliers of Materials and Specialist Contractors for Public Works is involved.*

(ii) *Where the existing trees that are to be preserved and protected include Old and Valuable Trees from the register at the website: <http://www.lcsd.gov.hk/LEISURE/LP/gc/tree>, the following clauses SCC 61C, SCC 61D, SCC 61E and SCC 61F shall be added to the Special Conditions of Contract. Further details on the registration procedures and special protection measures required for the Old and Valuable Trees are given in ETWB TCW No. 29/2004.]*

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| SCC 61C | (1) | <p>The Contractor shall employ an independent tree specialist (hereinafter referred to as ITS) in accordance with this Clause for the preservation and protection of the Old and Valuable *Tree/Trees (*Tree/Trees No. __) during the period as stated in the Contract.</p> | Independent tree specialist | Delete whichever is inappropriate |
| | (2) | <p>The ITS shall be a degree holder of any of the disciplines of agriculture, arboriculture, botany, forestry, horticulture, landscape architecture, landscape design, landscape management or landscape science or a discipline of equivalent subject acceptable to the Supervising Officer and shall have specialised knowledge and training in the above fields. The ITS shall also have at least three (3) years' documented or demonstrable experience gained whether in Hong Kong or elsewhere in the physiology and care of major tree species commonly found in Hong Kong. In the nomination for the employment pursuant to sub-clause (3) of this Clause, the ITS shall provide to the Supervising Officer a declaration of "no conflict of interest" in the discharge of his duties specified under the Contract.</p> | | |
| | (3) | <p>Within seven (7) days of the date of the Employer's letter of acceptance of the Tender, the Contractor shall nominate a candidate to be the ITS for the approval of the Supervising Officer. The Contractor shall enter into a written contract of employment with the ITS and ensure that the employment of the ITS shall commence within seven (7) days of the date of the Supervising Officer's approval of the employment of the ITS. In the event that the Contractor fails to comply with any of the requirements in this sub-clause, the Employer shall be entitled to employ an ITS forthwith and deduct all costs, charges and expenses arising from or in connection with the employment of an ITS in accordance with the provisions of General Conditions of Contract Clause __ [<i>insert number of GCC clause on recovery of money due to the Employer</i>] and/or recover such costs, charges and expenses as a debt from the Contractor.</p> | | |
| | (4) | <p>The Contractor shall ensure that the ITS carries out his duties specified in the Contract. In the event that the ITS is unable or refuses to carry out such duties or, in the opinion of the</p> | | |

Supervising Officer, is not performing satisfactorily, the Supervising Officer may withdraw his approval of the ITS at any time. If such approval is withdrawn, the Contractor shall, within seven (7) days of the notice of withdrawal by the Supervising Officer, nominate a replacement ITS for the approval of the Supervising Officer. The Contractor shall enter into a written contract of employment with the replacement ITS and ensure that the employment of the replacement ITS shall commence within seven (7) days of the date of the Supervising Officer's approval of the employment of the replacement ITS. In the event that the Contractor fails to comply with any of the requirements in this sub-clause, the Employer shall be entitled to employ a replacement ITS forthwith and deduct all costs, charges and expenses arising from or in connection with the employment of a replacement ITS in accordance with the provisions of General Conditions of Contract Clause __ *[insert number of GCC clause on recovery of money due to the Employer]* and/or recover such costs, charges and expenses as a debt from the Contractor.

- (5) The wages payable to the ITS shall be paid by the Contractor. It shall be a condition precedent for the Contractor to submit satisfactory evidence to the Supervising Officer that the ITS has been paid for his services rendered, such evidence including but not limited to receipts for payment of the ITS, before the Contractor is entitled to claim for payment of the item(s) of works for which the services of the ITS are required under the Contract.
- (6) The duties of the ITS shall include:
 - (a) conducting an initial survey of Old and Valuable *Tree/Trees (*Tree/Trees No. __) and an initial site survey and initial soil tests of *its/their tree protection *zone/zones and submitting a report on the same comprising the details and within the time frames as stipulated in Appendix __ *[Appendix I in the sample PS]* of the Particular Specification;
 - (b) preparing monitoring reports on Old and Valuable *Tree/Trees (*Tree/Trees No. __)

and submitting each monitoring report comprising the details and within the time frames as stipulated in Appendix ___ [Appendix II in the sample PS] of the Particular Specification;

- (c) conducting a final survey of Old and Valuable *Tree/Trees (*Tree/Trees No. ___) and a final site survey and final soil tests of *its/their tree protection *zone/zones and submitting a report on the same comprising the details and within the time frames as stipulated in Appendix ___ [Appendix I in the sample PS] of the Particular Specification;
- (d) providing arboricultural advice in the preparation of method statements and any reports on repair of damage, supervising arboricultural work, and providing on-site advice in relation to site control within the tree protection *zone/zones and at *its/their adjacent areas, for the preservation and protection measures for Old and Valuable *Tree/Trees (*Tree/Trees No. ___) as stipulated in the Contract; and
- (e) any other services or duties specified in the Contract.

SCC 61D (1) The Contractor shall take all reasonable measures, including but not limited to the stipulations in the Contract, to preserve and protect Old and Valuable *Tree/Trees (*Tree/Trees No. ___);

Preservation and protection of Old and Valuable Trees Delete whichever is inappropriate

- (2) If Tree No. ___¹ dies or becomes moribund as determined by the ITS and such death or moribundity occurs before the expiry of the Maintenance Period or where there is more than one such Period, before the expiry of the last Period, the Contractor shall be liable to pay to the Employer a sum equal to the cost that the Employer has expended for nurturing, preservation, protection and maintenance of that tree. This sum¹ for Tree No. ___ is

¹ Separate sum shall be applied to each tree if more than one Old and Valuable Tree is involved. Such sum for each Old and Valuable Tree shall be the genuine pre-tender estimate of the cost that the Employer has expended in nurturing, preservation, protection and maintenance of that particular tree.

quantified and stated in the Appendix to the Form of Tender. The payment of such sum shall not relieve the Contractor from any of his obligations under the Contract. Provided that if the death or moribundity of ¹Tree No. ___ is not due to neglect or failure on the part of the Contractor to comply with any of his express or implied obligations under the Contract as determined by the Supervising Officer, the Contractor shall not be liable to pay such sum to the Employer.

SCC 61E General Conditions of Contract Clause ___ [*insert number of GCC clause on definitions*] is amended by adding the following:

In Special Conditions of Contract Clauses SCC ___ [*insert numbers of SCC clauses on sub-contracting, independent tree specialist, and preservation and protection of Old and Valuable Trees given above*], all references to “tree”, “Old and Valuable Tree”, “tree protection zone” and “arboricultural work” are as respectively defined in the Particular Specification.

“Aftercare to Old and Valuable Trees” means the regular monitoring and other operations specified to be performed for Old and Valuable Trees (*Tree/Trees No. ___) during the period stated in the Contract for such regular monitoring and other operations.

SCC 61F (1) As soon as in the opinion of the Supervising Officer the Works other than Aftercare to Old and Valuable Trees have been substantially completed, the Supervising Officer shall, notwithstanding the provisions of General Conditions of Contract Clause ___ [*insert number of GCC clause on commencement of the Works*], notify the Contractor in writing of the date for commencement of the Aftercare to Old and Valuable Trees which shall be undertaken for the duration stated in the Contract. Such date for commencement shall be the day immediately following the date of certification of completion of the Works other than Aftercare to Old and Valuable Trees, or the last Section thereof, by the Supervising Officer in accordance with General Conditions of Contract Clause ___ [*insert number of GCC clause on completion of the Works*].

(2) Notwithstanding the provisions of General

Definitions Delete whichever (Preservation and protection of existing trees including Old and Valuable Trees) is inappropriate

Commencement and completion of Aftercare to Old and Valuable Trees

Conditions of Contract Clauses__ [insert number of relevant sub-clauses of GCC clause on completion of the Works regarding giving a certificate of completion in respect of any part of the Works, e.g. GCC Clauses 53(5)(a)&(b) in GCC for Civil Engineering Works (1999 edition)], no certificate of completion shall be given in respect of any part of the Aftercare to Old and Valuable Trees, provided that this shall not prevent the issuance of a certificate of completion in respect of the whole of the Aftercare to Old and Valuable Trees.

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| SCC 62 | <p>(1) "Systematic Risk Management activities" means the systematic risk management activities as stipulated in Particular Specification Clause [][#].</p> <p>(2) The Contractor shall carry out Systematic Risk Management activities in accordance with Particular Specification Clause [][#].</p> | <p>Systematic Risk Management</p> | <p>TC(W) No. 6/2005</p> <p>This SCC is to be used for project estimate > \$200M</p> |
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[#] *Insert the appropriate reference.*

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| SCC 63 | <p>(1) "Environmental Management Plan" means the Environmental Management Plan (EMP) referred to in this Special Condition of Contract, including any revised or updated version thereof, prepared by the Contractor in accordance with the Particular Specification.</p> <p>(2) The Contractor shall prepare a draft EMP in accordance with the Particular Specification [and the Outline EMP]¹ and submit []² copies of the draft EMP to the Supervising Officer for comments within 21 days of the date of the Employer's letter of acceptance of the Tender.</p> <p>(3) If the Supervising Officer is of the opinion that the draft EMP does not meet the requirements of the Contract, he shall request the Contractor to revise the draft EMP by notice in writing and the Contractor shall revise the draft EMP and re-submit within 7 days of the date of the notice.</p> <p>(4) The Contractor shall finalize the EMP within 45 days of the date of the Employer's letter of acceptance of the Tender and submit []² hard copies of the EMP and a soft copy in Microsoft Word format to the Supervising Officer.</p> | <p>Environmental Management Plan</p> | <p>S for ETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006</p> <p>This SCC is to be used for contracts included under the Pay for Safety and Environment Scheme.</p> |
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- (5) The Contractor shall review and update the EMP monthly and submit []² hard copies of the updated part of the EMP and a soft copy in Microsoft Word format to the Supervising Officer.
- (6) The Contractor shall provide all facilities, access and assistance to the Supervising Officer or his Representative to periodically verify the EMP implementation. If the Supervising Officer or his Representative is of the opinion that the EMP is not properly implemented, the Supervising Officer or his Representative shall notify the Contractor in writing of such failure and the Contractor shall take all necessary steps promptly to rectify the failure.
- (7) The submission of EMP shall not relieve the Contractor from any of his obligations or responsibilities under the Contract.
- (8) The Contractor shall comply with the EMP and ensure compliance with the provision of the necessary environmental measures as specified in the Contract in the execution of the Works, including compliance by his employees and sub-contractors of all tiers. The Contractor shall provide any other parties working on the Site, including the Specialist Contractors and utility companies, with a copy of the EMP and shall request those parties to comply with it. The Supervising Officer or his Representative shall have the power to order any person who, or plant or equipment which, fails to comply with the EMP to be removed from the Site.
- (9)³ For works involving demolition, the Contractor shall submit a method statement for the works as part of the EMP to the Supervising Officer for approval prior to the commencement of the demolition on the Site. The Contractor shall include in the method statement the sequence of demolition and the work programme to facilitate effective recovery of reusable and/or recyclable portions of C&D materials at the earliest stage, so as to minimise the need for subsequent sorting, and specify the measures to minimize nuisance affecting the immediate vicinity. Particular attention shall be given to materials that will cause contamination or ill-health to workers. C&D materials arising from demolition debris shall be separated into the following categories:

- (i) broken concrete
- (ii) other inert materials, e.g. blockwork, brickwork etc.
- (iii) metals, e.g. reinforcement bars, mechanical and electrical fittings, building services fittings, hardware etc.
- (iv) general refuse
- (v) hazardous materials

¹ *Insert 'and the Outline EMP' in case of tenders selected based on a marking scheme where the Outline EMP is part of the Contractor's technical proposal.*

² *Insert the number of required copies. The number of required copies should be kept to the minimal to save paper.*

³ *This sub-clause is to be used if the Works involve demolition.*

SCC 64	<p>(1) All Constructional Plant powered by diesel fuel, whether they belong to the Contractor or his sub-contractors, must only be replenished with ultra low sulphur diesel (ULSD) (defined as diesel fuel containing not more than 0.005% by weight of sulphur) when working on the Site. The Contractor shall maintain a summary record of <u>all</u> delivery notes of ULSD delivered to the Site, including those ordered by his sub-contractors, together with the details of consumption of such fuel by individual Constructional Plant on the Site and the date of arrival and departure of the Constructional Plant to and from the Site. The record of fuel deliveries shall be supported by the original receipts of delivery notes from oil companies. Both the record and delivery receipt shall be kept on the Site for inspection by the Supervising Officer or his site supervisory staff upon request.</p>	<p>Use of ultra low sulphur diesel</p>	<p>S for ETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006</p> <p>This SCC is to be used for contracts included under the Pay for Safety and Environmental Scheme.</p>
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(2) The Supervising Officer or his Representative may order at any time any number of fuel samples to be taken from any diesel-operated Constructional Plant, fuel tank and/or container on the Site, except those which the Contractor can substantiate that the Constructional Plant, fuel tank and container concerned has/have been brought to the Site recently according to the summary record maintained pursuant to sub-clause (1), and has/have never been replenished with any fuel since its arrival. The sulphur content of the fuel samples shall be tested by a HOKLAS accredited laboratory using internationally recognized testing methods such as ASTM D2622, ISO 14596 and ISO 20884. The laboratory to carry out the test shall be proposed by the Contractor and agreed by the Supervising Officer.

SCC 65A	General Conditions of Contract Clause 1(1) is amended by adding the definition of :	Definition and Interpretation	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010 Mandatory For in-house capital works contracts
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“Site Personnel” - “Site Personnel” means all workers and staff employed by the Contractor or his sub-contractor of all tiers including specialist sub-contractors and Nominated Sub-contractors, except self-employed workers, engaged for the execution of the Works on the Site and includes those drivers and lorry drivers who are not self-employed persons engaged for the Works.

OR

SCC 65B	General Conditions of Contract Clause 1(1) is amended by adding the definition of :	Definition and Interpretation	SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010 Mandatory (Except for E&M supply and installation contracts) For consultant-administered capital works contracts
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“Site Personnel” - “Site Personnel” means all workers and staff employed by the Contractor or his sub-contractor of all tiers including specialist sub-contractors and Nominated Sub-contractors, except self-employed workers, engaged for the execution of the Works on the Site and includes those drivers and lorry drivers who are not self-employed persons engaged for the works.

“Labour Relations Officer” - “Labour Relations Officer” means any person, or persons appointed from time to time by the Supervising Officer and notified in writing to the Contractor to perform the duties specified in the Contract.”

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| SCC 66 | <p>(1) Except as provided for the Contractor’s and sub-contractors’ mandatory contribution elsewhere in the Contract and subject to sub-clause (2) of this Clause, the Supervising Officer shall ascertain and certify for payment in accordance with General Conditions of Contract Clause 79, the amount of the Contractor’s mandatory contribution under the Mandatory Provident Fund Schemes Ordinance (“Cap. 485”) and the sum equivalent to the amount of mandatory contribution under Cap. 485 by sub-contractors, for the Site Personnel under the Contract, based on the instruction records as specified in Particular Specification Section X.</p> | <p>Reimbursement of Contractor’s and sub-contractors’ Contribution to the Mandatory Provident Fund for their Site Personnel</p> | <p>SDEV’s memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012</p> <p>Mandatory (Except for E&M supply and installation contracts)</p> <p>For consultant-administered and in-house capital works contracts</p> |
| | <p>(2) (a) The Employer shall not be liable to make reimbursement to the Contractor any amount or sum equivalent to the amount relating to the employer’s mandatory provident fund for the Site Personnel under the Contract other than the amount and sum certified by the Supervising Officer pursuant to sub-clause (1) of this Clause.</p> <p>(b) The Employer shall not be liable to pay the Contractor any of the part of Contractor’s mandatory contribution under Cap 485 and any of the sum equivalent to the amount of mandatory contribution under Cap. 485 by sub-contractors for any Site Personnel under the Contract which exceeds the Provisional Sum for reimbursement of employer’s mandatory contributions under Cap 485 allowed for in the Contract.</p> | | |
| | <p>(3) For the avoidance of doubt and subject to sub-clause (2) of this Clause, the Employer shall only be liable to pay the Contractor the amount or the sum equivalent to the amount of mandatory contribution under Cap 485 in respect of a relevant member of the Site Personnel under the Contract for the relevant contribution period.</p> | | |

- (4) Notwithstanding General Conditions of Contract Clause 68, the Contractor and his sub-contractors are not entitled to any profit and administration cost including overheads cost, whether on or off the Site, for the reimbursement made under this Clause.
- (5) For the purposes of this Clause, “sub-contractors” shall mean sub-contractors of all tiers including Specialist Contractors and Nominated Sub-contractors.

SCC 67

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| (1) | The Contractor shall comply with the requirements and procedures set out in Particular Specification Section [Y] for the employment and administration of Labour Relations Officers (LRO). | Reimbursement of Contractor’s actual payment and payment of Contractor’s | SDEV’s memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010 |
| (2) | The Supervising Officer shall ascertain and certify for payment in accordance with General Conditions of Contract Clause 79, the amount of actual payment made by the Contractor and of the Contractor’s associated expenses in providing LRO referred to in sub-clause (6) of SCC [67]. For the avoidance of doubt, the actual payment includes the salary, overtime allowance, end-of-contract gratuity, medical and dental care expenses for LRO and the advertisement costs incurred in the recruitment of LRO. For the further avoidance of doubt, any reimbursement of Contractor’s contributions to the mandatory provident fund for LRO shall be made in accordance with SCC [66]. Other costs or expenses, including but not limiting to those incurred for recruitment, employment, arranging for temporary or permanent replacement, training and employees’ compensation insurance shall be covered by the Contractor’s associated expenses which are determined in accordance with sub-clause (4). | associated expenses in providing Labour Relations Officers | Mandatory (Except for E&M supply and installation contracts)

For in-house capital works contracts |
| (3) | The Contractor shall be reimbursed with the actual payment made to LRO as certified by the Supervising Officer in accordance with General Conditions of Contract Clause 79. The rules on “accountability” set under this sub-clause (3) must be satisfied before any salary and other direct payments related to LRO made by the Contractor is reimbursable:- | | |

- (i) the amount in respect of salary, end-of-

contract gratuity and overtime payment shall have been paid by the Contractor to the LRO and as evidenced by receipts from the LRO;

(ii) actual expenses incurred, if any, for advertising the recruitment of LRO in any local press shall be evidenced by relevant receipts; and

(iii) LRO, or the Contractor shall be additionally accountable for the amount invoiced in respect of reimbursement of medical and dental care, i.e. only if it is actually spent by the LRO or settled by the Contractor, as the case may be, on the respective purposes, within the approved employment terms, and as evidenced by receipts from the respective service providers who provide service to the LRO.

(4) For the purposes of this Clause, the “Contractor’s associated expenses” refers to a percentage fee of the amount of actual payment made to LRO as certified by the Supervising Officer in accordance with General Conditions of Contract Clause 79 in providing LRO. The rate of the percentage fee is as inserted by the Contractor in [] of the tender document and is to be used for arriving at the Provisional Sum for Contractor’s associated expenses in providing Labour Relations Officers.

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| SCC 68A | (1) | <p>Subject to those Casual Workers referred to in Clause [Z].1 (1) of Particular Specification "Section [Z]" on "Causal Workers", all Site Personnel shall be engaged in accordance with Clauses [X].2 to [X].5 of Particular Specification "Section [X]" on "Payment of Wages of Site Personnel". Such Site Personnel shall be engaged with a written employment contract with their respective employers who shall be either the Contractor or any of his sub-contractors, as submitted in the Sub-contractors' Management Plan required under SCC Clause [] of these Special Conditions of Contract. The terms of the employment contract shall be not less favorable to the terms provided in the Specimen Employment Contract which may as necessary be revised by the Supervising Officer from time to time at Appendix [#] to these Special Conditions of Contract as far as the Site Personnel are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under this Contract.</p> | <p>Payment of Wages of Site Personnel</p> | <p>SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010</p> <p>Mandatory (Except for E&M supply and installation contracts)</p> <p>For in-house capital works contracts</p> |
| | (2) | <p>The Contractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by extending either the Contractor's employees compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix [##] to these Special Conditions of Contract and shall maintain such policy for the duration of the self-employed workers being engaged in the Contract. The Contractor shall produce evidence of such insurance before the self-employed workers are issued a smart card as described in Particular Specification "Section [X]" on "Payment of Wages of Site Personnel". The Contractor shall inform the Supervising Officer immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.</p> | | |

- (3) Lorry drivers engaged for the Works (excluding those lorry drivers engaged by suppliers to deliver material to the Site) may be either a Site Personnel or a self-employed person.
- (4) The Contractor shall provide and maintain an attendance recording system comprising smart-card cum biometric authentication to record and verify the information of all Site Personnel entering and leaving the Site in accordance with Particular Specification “Section [X]” on “Payment of Wages of Site Personnel”.
- (5) Within 14 days of the commencement of the Contract, the Contractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Personnel in accordance with Particular Specification “Section [X]” on “Payment of Wages of Site Personnel”. The Contractor shall submit a written declaration that all Site Personnel’s wages payable have been paid when the Contractor submits the instruction records as specified in Particular Specification “Section [X]” to the Supervising Officer. Site Personnel who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Particular Specification “Section [X]”.
- (6) The Contractor shall provide suitably qualified staff to act as Labour Relations Officers referred to in Section [Y] of the Particular Specification to monitor payment of wages.
- (7) Pursuant to General Conditions of Contract Clause 4(3), failure to comply with “Section [X]” of the Particular Specification by any of the sub-contractors may render the removal of the sub-contractor from the Site and/or the Works.
- (8) (a) Without prejudice to any of the provision under General Conditions of Contract Clause 40 and in the event of default being made in the payment of any wages of any Site Personnel employed by the Contractor or any of the sub-contractors in and for carrying out this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or by any of

the responsible sub-contractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour; provided that the subject incident of default in payment of wages is reported to the Labour Relations Officer within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap 57), the Employer may, after the Contractor or the sub-contractor, as the case may be, who is in default of paying any wages to the Site Personnel, make payment of such wages or claim for wages on behalf of the Contractor or the sub-contractor to the Site Personnel and any sums so paid shall be recoverable by the Employer as a debt from the Contractor.

- (b) For the avoidance of doubt, Site Personnel employed by the Contractor are not subject to the reporting requirement to the Labour Relations Officer under sub-clause 8(a) of this Clause.
- (c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause 8(a) of this clause shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Labour

Relations Officer within 7 working days
(Sundays and public holidays excluded)
of the final date for payment under
section 23 of the Employment Ordinance
(Cap 57).

- (9) For the purpose of this Clause, "sub-contractors" means sub-contractors, irrespective of tiers, including specialist sub-contractors and Nominated Sub-contractors.

SCC 68B

- (1) Subject to those Casual Workers referred to in Clause [Z].1 (1) of Particular Specification "Section [Z]" on "Causal Workers", all Site Personnel shall be engaged in accordance with Clauses [X].2 to [X].5 of Particular Specification "Section [X]" on "Payment of Wages of Site Personnel". Such Site Personnel shall be engaged with a written employment contract with their respective employers who shall be either the Contractor or any of his sub-contractors, as submitted in the Sub-contractors' Management Plan required under SCC Clause [] of these Special Conditions of Contract. The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract which may as necessary be revised by the Supervising Officer from time to time at Appendix [#] to these Special Conditions of Contract as far as the Site Personnel are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under this Contract.

Payment of
Wages of
Site
Personnel

SDEV's memo ref.
(027RU-01-3) in
DEVB(W)
510/17/01 dated
16.7.2010

Mandatory
(Except for E&M
supply and
installation
contracts)

For consultant-
administered
capital works
contracts

- (2) The Contractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by extending either the Contractor's employee compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix [##] to these Special Conditions of Contract and shall maintain such policy for the duration of the self-employed workers being engaged in the Contract. The Contractor shall produce evidence of such insurance before the self-

- employed workers are issued a smart-card as described in Particular Specification “Section [X]” on “Payment of Wages of Site Personnel”. The Contractor shall inform the Supervising Officer immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.
- (3) Lorry drivers engaged for the Works (excluding those lorry drivers engaged by suppliers to deliver material to the Site) may be either a Site Personnel or a self-employed person.
 - (4) The Contractor shall provide and maintain an attendance recording system comprising smart-card cum biometric authentication to record and verify the information of all Site Personnel entering and leaving the Site in accordance with Particular Specification “Section [X]” on “Payment of Wages of Site Personnel”.
 - (5) Within 14 days of the commencement of the Contract, the Contractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Personnel in accordance with Particular Specification “Section [X]” on “Payment of Wages of Site Personnel”. The Contractor shall submit a written declaration that all Site Personnel’s wages payable have been paid when the Contractor submits the instruction records as specified in Particular Specification “Section [X]” to the Supervising Officer. Site Personnel who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Particular Specification “Section [X]”.
 - (6) Pursuant to General Conditions of Contract Clause 4(3), failure to comply with “Section [X]” of the Particular Specification by any of the sub-contractors may render the removal of the sub-contractor from the Site and/or the Works.
 - (7) (a) Without prejudice to any of the provision under General Conditions of Contract Clause 40 and in the event of default being made in the payment of any wages of any Site Personnel employed by the Contractor or any of the sub-contractors

in and for carrying out this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or by any of the responsible sub-contractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour; provided that the subject incident of default in payment of wages is reported to the Labour Relations Officer within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap 57), the Employer may, after the Contractor or the sub-contractor, as the case may be, who is in default of paying any wages to the Site Personnel, make payment of such wages or claim for wages on behalf of the Contractor or the sub-contractor to the Site Personnel and any sums so paid shall be recoverable by the Employer as a debt from the Contractor.

- (b) For the avoidance of doubt, Site Personnel employed by the Contractor are not subject to the reporting requirement to the Labour Relations Officer under sub-clause 7(a) of this Clause.

(c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause 7(a) of this Clause shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Labour Relations Officer within 7 working days (Sundays and public holidays excluded) of the final date for payment under section 23 of the Employment Ordinance (Cap 57).

(8) For the purpose of this Clause, "sub-contractors" means sub-contractors, irrespective of tiers, including specialist sub-contractors and Nominated Sub-contractors.

SCC 69A

(1) Without prejudice to the generality of General Conditions of Contract Clause 17, the Contractor shall provide a team of suitably qualified and experienced staff to manage and supervise the Contract throughout the execution of the Works. All members of staff on the management/site supervision team (refer to as "the Team" in this Clause) must be under the direct employment of the Contractor. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines¹ :-

Contractor's Management Team

SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010

Mandatory (Except for E&M supply and installation contracts)

(State minimum qualification requirements in the Particular Specification for each discipline if considered necessary.)

For in-house capital works contracts

- (a) Project Manager;
- (b) Site agent in accordance with General Conditions of Contract Clause 17;
- (c) Site Engineers;
- (d) Topographic Surveyors;
- (e) Quantity Surveyors;
- (f) Site Superintendent; and
- (g) Site Foremen.

¹ Add / delete disciplines as appropriate

- (2) Members of staff on the Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers including Specialist Sub-contractors and Nominated Sub-contractors under this Contract.
- (3) Within 14 days of the commencement of the Contract, the Contractor shall submit to the Supervising Officer a list of staff with all necessary details which comprised the Team referred to in sub-clause (1) of this Clause.
- (4) The Contractor shall either provide documentary proof on the employment status of the staff on the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the Supervising Officer or provide a formal declaration to the effect that such a staff is indeed under the direct employment of the Contractor. The declaration shall be signed by a person authorized to sign tenders on behalf of the Contractor.
- (5) With the exception of the Project Manager, all members of staff in the Team shall be full time[#] on Site during site working hours.
- (6) The Contractor shall inform the Supervising Officer forthwith of any changes made to any of the staff on the Team.

[#] Consider whether some of the staff may only be needed part time, such as surveyors.

SCC 69B

- (1) Without prejudice to the generality of General Conditions of Contract Clause 17, the Contractor shall provide a team of suitably qualified and experienced staff to manage and supervise the Contract throughout the execution of the Works. All members of staff on the management/site supervision team (refer to as “the Team” in this Clause) must be under the direct employment of the Contractor. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines¹ :-

(State minimum qualification requirements in the Particular Specification for each discipline if considered necessary.)
 - (a) Project Manager;
 - (b) Site agent in accordance with General

Contractor’s Management Team

SDEV’s memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010

Mandatory (Except for E&M supply and installation contracts)

For consultant-administered capital works contracts

¹ Add / delete disciplines as

- Conditions of Contract Clause 17; appropriate
- (c) Site Engineers;
 - (d) Topographic Surveyors;
 - (e) Quantity Surveyors;
 - (f) Site Superintendent; and
 - (g) Site Foremen.
- (2) Members of staff on the Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers including Specialist Sub-contractors and Nominated Sub-contractors under this Contract.
- (3) Within 14 days of the commencement of the Contract, the Contractor shall submit to the Supervising Officer a list of staff with all necessary details which comprised the Team referred to in sub-clause (1) of this Clause.
- (4) The Contractor shall either provide documentary proof on the employment status of the staff on the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the Supervising Officer or provide a formal declaration to the effect that such a staff is indeed under the direct employment of the Contractor. The declaration shall be signed by a person authorized to sign tenders on behalf of the Contractor.
- (5) With the exception of the Project Manager, all members of staff in the Team shall be full time[#] on Site during site working hours.
- (6) The Contractor shall inform the Supervising Officer forthwith of any changes made to any of the staff on the Team.
- [#] Consider whether some of the staff may only be needed part time, such as surveyors.

SCC 70

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| (1) | <p>Without prejudice to the generality of General Conditions of Contract Clause 4, if any part of the Works is sub-contracted by the Contractor, the Contractor shall ensure that a clause on reimbursement of the sum equivalent to the amount of sub-contractor's contribution to mandatory contribution under the Mandatory Provident Fund Schemes Ordinance Cap 485 for the Site Personnel under the Contract and on payment of wages of Site Personnel in the form appearing in the Annex hereto is included in all sub-contracts entered into with the Contractor. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that such clause in the form appearing in the Annex hereto is included in all sub-contracts at lower tiers of sub-contracting.</p> | Sub-contract
Conditions | <p>SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012</p> <p>Mandatory (Except for E&M supply and installation contracts)</p> <p>For consultant-administered and in-house capital works contracts</p> |
| (2) | <p>The Contractor shall ensure that all sub-contractors engaged by the Contractor who are involved in the Contract shall include, observe and comply with the provisions which are in the terms of Clause ¹[A] in the Annex in the relevant sub-contracts. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that sub-contractors who are involved in the relevant sub-contracts of the Contract shall include, observe and comply with the provisions in the relevant sub-contracts which are mutatis mutandis in the terms of Clause [A].</p> | | <p>¹Please refer to Clause [A] of the memo.</p> |
| (3) | <p>The Contractor shall submit copies of the relevant sub-contracts of the Contract to the Supervising Officer for the purpose of checking if the sub-contract provisions referred to in sub-clauses (1) and (2) of this Clause are included in the relevant sub-contracts as required under sub-clauses (1) and (2) of the Clause. Upon request by the Supervising Officer, the Contractor shall provide the original documents of the relevant sub-contracts for inspection by the Supervising Officer.</p> | | |
| (4) | <p>The Contractor shall comply with and shall ensure that all sub-contractors engaged by the Contractor shall comply with the provisions of this Clause; and shall, if necessary, within reasonable time enter into a supplemental agreement with his sub-contractor to ensure that the sub-contract complies with the requirements in sub-clauses (1) and (2) of this Clause and</p> | | |

shall take all reasonable steps to ensure that sub-contractors at any lower tier of sub-contracting shall include, observe and enter into a supplemental agreement if necessary and as required under this sub-clause.

- (5) If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with the provisions of this Clause, the Supervising Officer shall, without prejudice to any other rights and remedies, have full power to order the removal of the sub-contractor from the Site and/or the Works.

SCC 71

- (1) For the purpose of this Clause, the first tier of sub-contracting means the contracts between the Contractor and his sub-contractors. The second tier means the sub-contracts between any of the sub-contractors of the first tier and his sub-contractors. The foregoing shall apply with necessary modifications to subsequent tiers of sub-contracting.
- (2) Notwithstanding General Conditions of Contract Clause 4 on sub-contracting a part of the Works and subject to sub-clauses (3) to (5) of this Clause and compliance with other provisions of the Contract, the sub-contracting of a part of the Works by the Contractor shall be limited to two tiers of sub-contracting.
- (3) Where any part of the Works has been sub-contracted out under sub-clause (2) of this Clause, the sub-contractor of the first or the second tier of sub-contracting (as the case may be) may, subject to sub-clause (4) of this Clause and compliance with other provisions of the Contract, engage in two additional tiers of sub-contracting with respect to a Relevant Portion of such part of the Works, except (i) where the Relevant Portion involves work or services to be carried out in any confined space, or (ii) where the Relevant Portion involves demolition or scaffolding work [or]¹. For situations as stated in (i) or (ii), sub-contracting of the Relevant Portion by the sub-contractor of the first or the second tier (as the case may be) shall be limited to one additional tier of sub-contracting.

Limiting the tiers of sub-contracting

SDEV's memo ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008

Mandatory

- (4) Notwithstanding sub-clauses (2) and (3) of this Clause, sub-contracting of any part of the Works requiring entry of human beings into confined space that form part of a sewerage or drainage system shall be limited to the first tier of sub-contracting and further sub-contracting by the first tier sub-contractor shall not be permitted.
- (5) (a) Notwithstanding sub-clauses (3) and (4) of this Clause, the Supervising Officer may upon request by the Contractor permit the Contractor to introduce an extra tier of sub-contracting for a part of the Works or a Relevant Portion which has been sub-contracted out in accordance with the provisions of the Contract (including without limitation on the foregoing provisions).
- (b) The Supervising Officer shall not be obliged to consider a request for an extra tier of sub-contracting unless the request is made in writing to the Supervising Officer at least 14 days before the sub-contractor of the relevant tier of sub-contracting enters into any sub-contract for the extra tier of sub-contracting and the request is accompanied by an explanation with supporting evidence on the need for the extra tier of sub-contracting.
- (c) A request which has been made in strict compliance with paragraph (b) above is taken to have been permitted by the Supervising Officer if it is not expressly rejected by the Supervising Officer in writing within 14 days from the date of receipt by the Supervising Officer of the request from the Contractor.

(6) The Contractor shall comply with and shall ensure that all sub-contractors (irrespective of any tier) shall comply with the provisions of this Clause, General Conditions of Contract Clause 4 and other relevant provisions of the Contract ("Sub-contractor Provisions"). If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with the Sub-contractor Provisions, the Supervising Officer shall, without prejudice to any other rights and remedies, have full power to order the removal of any sub-contractor which has been engaged in contravention of any of the Sub-contractor Provisions from the Site and/or the Works.

(7) In this Clause, unless the context otherwise requires –

"confined space" has the same meaning as that adopted in the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap. 59AE);

"Relevant Portion" means a portion of any part of the Works which has been sub-contracted out to a sub-contractor of the first or the second tier of sub-contracting under sub-clause (2) of this Clause, and such portion comprises only work or services falling within the description of one or more of the "Construction Trades" which are listed under the trade classification of the Voluntary Sub-contractor Registration Scheme;

"Voluntary Sub-contractor Registration Scheme" means the Voluntary Sub-contractor Registration Scheme as referred to in Environment, Transport and Works Bureau Technical Circular (Works) No. 13/2004.

¹Subject to the approval of Works Branch of the Development Bureau, project officers may insert other high-risk operations appropriate to the nature of the Contract.

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| SCC 72 | <p>(1) Without limiting his obligations under the Contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of []¹ in respect of his obligations in relation to the design of any part or all of the Works carried out by or on behalf of the Contractor pursuant to the Contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date of notification of acceptance of Tender until []² years after the date of the certificate of completion.</p> <p>(2) The Contractor shall procure that each of the designer and Design Checker appointed or engaged by the Contractor in connection with the design or checking of the design of any part or all of the Works, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of []¹ in respect of his obligations in relation to the design or, as the case may be, checking of the design of any part or all of the Works, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective dates of commencement of appointment or engagement of the designer and Design Checker until []² years after the date of the certificate of completion.</p> <p>(3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.</p> <p>(4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.</p> | <p>Professional Indemnity Insurance</p> <p>TC(W)
No. 9/2007 &
SDEV's memo ref.
(02245-01-13) in
DEVB(W)
510/34/01 dated
6.10.2009</p> |
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- (5) (a) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (b) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of

insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

(6) (a) The Contractor shall provide to the Employer within 60 days from the date of notification of acceptance of Tender and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:

(i) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this Clause in Form []⁵ in Appendix []⁵ to these Special Conditions of Contract; and

- (ii) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in Form []⁵ in Appendix []⁵ to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.

- (b) The Contractor shall provide to the Employer, within []² days from the respective dates of appointment or engagement of his designer and Design Checker, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
 - (i) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in Form []⁵ in Appendix []⁵ to these Special Conditions of Contract;

 - (ii) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in Form []⁵ in Appendix []⁵ to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the

insurance policy that the Employer may reasonably require.

- (7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of General Conditions of Contract Clause 83 and/or to recover such amount as a debt from the Contractor.
- (8) In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53, the expression “certificate of completion” shall, for the purpose of this Clause, mean the last of such certificates []⁶.
- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

¹ *Insert the amount.*

² *Insert the time.*

⁵ *Insert the appropriate reference.*

⁶ *For a contract with a separate Section comprising only the Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Establishment Works”. For a contract with a separate Section comprising only the Landscape Softworks and Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Landscape Softworks and Establishment Works”.*

SCC 73

- (1) The Contractor shall not dispose of construction and demolition materials generated by the Site at any place other than the disposal grounds designated in the Contract or directed by the Supervising Officer or such alternative disposal grounds as proposed by the Contractor and approved by the Supervising Officer in accordance with Particular Specification Clause [insert clause no.].

Disposal
Grounds

DEVB TCW
No. 6/2010

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| | (2) Notwithstanding any other provisions in the Contract, the Supervising Officer's approval or disapproval of any alternative disposal ground proposed by the Contractor shall not in any way relieve the Contractor of any duty or responsibility under the Contract nor entitle the Contractor to any additional payment or extension of time. | Mandatory for use with all GCCs |
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SCC 74

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| | (1) Further to General Conditions of Contract Clause 60, the Supervising Officer may order in writing that any work to be carried out as a result of a Variation ordered under General Conditions of Contract Clause 60 shall be executed on a daywork basis. Such order shall be given at any time before such work is commenced. | Dayworks
D&B Admin. Procedures (ver1999) SCC30 |
| | (2) The Contractor shall then be paid for such work under the conditions and at the daywork rates set out or referred to in the Employer's Requirements or if no such conditions and rates have been included or referred to, at such rates as the Supervising Officer shall determine as being reasonable. | |
| | (3) The Contractor shall furnish to the Supervising Officer such receipts or other vouchers as may be necessary to prove the sums paid for the Plant and Constructional Plant, goods and materials used in the works executed on a daywork basis and before ordering any such goods and materials shall, if so required by the Supervising Officer, submit to the Supervising Officer quotations for the same for his approval. | |
| | (4) In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each working day to the Supervising Officer a list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all goods, materials, Plant and Constructional Plant used thereon or therefor. The Supervising Officer shall agree as correct or reject with stated reasons such lists and statements and shall sign and return to the Contractor one copy thereof within 2 days exclusive of General Holidays. | |

SCC 75

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| (1) | <p>For purposes of the Contract, “[Major Prefabrication Items]” shall mean the following item(s) of works:</p> <p>(a) <i>[description]</i> identified in <i>[Set out the relevant Drawing number(s) and the relevant clause/section number(s) of the Contract documents, e.g. Specification]</i>; and</p> <p>(b)
 <i>[set out details of any further item(s) of works]</i>,</p> | <p>Bond for Off-Site Manufacture of Major Prefabrication Item(s)</p> | <p>SDEV’s memos ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011 and ref: DEVB(W) 510/83/08 dated 20.7.2012</p> |
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which has/have been completed off-Site in accordance with the Contract but is/are yet to be delivered to the Site for inclusion in the Works.

- (2) Should the Contractor elect to apply for interim payment for the manufacturing and fabrication of any Major Prefabrication Item carried out off-Site before delivery to Site, the Contractor shall, as a condition precedent to his right to apply for any interim payment or to continue to apply for any interim payment pursuant to General Conditions of Contract Clause 79 in relation to the elected Major Prefabrication Item, provide the Employer with and maintain in existence a separate bond in the form annexed at Appendix [] *[pls refer to SDEV’s memo ref. (02APB-01-8) in DEVB(W)510/83/08 dated 8.3.11]* to the Special Conditions of Contract covering the elected Major Prefabrication Item, in the amount therein described and subject to the terms more particularly described in the Contract, with only such amendments thereto as may previously have been agreed in writing by the Supervising Officer. The bond shall be released in the manner described in the bond. The Contractor shall submit a separate bond in relation to each elected Major Prefabrication Item.

- (3) For the avoidance of doubt, if no bond as described in sub-clause (2) of this Clause covering the elected Major Prefabrication Item has been provided to the Employer and maintained in existence, no interim payment shall be made under the Contract for the Major Prefabrication Item and the payment for such Major Prefabrication Item shall continue to be processed and made in the normal manner upon delivery to Site under the provisions of the Contract.
- (4) Upon the Contractor having provided to the Employer a duly executed bond under sub-clause (2) of this Clause in relation to any Major Prefabrication Item, the following amendments, effective from the date of the receipt of such bond by the Employer, shall be deemed to have been made to the Contract:

Clause 21 of General Conditions of Contract shall be amended by:

- (A) Adding to the end of the first subparagraph of sub-clause (1) after “Specialist Works” but before the full stop:

“ , and, in relation to the Major Prefabrication Item(s) for which the Contractor has provided to the Employer duly executed bond(s) under sub-clause (2) of Special Conditions of Contract Clause SCCxx, for the care of the Major Prefabrication Item(s) whether stored off-Site or in the course of transportation.”

- (B) Adding after “on the Site,” in line 4 of sub-clause (2):

“ or, in relation to the Major Prefabrication Item(s) for which the Contractor has provided to the Employer duly executed bond(s) under sub-clause (2) of Special Conditions of Contract Clause SCCxx, to the Major Prefabrication Item(s) whether stored off-Site or in the course of transportation,”

Clause 72 of General Conditions of Contract shall be deleted and replaced by:

- (1) All Plant and materials owned by the

Contractor for incorporation in the Works shall be and become the property of the Employer upon delivery to the Site, except to the extent that property in such Plant and materials shall have already been passed to the Employer in accordance with sub-clause (2) of this Clause.

- (2) In relation to the Major Prefabrication Item(s) for which the Contractor has provided to the Employer duly executed bond(s) under sub-clause (2) of Special Conditions of Contract Clause SCCxx, such Major Prefabrication Item(s) located in the manufacture / fabrication / assembly yard(s) off-Site or in the course of transportation shall be and become the property of the Employer upon property in such Major Prefabrication Item(s) vesting in the Contractor or otherwise passing unconditionally to the Contractor under relevant sub-contract.
- (3) The Plant and materials under sub-clauses (1) and the Major Prefabrication Item(s) under sub-clause (2) of this Clause shall not be removed without an instruction or the prior written consent of the Supervising Officer. Such Plant and materials and Major Prefabrication Item(s) shall, subject to Clause 81, only re-vest in the Contractor to the extent that they may be found to be surplus to requirements upon or prior to completion of the Works. The operation of this Clause shall not be deemed to imply any approval by the Supervising Officer of such Plant or materials or Major Prefabrication Item(s) or prevent the rejection by the Supervising Officer of any Plant or material or Major Prefabrication Item at any time.

[Note: The following amendments to GCC Clauses 78 and 79 shall only be applicable if SCC56 for Milestone Payment is not used.]

Clause 78 of General Conditions of Contract shall be amended by:

- (A) Adding after sub-clause (2)(b):

“(c) a list of the Major Prefabrication

Item(s) for which the Contractor has provided the duly executed bond(s) under sub-clause (2) of Special Conditions of Contract Clause SCCxx and the estimated contract value of such Major Prefabrication Item(s)”; and”

- (B) Renumbering original sub-clause (2)(c) as sub-clause (2)(d).

Clause 79 of General Conditions of Contract shall be amended by:

- (A) Adding after sub-clause (1)(c):

“(d) the estimated value of the Major Prefabrication Item(s) for which the Contractor has provided the duly executed bond(s) under sub-clause (2) of Special Conditions of Contract Clause SCCxx; and”

- (B) Renumbering original sub-clause “(1)(d)” as “(1)(e)”.

- (C) Amending the further proviso at the end of sub-clause (1) to read:

"Provided further that, for the purpose of interim payments:

- (i) the value of the materials and unfixated Plant as referred to in (c) above for use in connection with any item of permanent work priced in the Contract and the value of the Major Prefabrication Item(s) referred to in (d) above shall be determined on the basis of the rate set out in the Contract for such work; and
- (ii) in relation to the Major Prefabrication Item(s) referred to in (d) above, it shall be a condition precedent to valuation and certification by the Supervising Officer of such Major Prefabrication Item(s) under this sub-clause that the Contractor has complied with the provisions of sub-clause (5) of Special Conditions of Contract Clause SCCxx."

[Note: The following paragraph is to be used in conjunction with the SCC for Milestone Payment.]

Page # of the # [e.g. Schedule of Milestones, Payment Schedule, etc.] shall be replaced by page #A of the # [e.g. Schedule of Milestones, Payment Schedule, etc.] annexed at Appendix # to the Special Conditions of Contract.

[Guidance Note: “#” – Insert as appropriate. The replacing pages shall include the necessary provisions to accommodate payments for the Major Prefabrication Item(s).]

For the avoidance of doubt, if the Contractor has not elected to apply for interim payment for any Major Prefabrication Item by not submitting the bond as required in sub-clause (2) of this Clause, this sub-clause (4) shall have no application to such Major Prefabrication Item.

- (5) If the Contractor exercises his right under this Clause to apply for interim payment in relation to any Major Prefabrication Item(s), he shall be responsible for the arrangement and for all the costs and expenditure incurred by the Supervising Officer's Representative in connection with his visit(s) to any off-Site manufacture / fabrication / assembly yard(s) to verify the Contractor's entitlement to any interim payment for such Major Prefabrication Item(s). The aforesaid costs and expenditure shall be deemed to be included in the rates in *[e.g. the breakdown of the Contractor's Rates and Prices]*

Furthermore, the Contractor shall furnish to the Supervising Officer the following:

- (i) clear proof that the Major Prefabrication Item(s) has/have met all Contract requirements and especially geometric configurations, ready for shipment to the Site for erection;
- (ii) in the case the Major Prefabrication Item(s) is / are stored whether at the manufacture / fabrication / assembly yard(s) where the Major Prefabrication Item(s) has / have been manufactured / fabricated / assembled or at other place(s)

of storage off-Site, evidence that there is in relation to such Major Prefabrication Item(s) clear identification of:

- (1) the Employer as the person to whose order it is / they are held, and
- (2) its / their destination as the Works and such Major Prefabrication Item(s) either is / are set apart or has / have been clearly and visibly marked, individually or in sets, by letters or figures or by reference to a pre-determined code;
- (iii) in the case the Major Prefabrication Item(s) is / are under shipment by sea, the relevant shipping documents;
- (iv) clear proof that the Major Prefabrication Item(s) is / are the property of the Contractor and that the conditions set out in paragraphs (i) to (iii) of this sub-clause, as applicable, have been complied with; and
- (v) clear proof that such Major Prefabrication Item(s) is/are fully insured against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Contractor, during the period commencing with the transfer of property in the Major Prefabrication Item(s) to the Contractor until they are delivered to the Works. *[Note: Delete this paragraph (v) if OCIP arrangement has been adopted for the Contract.]*

[Notes: - In implementation of the risk-based assessment for insurance procurement according to ETWB TC(W) No. 6/2005 and 7/2005, the project officer's attention is drawn to the risk of damage to the third party during the period commencing with the transfer of property in the Major Prefabrication Item(s) to the Employer until they are delivered to the Works.]

SCC 76A

General Conditions of Contract Clause 79(3)# is deleted and replaced by the following :

Release of Retention Money (for use in contracts without landscape works)

SDEV’s memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.11

“(3)(a) The Supervising Officer shall, within 14 days of the date of issue of the certificate of completion in respect of the Works in accordance with Clause 53(1) , issue a certificate for the payment of not more than 50 % of the Retention Money giving due account to the cost of the outstanding work referred to in Clause 53 and all work of maintenance, repair, rectification and making good of any defects, imperfection, shrinkage, settlement and other fault referred to in Clause 56 which have been notified in writing to the Contractor (“Outstanding Work”) [, which certificate shall state any Retention Money due to any Nominated Sub-contractor]* and, subject to Clause 83, the Employer shall pay such portion of Retention Money to the Contractor within 21 days of such certificate. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression “certificate of completion” shall, for the purposes of this sub-clause, mean the last of such certificates.

(b) Further to paragraph (a) of this sub-clause and within 14 days after the date of the expiry of the Maintenance Period for the Works or, where there is more than one such Period, the latest Period, the Supervising Officer shall issue a certificate for the payment of a further portion of the Retention Money representing the remainder of the Retention Money less, where applicable, an amount (“Remaining Amount”) which, in the opinion of the Supervising Officer, represents the cost of any Outstanding Work then remaining to be carried out [, which certificate shall state any Retention Money due to any Nominated Subcontractor]* and, subject to Clause 83, the Employer shall pay such further portion of the Retention Money to the Contractor within 21 days of the date of such certificate.

c) Where a sum representing the Remaining Amount is withheld from certification under paragraph (b) of this sub-clause, the Supervising Officer shall, within 14 days of the date of issue by the Supervising Officer of the maintenance

certificate in accordance with Clause 80, issue a certificate for the payment of the sum representing the Remaining Amount [, which certificate shall state any Retention Money due to any Nominated Subcontractor]* and, subject to Clause 83, the Employer shall pay such sum to the Contractor within 21 days of the date of such certificate.”

**Only applicable to contracts with provision for Nominated Sub-contractor*

#Revised to 78(6) if SCC for milestone payment is adopted.

SCC 76B

General Conditions of Contract Clause 79(3)# is deleted and replaced by the following :

“(3)(a) The Supervising Officer shall, within 14 days of the date of issue of the certificate of completion in respect of the Works in accordance with Clause 53(1) , issue a certificate for the payment of not more than 50 % of the Retention Money giving due account to the cost of the outstanding work referred to in Clause 53 and all work of maintenance, repair, rectification and making good of any defects, imperfection, shrinkage, settlement and other fault referred to in Clause 56 which have been notified in writing to the Contractor [, which certificate shall state any Retention Money due to any Nominated Sub-contractor]* and, subject to Clause 83, the Employer shall pay such portion of Retention Money to the Contractor within 21 days of such certificate. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression “certificate of completion” shall, for the purposes of this sub-clause, mean the last of such certificates.

(b) Further to paragraph (a) of this sub-clause and within 14 days after the date of the expiry of the Maintenance Period for the Works or, where there is more than one such Period, the latest Period, the Supervising Officer shall issue a certificate for the payment of a further portion of the Retention Money representing the remainder of the Retention Money less, where applicable, an amount (“Remaining Amount”) which, in the opinion of the Supervising Officer, represents the cost of any Outstanding Work

Release of Retention Money (for use in contracts with landscape works)

SDEV’s memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011

then remaining to be carried out [, which certificate shall state any Retention Money due to any Nominated Sub-contractor]* and, subject to Clause 83, the Employer shall pay such further portion of the Retention Money to the Contractor within 21 days of the date of such certificate.

c) Where a sum representing the Remaining Amount is withheld from certification under paragraph (b) of this sub-clause, the Supervising Officer shall, within 14 days of the date of issue by the Supervising Officer of the maintenance certificate in accordance with Clause 80, issue a certificate for the payment of the sum representing the Remaining Amount [, which certificate shall state any Retention Money due to any Nominated Subcontractor]* and, subject to Clause 83, the Employer shall pay such sum to the Contractor within 21 days of the date of such certificate.”

**Only applicable to contracts with provision for Nominated Sub-contractor*

Revised to 78(6) if SCC for milestone payment is adopted.

- SCC 77** (1) (a) The Contractor shall provide the Supervising Officer and his staff, the Site Personnel and self-employed workers engaged for the execution of the Works on the Site (such self-employed workers are hereinafter referred to in this Clause as “self-employed workers”) with uniform items and ensure that the Site Personnel and self-employed workers wear such uniform items when they are on the Site *and provide and maintain uniform changing facilities** in accordance with the provisions of Particular Specification Clauses [X.1 to X.4].
- (b) The Contractor shall give at least 7 days advance notice to the Supervising Officer of the date on which the Site Personnel and self-employed workers begin to wear the uniform items approved by the Supervising Officer in accordance with Particular Specification Clause [X.3] (such uniform items are hereinafter referred to as “approved uniform items”)
- Uniform *and associated facilities** (for contracts with anticipated commencement date after 22 May 2013) SDEV’s memo ref. DEVB (Trg) 133/3(7) dated 11.5.2011

when they are on the Site.

- (2) Subject to sub-clauses (1) and (3) to (6) of this Clause, the Contractor shall be entitled to the following parts of the lump sum on the breakdown of the Contractor's rates and prices Item No. [1/U/1] in respect of uniform for Site Personnel and self-employed workers (such lump sum is hereinafter referred to in this Clause as "the lump sum") –
- (a) 10% of the lump sum upon the Supervising Officer's approval of the design of uniform items;
 - (b) 80% of the lump sum in instalments in respect of monthly instalment periods falling within the period from the Material Date to the date of completion of the Works as stated in the certificate of completion, or where the Works are divided into Sections, the date of completion of the Section last completed as determined by reference to the respective dates of completion of the Sections as stated in the certificates of completion (such period is hereinafter referred to in this Clause as the "**Initial Period**"); and
 - (c) 10% of the lump sum in instalments in respect of monthly instalment periods falling within the period from and including the day following the date of completion of the Works as stated in the completion certificate, or where the Works are divided into Sections, from and including the day following the date of completion of the Section last completed as determined by reference to the respective dates of completion of the Sections as stated in the certificates of completion, to the date as stated in the *maintenance / defects liability** certificate issued in accordance with General Conditions of Contract Clause 80, on which the Contractor shall have completed his obligation to execute the Works (such period is hereinafter referred to in this Clause as the "**Subsequent Period**").
- (3) (a) The first monthly instalment period

under sub-clause (2)(b) of this Clause shall commence on the first day of the Initial Period. The last monthly instalment period under sub-clause (2)(b) of this Clause shall end on the date of completion of the Works as stated in the certificate of completion, or where the Works are divided into Sections, the date of completion of the Section last completed as determined by reference to the respective dates of completion of the Sections as stated in the certificates of completion, and such last monthly instalment period may be less than a month.

- (b) The first monthly instalment period under sub-clause (2)(c) of this Clause shall commence on the first day of the Subsequent Period. The last monthly instalment period under sub-clause (2)(c) of this Clause shall end on the date as stated in the *maintenance / defect liability** certificate issued in accordance with General Conditions of Contract Clause 80, on which the Contractor shall have completed his obligation to execute the Works, and such last monthly instalment period may be less than a month.

- (4) Subject to sub-clause (5) of this Clause, the amount of the instalment for each of the monthly instalment periods under sub-clauses (2)(b) and (2)(c) of this Clause shall be calculated by dividing the stated percentage of the lump sum by the number of monthly instalment periods under sub-clause (2)(b) or (2)(c) of this Clause, as the case may be.

- (5) (a) The amount of the instalment for each of the monthly instalment periods under sub-clauses (2)(b) and (2)(c) of this Clause shall be adjusted by multiplying a Factor X according to the Non-compliance Rate for Uniform as determined in accordance with Particular Specification Clause [X.4] for the monthly instalment period, as follows:

Non-compliance Rate for Uniform	Factor X
Up to 5%	100%

more than 5% and up to 10%	95%
more than 10% and up to 20%	75%
more than 20% and up to 30%	60%
more than 30%	0%

- (b) Without prejudice to the power of the Supervising Officer under General Conditions of Contract Clause 79(5) to delete, correct or modify any sum previously certified by him, the Supervising Officer shall calculate the difference between the amount of each instalment under sub-clause (2)(b) or (2)(c) of this Clause, as the case may be, and the adjusted amount of such instalment (such difference is hereinafter referred to in this Clause as “the said difference”), and deduct the aggregate total of the said differences of all instalments under sub-clauses (2)(b) and (2)(c) of this Clause from the Contract Sum.
- (c) Any adjustment made under this sub-clause (5) shall not relieve the Contractor from any liability to the Employer for damages, costs, charges, expenses, debts, or other sums for which he is liable under any provisions of the Contract save that the amount of such liability shall be reduced by the amount of the said difference in respect of the particular, relevant non-compliance.
- (6) For the purposes of this Clause:
- “certificate of completion” means a certificate of completion issued in accordance with General Conditions of Contract Clause 53.
- “date for commencement of construction of the Works” means the date for commencement of construction of the Works as notified by the Supervising Officer in accordance with General Conditions of Contract Clause 47.
- “Material Date” means:
- (i) the date as notified by the Contractor in accordance with

sub-clause (1)(b) of this Clause if such date falls within the period of 2 months after the date for commencement of construction of the Works; or

- (ii) the date of expiry of 2 months after the date for commencement of construction of the Works (such date of expiry is hereinafter referred to as “the said date of expiry”) if the Contractor fails to give notice in accordance with sub-clause (1)(b) of this Clause or if the date notified by the Contractor in accordance with sub-clause (1)(b) of this Clause falls after the said date of expiry.

“Section last completed” excludes *the Section for Establishment Works and the Section for Aftercare to Old and Valuable Trees / the Section for Establishment Works and Aftercare to Old and Valuable Trees**.

- (7) The Contractor warrants to the Employer that:
 - Intellectual Property Rights relating to uniform
 - (a) the design (other than any logo specified by the Employer or the Supervising Officer), manufacture and supply of the uniform (hereinafter collectively referred to in this Clause as “design of the uniform”) in accordance with Particular Specification Clause [X.3] does not and will not infringe any Intellectual Property Rights of any party; and
 - (b) in respect of the design of the uniform including but not limited to the supply or use of any materials or articles by the Contractor, the Intellectual Property Rights of which are vested in a third party:
 - (i) the Contractor has or shall have obtained a valid and continuing licence under which the Contractor is entitled to sub-license the third party

Intellectual Property Rights for himself and for the Employer, its authorized users, assigns and successors-in-title; or

- (ii) the Contractor has or shall have obtained the grant of all necessary clearances for himself and for the Employer, its authorised users assigns and successors-in-title prior to the supply or use of any materials or articles.
- (8) Without prejudice to General Conditions of Contract Clause 28, the Contractor shall indemnify the Employer and keep the Employer fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where the settlement has first been proposed or approved in writing by/on behalf of the Contractor) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design of the uniform, its possession or use infringes any Intellectual Property Rights of any party.
- (9) The provisions of this Clause shall survive the completion or termination of the Contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion, termination or determination.
- (10) General Conditions of Contract Clause 1(1) is amended by adding the following definition:
- Definition
and
Interpretation
- “Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for grant of such rights.

“Site Personnel” means all workers and staff employed by the Contractor or his sub-

contractors of all tiers including specialist sub-contractors and Nominated Sub-contractors, except self-employed workers, engaged for the execution of the Works on the Site and includes those drivers or lorry drivers who are not self-employed persons engaged for the Works. *[for use only when the Contract has not adopted the standard Special Conditions of Contract Clauses for the prevention of non-payment of wages.]*

* Delete as appropriate.

- | | | | | |
|---------------|-----|--|---|--|
| SCC 78 | (1) | The operation of the Dispute Resolution Advisor (DRA) System is set out in Annexes A and B to this Special Condition of Contract. | Dispute Resolution Advisor System | SDEV's memo ref. (02BBG-01-4) in DEVB(W) 506/00/01 dated 24.3.2011 |
| | (2) | General Conditions of Contract Clauses 48, 50, 61 and 63 are amended in accordance with the DRA System. | | |
| | (3) | For the avoidance of doubt this Special Condition shall include Annexes ¹ A and B to this Special Condition of Contract. | | ¹ Please refer to Annexes A and B of the memo. |
| SCC 79 | (1) | Subject to sub-clause (2) of this Clause, the Contractor shall within 6 months from the date for commencement of construction of the Works as notified by the Supervising Officer (hereinafter referred to in this Clause as "the 6-month period") employ a minimum total of [] ^(see Note 1) ECMTS Graduates to work on the Site in a trade in which they graduated under the Enhanced Construction Manpower Training Scheme (hereinafter referred to in this Clause as "ECMTS"). For the purposes of this Clause: | Mandatory Employment of Graduates of the Enhanced Construction Manpower Training Scheme (ECMTS) | SDEV's memo ref: DEVB(Trg)133/4 (9) dated 7.12.2012 |
| | | (i) "ECMTS Graduate" means a graduate who has successfully completed a training course conducted by the Construction Industry Council under the ECMTS not more than 6 months preceding the date on which the graduate is first employed to work on the Site in accordance with this Clause, and for the avoidance of doubt, "ECMTS Graduate" does | | |

not include any graduate who has completed a training course conducted by a contractor or sub-contractor under the Contractor Cooperative Training Scheme administered by the Construction Industry Council; and

- (ii) an ECMTS Graduate shall be taken as having successfully completed the relevant training course on the issue date specified in the certificate issued by the Construction Industry Council under the ECMTS.
- (2) An ECMTS Graduate employed by a sub-contractor of the Contractor within the 6-month period to work on the Site in accordance with the provisions of this Clause shall be counted towards the minimum total number of ECMTS Graduates specified in sub-clause (1) of this Clause. For the purposes of this Clause, “sub-contractor” means any sub-contractor, irrespective of tier, including any Specialist Sub-contractor and Nominated Sub-contractor.
- (3) Subject to sub-clause (5) of this Clause, each ECMTS Graduate shall be employed to work on the Site for at least 12 months (hereinafter referred to in this Clause as “the minimum 12-month employment period”). During the employment of the ECMTS Graduate, the Contractor or his sub-contractor, as the case may be, shall pay the ECMTS Graduate a wage of no less than the higher of the following:
- (i) HK\$10,000 per month for the first 6 months of the ECMTS Graduate’s employment and then a wage of no less than HK\$15,000 per month thereafter; or
 - (ii) the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).

- (4) If, within the 6-month period, the total number of ECMTS Graduate employed by the Contractor and his sub-contractors in accordance with this Clause is below the minimum total number specified in sub-clause (1) of this Clause for a reason beyond the reasonable control of the Contractor, the Contractor shall demonstrate to the Supervising Officer that he has used all reasonable endeavours to comply with this Special Condition of Contract and seek the approval of the Supervising Officer to defer the employment of the remaining ECMTS Graduates under this Clause.
- (5) (a) If the Contractor or his sub-contractor, as the case may be, is unable to employ the ECMTS Graduate to work on the Site for at least 12 months for any of the reasons listed below in this sub-clause (5)(a), the Contractor or his sub-contractor, as the case may be, may subject to sub-clauses (5)(b) and (5)(c) below employ the ECMTS Graduate for a shorter period:
- (i) there is no work or insufficient work under the Contract in the trade in which the ECMTS Graduate graduated; or
 - (ii) the ECMTS Graduate resigns on his own accord; or
 - (iii) the ECMTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a ECMTS Graduate; or
 - (iv) the ECMTS Graduate has committed any act for which the Contractor or his sub-contractor, as the case may be, is entitled to terminate the employment contract without notice or payment in lieu under the law.

- (b) If any ECMTS Graduate is employed for a period shorter than the minimum 12-month employment period, the Contractor or his sub-contractor, as the case may be, shall within 2 months after the date on which the employment of such ECMTS Graduate ends, replace such ECMTS Graduate with a new ECMTS Graduate for the remaining time under the minimum 12-month employment period, unless:
 - (i) there is no work or insufficient work under the Contract that is suitable for an ECMTS Graduate; or
 - (ii) the remaining time under the minimum 12-month employment period is less than 2 months; or
 - (iii) otherwise approved by the Supervising Officer.
 - (c) If the Contractor or his sub-contractor, as the case may be, is unable to replace the ECMTS Graduate in accordance with sub-clause 5(b) of this Clause for a reason beyond the reasonable control of the Contractor, the Contractor shall demonstrate to the Supervising Officer that he has used all reasonable endeavours to comply with sub-clause (5)(b) of this Clause and seek the approval of the Supervising Officer to defer the replacement of the ECMTS Graduate.
- (6) The Contractor shall submit the names and particulars, as required by the Supervising Officer, of the ECMTS Graduates employed to work on the Site.
- (7) The Contractor shall notify the Supervising Officer in writing of any change in the employment terms of an ECMTS Graduate or of the intention of an ECMTS Graduate, the Contractor or his sub-contractor to terminate the employment contract of the ECMTS Graduate to work on the Site, within 3 working days of the Contractor or his sub-contractor knowing the change or intention,

whichever is earlier, and provide with the written notification under this sub-clause (7) the reason for the change of employment terms or termination of the employment contract.

- (8) Nothing in this Special Condition of Contract shall derogate from or in any way affect the respective obligations of the Contractor and his sub-contractors to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.

Note 1

The minimum number of Graduates to be specified shall be –

Estimated Contract Sum / Total Expenditure for Term Contracts	Minimum Number of Graduate to be Employed
> \$200 million and <= \$400 million	4
> \$400 million	10

- The construction period of the eligible contract shall be 2 years or longer.

SCC 80A

- (1) For the purposes of this Clause, the following words and expressions shall, except when the context otherwise requires, have the meaning hereby assigned to them:

“ B&C first-tier sub-contractor” means a first-tier sub-contractor executing any part of the B&C works or supplying any materials or services for the B&C works.

“B&C Trade” means a CCTS Trade which is a building and civil work trade.

“B&C works” means the building and civil works under the Contract.

“ CCTS” means the Contractor Cooperative Training Scheme administered by the CIC.

“CCTS Graduate” has the meaning assigned to it under sub-clause (6)(b) of this Clause.

“CCTS Trade” means a trade selected from the list of trades prescribed by the relevant authority under the CCTS or proposed by the Contractor or an E&M first-tier sub-contractor, as the case may be, for the approval of the relevant authority under the CCTS.

“ CCTS Trainee” means a trainee employed to undergo training under the CCTS.

“Change to the CCTS Terms and Conditions” means any addition or amendment to the CCTS terms and conditions made on or after the date which was 10 days prior to the tender closing date.

“ CIC” means the Construction Industry Council established by section 4 of the Construction Industry Council Ordinance (Cap. 587).

Implementation SDEV’s memos of the Contractor ref.
Cooperative DEVB(Trg)133/4(Training Scheme 9) dated 5.8.2013 (CCTS) – for CCTS Trainees Mandatory for use in both B&C Trades and E&M Trades with all GCCs

“E&M first-tier sub-contractor” has the meaning assigned to it under sub-clause (2)(b)(i) of this Clause.

“E&M second-tier sub-contractor” means a second-tier sub-contractor who has entered into a sub-contract with an E&M first-tier sub-contractor to execute any part of the E&M works or supplying any materials or services for the E&M works.

“ E&M Trade” means a CCTS Trade which is an electrical and mechanical work trade.

“E&M works” means the electrical and mechanical works under the Contract.

“ relevant E&M first-tier sub-contractor”, in relation to an E&M second-tier sub-contractor, means the E&M first-tier sub-contractor with whom such E&M second-tier sub-contractor has entered into a sub-contract to execute any part of the E&M works or supplying any materials or services for the E&M works.

- (2) (a) (i) The Contractor shall join the CCTS. The Contractor shall employ a total of at least [~~XX~~^(see Note 1)] CCTS Trainees in B&C Trades to undergo CCTS training under the Contract.
- (ii) The Contractor shall provide and complete on-the-job training for the CCTS Trainees in B&C Trades in accordance with the approved CCTS training proposals referred to in sub-clause (4) of this Clause.
- (iii) Subject to the other provisions of this Clause, a CCTS Trainee in a B&C Trade employed by a B&C first-tier subcontractor to undergo CCTS training provided under the Contract shall be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) above.

- (b) (i) The Contractor shall ensure that one or more of his first-tier sub-contractors executing any part of the E&M works or supplying any materials or services for the E&M works join the CCTS (such sub-contractor who joins the CCTS is hereinafter referred to in this Clause as “E&M first-tier sub-contractor”). The Contractor shall employ a total of at least [YY^(see Note 2)] CCTS Trainees in E&M Trades to undergo CCTS training under the Contract.
- (ii) The Contractor shall ensure that, in respect of each E&M Trade, an E&M first-tier sub-contractor provides and completes on-the-job training for the CCTS Trainees in that E&M Trade in accordance with the approved CCTS training proposal referred to in sub-clause (4) of this Clause.
- (iii) Subject to the other provisions of this Clause, a CCTS Trainee in an E&M Trade employed by an E&M first-tier sub-contractor or E&M second-tier sub-contractor to undergo CCTS training under the Contract shall be counted towards the minimum total number of CCTS Trainees in E&M Trades as specified in sub-clause (2)(b)(i) above.

- (3) (a) The training of the CCTS Trainees in B&C Trades shall be commenced within 3 months from and including the date for commencement of construction of the Works as notified by the Supervising Officer in accordance with General Conditions of Contract Clause 47 (hereinafter referred to in this sub-clause (3) as “the 3-month period”).
- (b) The training of the CCTS Trainees in E&M Trades shall be commenced within the 3-month period or such longer period as approved by the Supervising Officer from and including the date for commencement of construction of the Works as notified by the Supervising Officer
- (c) The training of the CCTS Trainees in a CCTS Trade shall only commence after the relevant CCTS training proposal referred to in sub-clause (4) of this Clause has been approved by the relevant authority under the CCTS and such training shall be in accordance with the approved CCTS training proposal. If the training of the CCTS Trainees in a CCTS Trade cannot be commenced within the 3-month period or, as the case may be, the longer period approved under sub-clause (3)(b) above for a reason beyond the reasonable control of the Contractor, the Contractor shall seek the approval of the Supervising Officer to defer the commencement of the training of the CCTS Trainees in such CCTS Trade.

- (4) (a) The Contractor shall submit to the CIC for approval by the relevant authority under the CCTS a CCTS training proposal for each B&C Trade, and copy the submission to the Supervising Officer.
- (b) The Contractor shall ensure that, in respect of each E&M Trade, an E&M first-tier sub-contractor submits to the CIC for approval by the relevant authority under the CCTS a CCTS training proposal for the E&M Trade, and copy the submission to the Supervising Officer.
- (c) The submission of the CCTS training proposal shall be in accordance with the CCTS terms and conditions and, subject to the CCTS terms and conditions and any requirements as may be specified by the relevant authority under the CCTS, shall include, but not limited to, information on the number of proposed CCTS Trainees, details of any proposed secondment arrangement referred to in sub-clause (9) of this Clause, training period, course contents and syllabus, end-of-training assessment, cost of training, training subsidy being applied for, training instructors, equipment and plant and training venue, re-training of trainees failing the assessment, and replenishment of drop-out trainees as appropriate.
- (5) (a) The Contractor shall supervise and monitor the training provided to the CCTS Trainees in each B&C Trade, whether the CCTS Trainees in the B&C Trade are employed by the

Contractor or a B&C first-tier sub-contractor, and ensure that the training provided is in accordance with the relevant approved CCTS training proposal referred to in sub-clause (4) of this Clause. The Contractor shall comply with the terms and conditions of the CCTS and any additions or amendments thereto which are applicable to the relevant approved CCTS training proposal and shall ensure that his B&C first-tier sub-contractor complies with the same as appropriate.

- (b) (i) The Contractor shall ensure that in respect of each E&M Trade, an E&M first-tier sub-contractor supervises and monitors the training provided to the CCTS Trainees in the E&M Trade, whether the CCTS Trainees are employed by the E&M first-tier sub-contractor or his E&M second-tier sub-contractor, and ensure that the training provided is in accordance with the relevant approved CCTS training proposal referred to in sub-clause (4) of this Clause.

(ii) The Contractor shall ensure that the E&M first-tier sub-contractor complies with the terms and conditions of the CCTS and any additions or amendments thereto which are applicable to the relevant approved CCTS training proposal, and that the E&M first-tier sub-contractor shall ensure that his E&M second-tier sub-contractor complies with the same as appropriate.

- (6) (a) For the purposes of this Clause, the training of a CCTS Trainee in a CCTS Trade is completed when the CCTS Trainee has passed the end-of-training assessment applicable to the CCTS Trade conducted or approved by the CIC.
- (b) Upon completion of the training of a CCTS Trainee in a CCTS Trade (a CCTS Trainee whose training in a CCTS Trade is completed is hereinafter referred to in this Clause as “CCTS Graduate”), the Contractor shall, subject to sub-clause (6)(e) below and the agreement of the CCTS Graduate to be employed in accordance with this sub-clause (6)(b), immediately employ the CCTS Graduate for a period of at least 12 months to work in the CCTS Trade in which he was trained. During such 12-month period, or if the period is longer than 12 months, during the first 12 months of such period, the CCTS Graduate shall be paid –
- (i) if he is a CCTS Graduate in a B&C Trade, a wage of no less than the higher of the following:
- HK\$10,000 per month for the first 6 months and then a wage of no less than HK\$15,000 per month thereafter; or
 - the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).
- (ii) if he is a CCTS Graduate in an E&M Trade, a wage of no less than the higher of the following:

- HK\$10,000 per month;
or

- the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608)

(c) The Contractor shall employ in accordance with sub-clause 6(b) above the total number of CCTS Graduates irrespective of whether they were employed as CCTS Trainees by the Contractor or, as the case may be, B&C first-tier sub-contractors, E&M first-tier sub-contractors or E&M second-tier sub-contractors.

(d) (i) If a CCTS Graduate who was employed as a CCTS Trainee by a B&C first-tier sub-contractor, E&M first-tier sub-contractor or E&M second-tier sub-contractor, as the case may be, is immediately employed upon completion of his training by the same sub-contractor to work in the CCTS Trade in which he was trained, he shall be counted towards the total number of CCTS Graduates that the Contractor is required to employ under sub-clause 6(c) above provided that -

(I) the CCTS Graduate is paid a wage in accordance with sub-clause (6)(b)(i) or (6)(b)(ii) above, as the case may be; and

(II) the CCTS Graduate is employed for a period of at least 12 months or, if any of the circumstances set out in

sub-clause (6)(d)(ii) below applies, for a shorter period.

(ii) The circumstances referred to in sub-clause (6)(d)(i)(II) above are:

(I) in the case where the CCTS Graduate was employed as a CCTS Trainee by a B&C first-tier sub-contractor or an E&M first-tier sub-contractor, there is insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under all contracts between the Contractor and such B&C first-tier sub-contractor or E&M first-tier sub-contractor, as the case may be, after completion of the training of the CCTS Graduate; or

(II) in the case where CCTS Graduate was employed as a CCTS Trainee by an E&M second-tier sub-contractor, there is insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under all contracts between the relevant E&M first-tier sub-contractor and such E&M second-tier sub-contractor after completion of the training of the CCTS Graduate; or

(III) the CCTS Graduate resigns on his own accord; or

(IV) the CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or

(V) the CCTS Graduate has committed any act for which the sub-contractor is entitled to terminate the employment contract without notice or payment in lieu under the law.

(e) If the Contractor is unable to employ the CCTS Graduate for a period of at least 12 months as required under sub-clause (6)(b) above for any of the reasons listed below in this sub-clause (6)(e), the Contractor may decide not to employ the CCTS Graduate, or may shorten the employment period of the CCTS Graduate –

(i) there is no work or insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under the Contract and all other contracts of the Contractor after completion of the training of the CCTS Graduate; or

(ii) the CCTS Graduate resigns on his own accord; or

(iii) the CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or

(iv) the CCTS Graduate has committed any act for which the Contractor is entitled to terminate the employment contract without notice or

payment in lieu under the law.

- (7) (a) The Contractor shall register or, as the case may be, ensure that his E&M first-tier sub-contractor registers with the CIC the names of the CCTS Trainees, contract number and title of the contract under which the CCTS Trainees work. The Contractor shall submit and ensure that his E&M first-tier sub-contractor submits a certified true copy of the written employment contract of each CCTS Trainee to the CIC and the Supervising Officer for inspection if so requested by them. No CCTS Trainee shall be registered more than once at any one time. The Contractor shall also submit a certified true copy of the written employment contract of each CCTS Graduate employed in accordance with sub-clause (6) of this Clause to the Supervising Officer for inspection if so requested by the Supervising Officer.

- (b)¹ Notwithstanding Special Conditions of Contract Clause SCC[zz]², the “Notes about Personal Data” in the Specimen Employment Contract in Appendix [#] to the Special Conditions of Contract shall be replaced by the “Notes about Personal Data” in Appendix [xx] to Special Conditions of Contract³ as far as the terms of the employment contract of the CCTS Trainees and employed CCTS Graduates are concerned.

¹ Use this sub-clause (b) if the Special Condition of Contract Clause for Payment of Wages of Site Personnel is used. Otherwise delete this sub-clause.

² This refers to the Special Condition of Contract Clause for Payment of Wages of Site Personnel.

³ This refers to the Specimen

Employment
Contract referred to
in the Special
Condition of
Contract for
Payment of Wages
of Site Personnel.

- (8) (a) (i) If the employment of a CCTS Trainee in a B&C Trade is terminated prior to the completion of the training, the Contractor shall, within one month after such termination, replace the CCTS Trainee with a new CCTS Trainee in a B&C Trade in accordance with this Clause unless the total number of CCTS Graduates in B&C Trades graduated under the Contract and the remaining number of CCTS Trainees in B&C Trades who are undergoing training is not less than the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause. The Contractor is deemed to comply with the same if the B&C first-tier subcontractor who employed the CCTS Trainee has replaced him with a new CCTS Trainee in a B&C Trade, within one month after such termination.
- (ii) If the employment of a CCTS Trainee in an E&M Trade is terminated prior to the completion of the training, the Contractor shall, within one month after such termination,

replace the CCTS Trainee with a new CCTS Trainee in an E&M Trade in accordance with this Clause unless the total number of CCTS Graduates in E&M Trades graduated under the Contract and the remaining number of CCTS Trainees in E&M Trades who are undergoing training is not less than the minimum total number of CCTS Trainees in E&M Trades required to be employed to undergo CCTS training under the Contract as specified in sub-clause (2)(b)(i) of this Clause. The Contractor is deemed to comply with the same if the E&M first-tier subcontractor or E&M second-tier subcontractor, as the case may be, who employed the CCTS Trainee has replaced him with a new CCTS Trainee in an E&M Trade within one month after such termination.

- (iii) If the Contractor is unable to replace the CCTS Trainee with a new CCTS Trainee in accordance with sub-clause (8)(a)(i) or, as the case may be, in accordance with sub-clause (8)(a)(ii) above, the Contractor shall use and continue to use reasonable endeavours to replace the CCTS Trainee until the CCTS Trainee has been replaced. The

Contractor shall upon request from time to time by the Supervising Officer demonstrate to the satisfaction of the Supervising Officer that reasonable endeavours have been used to replace the CCTS Trainee.

- (b) For the purpose of complying with sub-clause (2)(a)(i) or as the case may be, sub-clause (2)(b)(i) of this Clause, a CCTS Trainee whose employment is terminated prior to the completion of the training shall not be counted towards the minimum total number of CCTS Trainees in B&C Trades or CCTS Trainees in E&M Trades, as the case may be, as specified in sub-clause (2)(a)(i) or (2)(b)(i).

- (c) Sub-clauses (8)(a) and (8)(b) above shall not apply if, in the opinion of the Supervising Officer, the termination of employment of a CCTS Trainee is effected on or after the date which is 7 months prior to the anticipated date of completion of the Works, or where the Works are divided into Sections, the anticipated date of completion of the Section last completed as determined by the Supervising Officer. For the purposes of this sub-clause (8)(c), “Section last completed” excludes *the Section for Establishment Works and the Section for Aftercare to Old Valuable Trees / the Section for Establishment Works and Aftercare to Old and Valuable Trees**.

* Delete as appropriate.

- (9) (a) Subject to sub-clause (9)(b) below, the Contractor, B&C first-tier sub-contractor, E&M first-tier sub-contractor or E&M second-tier sub-contractor, as the case may be, may second any CCTS Trainee or CCTS Graduate in his employment to work under another contract in Hong Kong, whether it is a public works contract or not (hereinafter referred to in this sub-clause (9) as “Seconded Contract”). The work of the CCTS Trainee or CCTS Graduate in the Seconded Contract shall be in the same CCTS Trade in which the seconded CCTS Trainee is or the employed CCTS Graduate was trained under the CCTS (such CCTS Trade is hereinafter referred to in this sub-clause (9) as “the CCTS Trade concerned”).

* Delete as appropriate.

Provided that:

- (i) (I) the main contractor of the Seconded Contract shall be the Contractor; or
- (II) if the main contractor of the Seconded Contract is a joint venture, one of the participants or shareholders of the main contractor of the Seconded Contract shall be the Contractor; or
- (III) if the Contractor is a joint venture, one of the participants or shareholders of

the Contractor shall be the main contractor of the Seconded Contract; or

(IV) if the Contractor is a joint venture and the main contractor of the Seconded Contract is another joint venture, one of the participants or shareholders of the Contractor is a participant or shareholder of the main contractor of the Seconded Contract; and

(ii) in the case where the CCTS Trainee or CCTS Graduate is employed by a B&C first-tier sub-contractor or an E&M first-tier sub-contractor, such first-tier sub-contractor shall, unless otherwise agreed by the Supervising Officer, also be a first-tier sub-contractor of the main contractor of the Seconded Contract under a sub-contract to execute works of the CCTS Trade concerned under the Seconded Contract during the period of secondment; and

(iii) in the case where the CCTS Trainee or CCTS Graduate is employed by an E&M second-tier sub-

contractor, unless otherwise agreed by the Supervising Officer:

(I) the relevant E&M first-tier sub-contractor of such E&M second-tier sub-contractor shall also be a first-tier sub-contractor of the main contractor of the Seconded Contract; and

(II) the E&M second-tier sub-contractor shall also be a second-tier sub-contractor of his relevant E&M first-tier sub-contractor under a sub-contract to execute works of the CCTS Trade concerned under the Seconded Contract during the period of secondment

(b) The secondment of a CCTS Trainee shall be subject to the approval of the CIC or the relevant authority under the CCTS in accordance with the CCTS terms and conditions. The Contractor shall notify the CIC through the CCTS training proposal for the CCTS trade or in writing within the time specified by the CIC prior to the secondment the details as required by CIC in accordance with the CCTS terms and conditions of the secondment and shall,

subject to any requirement which may be specified by the CIC or the relevant authority under the CCTS, include, but not limited to, the contract number, the title of the Seconded Contract, the location at which the seconded CCTS Trainee will work, the nature of his work and the anticipated period of secondment. The Contractor shall at the same time send a copy of his aforesaid notification to the Supervising Officer and provide any other details of the secondment as may be required by the Supervising Officer.

- (c) A CCTS Trainee seconded pursuant to this sub-clause (9) shall only be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause or, as the case may be, the minimum total number of CCTS Trainees in E&M Trades as specified in sub-clause (2)(b)(i) of this Clause but not under the Seconded Contract. For the avoidance of doubt, a trainee employed to undergo CCTS training under another contract and seconded to work under the Contract shall not be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause or the minimum total number of CCTS Trainees E&M Trades as specified in sub-clause (2)(b)(i) of this Clause.

(10)** For the avoidance of doubt, sub-clauses (1) and (7)/(8)⁵ of the Special Conditions of Contract

** Use this sub-clause if the Special Conditions of

Clause SCC[zz] and sub-clauses X.1(1), X.2(1), X.2(2), X.2(4) and X.5 of the Particular Specification “Section X” on “Payment of Wages of Site Personnel” shall apply to the CCTS Trainees and employed CCTS Graduates who have been seconded to work under Seconded Contracts pursuant to sub-clause (9) of this Clause.

Contract for Payment of Wages of Site Personnel is used. Otherwise delete this sub-clause.

* Delete as appropriate.

⁵ Use sub-clause (7) for consultant-administered capital works contracts and use sub-clause (8) for in-house capital works contracts.

- (11) The Contractor shall notify the Supervising Officer in writing of any change in the employment terms of a CCTS Trainee or CCTS Graduate, or of the intention of the CCTS Trainee, the CCTS Graduate, the Contractor or, as the case may be, the B&C first-tier sub-contractor, the E&M first-tier sub-contractor or the E&M second-tier sub-contractor (hereinafter referred to in this sub-clause (11) as “the sub-contractor concerned”) to terminate the employment contract of the CCTS Trainee or CCTS Graduate, within 3 working days of the Contractor or the sub-contractor concerned knowing the change or intention, whichever is earlier, and provide with the written notification under this sub-clause (11) the reason for the change of employment terms or termination of the employment contract. In the case of any change in the employment terms of a CCTS Trainee or there being any intention of the CCTS Trainee, the Contractor or the sub-contractor concerned to terminate the employment contract of the CCTS Trainee, the Contractor shall also notify the CIC in accordance with the CCTS terms and conditions.

- (12) (a) Subject to sub-clause (12)(b) below, any increase or decrease in Cost to the Contractor in complying with this Clause resulting from any

Change to the CCTS Terms and Conditions shall be taken into account in ascertaining the Final Contract Sum.

- (b) If the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in decrease in Cost to the Contractor in complying with this Clause resulting from any Change to the CCTS Terms and Conditions or upon written application by the Contractor to the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost to the Contractor in complying with this Clause for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change to the CCTS Terms and Conditions , the Supervising Officer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with General Conditions of Contract Clause 79.

- (13) For the purpose of Particular Specification Clause [yy]⁶, the CCTS Trainees for the Contract or seconded from other contracts to work under the Contract shall not form part of the total local workforce on the Site when calculating the minimum number of Qualified Tradesmen and Intermediate Tradesmen to be employed by the Contractor under the Contract.

⁶ This refers to the Particular Specification promulgated under Works Bureau Technical Circular No. 13/2002.

- (14) Nothing in this Clause shall derogate

from or in any way affect the respective obligations of the Contractor, B&C first-tier sub-contractors, E&M first-tier sub-contractors and E&M second-tier sub-contractors to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.

- (15) Notwithstanding any other provisions in the Contract but without prejudice to sub-clause (12) of this Clause, there shall not be any measurement or separate payment for any of the work, services or obligations under this Clause. All the cost and expenses for complying with this Clause shall be deemed to be included in the Contractor's overheads.

Note 1

The CCTS with minimum total number of CCTS Trainees in B&C Trades shall be specified in capital works contracts (excluding E&M supply and installation contracts) or term maintenance contract (excluding E&M term maintenance contracts) with contract sum or estimated total expenditure for term contract exceeding \$200M and the Contract Period of 2.5 years or more.

The minimum total number of CCTS Trainees in B&C Trades to be specified shall be –

Contract Sum / Estimated Total Expenditure for Term Contracts	Minimum Total Number of CCTS Trainee in B&C Trades to be Specified in SCC[X](2)(a)
> \$200 million and <= \$400 million	10 or 5% of forecast total demand for workers in “specified B&C trades” for the Contract, whichever is greater
> \$400 million	20 or 5% of forecast total demand for workers in “specified B&C trades” for the Contract, whichever is greater

➤ “specified B&C trades” means the trades included in the Enhanced Construction Manpower Training Scheme (ECMTS) operated by the CIC. The latest list of trades in ECMTS should be adopted. The list of ECMTS trades as at 31 July 2013 are provided below for reference only –

- Bar Bender and Fixer
- Rigger/Metal Formwork Erector
- Carpenter (Formwork)
- Concretor
- Drainlayer
- Leveller

- Metal Worker
- Scaffolding Worker
- Tower Crane Dismantling/Erection Workers' Assistant
- Tunnel Worker
- Marble Worker
- Tiler
- Bricklayer
- Plasterer
- Painter & Decorator
- Plumber
- General Welder

➤ Forecast total demand for workers in “specified B&C trades” can be estimated making reference to the “Guideline for Estimation of Manpower Requirements arising from Public Works” published in June 2003 by the then Environment, Transport and Works Bureau and any of its amendment and revision.

Note 2

The CCTS with minimum total number of CCTS Trainees in E&M Trades shall be specified –

- (i) in the capital works contract (excluding E&M supply & installation contract) or terms maintenance contract (excluding E&M terms maintenance contract) which satisfy Note 1, and include E&M works with an estimated value of E&M works exceeding \$50 million and an estimated construction period for the E&M works of 6 months or more.

The minimum total number of CCTS Trainees in E&M Trades to be specified shall be –

Estimated Value of E&M Works	Minimum Total Number of CCTS Trainee in E&M Trades to be Specified in SCC[X](2)(b)
> \$50 million	4 or 5% of forecast total demand for “specified E&M trades” for the Contract, whichever is greater
> \$20 million for lifts/escalators term maintenance contract	

➤ “specified E&M trades” means the E&M trades prescribed by CIC for the CCTS for E&M trades. The latest list of the specified E&M trades should be adopted. The list of specified E&M trades as at 31 July 2013 are provided below for reference only –

- Electrical Wireman (including Electrical Fitter)
- Fire Services Electrical Fitter
- Fire Services Mechanical Fitter
- Lift Mechanic
- Escalator Mechanic
- Refrigeration/Air-conditioning/Ventilation Mechanic (Water System)
- Refrigeration/Air-conditioning/Ventilation Mechanic (Thermal System)
- Refrigeration/Air-conditioning/Ventilation Mechanic (Air System)

➤ Forecast total demand for workers in “specified E&M trades” can be estimated making reference to the “Guideline for Estimation of Manpower Requirements arising from Public Works” published in June 2003 by the then Environment, Transport and Works Bureau and any of its amendment and

revision.

SCC 80B (1)

For the purposes of this Clause, the following words and expressions shall, except when the context otherwise requires, have the meaning hereby assigned to them:

“B&C first-tier sub-contractor” means a first-tier sub-contractor executing any part of the B&C works or supplying any materials or services for the B&C works.

“B&C works” means the building and civil works under the Contract.

“B&C Trade” means a CCTS Trade which is a building and civil work trade.

“ CCTS” means the Contractor Cooperative Training Scheme administered by the CIC.

“ CCTS Graduate” has the meaning assigned to it under sub-clause (6)(b) of this Clause.

“CCTS Trade” means a trade selected from the list of trades prescribed by the relevant authority under the CCTS or proposed by the Contractor for the approval of the relevant authority under the CCTS.

“CCTS Trainee” means a trainee employed to undergo training under the CCTS.

“ Change to the CCTS Terms and Conditions” means any addition or amendment to the CCTS terms and conditions made on or after the date 10 days prior to the tender closing date.

“CIC” means the Construction Industry Council established by section 4 of the Construction Industry Council Ordinance (Cap. 587).

(2)

(a) The Contractor shall join the CCTS. The Contractor shall employ a total of at least [~~XX~~^(see the Note)] CCTS Trainees in B&C Trades to undergo CCTS training

Implementation of the Contractor Cooperative Training Scheme (CCTS) – for CCTS Trainees in B&C Trades only

SDEV’s memos ref. DEVB(Trg)133/4(9) dated 16.8.2013

Mandatory for use with all GCCs

under the Contract.

- (b) The Contractor shall provide and complete on-the-job training for the CCTS Trainees in B&C Trades in accordance with the approved CCTS training proposals referred to in sub-clause (4) of this Clause.
 - (c) Subject to the other provisions of this Clause, a CCTS Trainee in a B&C Trade employed by a B&C first-tier sub-contractor to undergo CCTS training under the Contract shall be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a) above.
- (3)
 - (a) The training of the CCTS Trainees in B&C Trades shall be commenced within 3 months from and including the date for commencement of construction of the Works as notified by the Supervising Officer in accordance with General Conditions of Contract Clause 47 (hereinafter referred to in this sub-clause (3) as “the 3-month period”).
 - (b) The training of the CCTS Trainees in a B&C Trade shall only commence after the relevant CCTS training proposal referred to in sub-clause (4) of this Clause has been approved by the relevant authority under the CCTS and such training shall be in accordance with the approved CCTS training proposal. If the training of the CCTS Trainees in a B&C Trade cannot be commenced within the 3-month period for a reason beyond the reasonable control of the Contractor, the Contractor shall seek the approval of the Supervising Officer to defer the commencement of the training of the CCTS Trainees in such B&C Trade.

- (4)
- (a) The Contractor shall submit to the CIC for approval by the relevant authority under the CCTS a CCTS training proposal for each B&C Trade, and copy the submission to the Supervising Officer.
 - (b) The submission of the CCTS training proposal shall be in accordance with the CCTS terms and conditions and, subject to the CCTS terms and conditions and any requirements as may be specified by the relevant authority under the CCTS, shall include, but not limited to, information on the number of proposed CCTS Trainees, details of any proposed secondment arrangement referred to in sub-clause (9) of this Clause, training period, course contents and syllabus, end-of-training assessment, cost of training, training subsidy being applied for, training instructors, equipment and plant and training venue, re-training of trainees failing the assessment, and replenishment of drop-out trainees as appropriate.
- (5) The Contractor shall supervise and monitor the training provided to the CCTS Trainees in each B&C Trade, whether the CCTS Trainees in the B&C Trade are employed by the Contractor or a B&C first-tier sub-contractor, and ensure that the training provided is in accordance with the relevant approved CCTS training proposal referred to in sub-clause (4) of this Clause. The Contractor shall comply with the terms and conditions of the CCTS and any additions or amendments thereto which are applicable to the relevant approved CCTS training proposal and shall ensure that his B&C first-tier sub-contractor complies with the same as appropriate.
- (6)
- (a) For the purposes of this Clause, the training of a CCTS Trainee in a CCTS Trade is completed when the CCTS Trainee has passed the end-of-training assessment applicable to the CCTS Trade

conducted or approved by the CIC.

- (b) Upon completion of the training of a CCTS Trainee in a CCTS Trade (a CCTS Trainee whose training in a CCTS Trade is completed is hereinafter referred to in this Clause as “CCTS Graduate”), the Contractor shall, subject to sub-clause (6)(e) below and the agreement of the CCTS Graduate to be employed in accordance with this sub-clause (6)(b), immediately employ the CCTS Graduate for a period of at least 12 months to work in the CCTS Trade in which he was trained. During such 12-month period, or if the period is longer than 12 months, during the first 12 months of such period, the CCTS Graduate shall be paid a wage of no less than the higher of the following:
- HK\$10,000 per month for the first 6 months and then a wage of no less than HK\$15,000 per month thereafter; or
 - the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).
- (c) The Contractor shall employ in accordance with sub-clause 6(b) above the total number of CCTS Graduates irrespective of whether they were employed as CCTS Trainees by the Contractor or, as the case may be, B&C first-tier sub-contractors.
- (d) (i) If a CCTS Graduate who was employed as a CCTS Trainee by a B&C first-tier sub-contractor, is immediately employed upon completion of his training by the same sub-contractor to work in the CCTS Trade in which he was trained, he shall be counted towards the total number of CCTS Graduates that the

Contractor is required to employ under sub-clause 6(c) above provided that -

- (I) the CCTS Graduate is paid a wage in accordance with sub-clause (6)(b) above; and
 - (II) the CCTS Graduate is employed for a period of at least 12 months or, if any of the circumstances set out in sub-clause (6)(d)(i) below applies, for a shorter period.
- (ii) The circumstances referred to in sub-clause (6)(d)(i)(II) above are:
- (I) in the case where the CCTS Graduate was employed as a CCTS Trainee by a B&C first-tier sub-contractor, there is insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under all contracts between the Contractor and such B&C first-tier sub-contractor after completion of the training of the CCTS Graduate; or
 - (II) the CCTS Graduate resigns on his own accord; or
 - (III) CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or
 - (IV) the CCTS Graduate has committed any act for which the sub-contractor is entitled to terminate the employment contract without notice or payment in lieu under the law.

- (e) If the Contractor is unable to employ the CCTS Graduate for a period of at least 12 months as required under sub-clause (6)(b) above for any of the reasons listed below in this sub-clause (6)(e), the Contractor may decide not to employ the CCTS Graduate, or may shorten the employment period of the CCTS Graduate –
- (i) there is no work or insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under the Contract and all other contracts of the Contractor after completion of the training of the CCTS Graduate; or
 - (ii) the CCTS Graduate resigns on his own accord; or
 - (iii) the CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or
 - (iv) the CCTS Graduate has committed any act for which the Contractor is entitled to terminate the employment contract without notice or payment in lieu under the law.
- (7) (a) The Contractor shall register with the CIC the names of the CCTS Trainees, contract number and title of the contract under which the CCTS Trainees work. The Contractor shall submit a certified true copy of the written employment contract of each CCTS Trainee to the CIC and the Supervising Officer for inspection if so requested by them. No CCTS Trainee shall be registered more than once at any one time. The Contractor shall also submit a

certified true copy of the written employment contract of each CCTS Graduate employed in accordance with sub-clause (6) of this Clause to the Supervising Officer for inspection if so requested by the Supervising Officer.

- (b) Notwithstanding Special Conditions of Contract Clause SCC[zz]², the “Notes about Personal Data” in the Specimen Employment Contract in Appendix [#] to the Special Conditions of Contract³ shall be replaced by the “Notes about Personal Data” in Appendix [xx] to the Special Conditions of Contract as far as the terms of the employment contract of the CCTS Trainees and employed CCTS Graduates are concerned.

¹ Use this sub-clause (b) if the Special Condition of Contract Clause for Payment of Wages of Site Personnel is used. Otherwise delete this sub-clause.

² This refers to the Special Condition of Contract Clause for Payment of Wages of Site Personnel.

³ This refers to the Specimen Employment Contract referred to in the Special Condition of Contract for Payment of Wages of Site Personnel.

- (8) (a) (i) If the employment of a CCTS Trainee in a B&C Trade is terminated prior to the completion of the training, the Contractor shall, within one month after such termination, replace the CCTS Trainee with a new CCTS Trainee in a B&C Trade in accordance with this Clause unless the total number of CCTS Graduates in B&C Trades graduated under the Contract and the remaining number of CCTS Trainees in B&C Trades who are undergoing training is not less than the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a) of this Clause. The Contractor is deemed to comply with the same if the B&C first-tier sub-contractor

who employed the CCTS Trainee has replaced him with a new CCTS Trainee in a B&C Trade, within one month after such termination.

(ii) If the Contractor is unable to replace the CCTS Trainee with a new CCTS Trainee in accordance with sub-clause (8)(a)(i) above, the Contractor shall use and continue to use reasonable endeavours to replace the CCTS Trainee until the CCTS Trainee has been replaced. The Contractor shall upon request from time to time by the Supervising Officer demonstrate to the satisfaction of the Supervising Officer that reasonable endeavours have been used to replace the CCTS Trainee.

(b) For the purpose of complying with sub-clause (2)(a) of this Clause, a CCTS Trainee whose employment is terminated prior to the completion of the training shall not be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in that sub-clause.

(c) Sub-clauses (8)(a) and (8)(b) above shall not apply if, in the opinion of the Supervising Officer, the termination of employment of a CCTS Trainee is effected on or after the date which is 7 months prior to the anticipated date of completion of the Works, or where the Works are divided into Sections, the anticipated date of completion of the Section last completed as determined by the Supervising Officer. For the purposes of this sub-clause (8)(c), “Section last completed” excludes *the Section for Establishment Works and the Section for Aftercare to Old Valuable Trees / the Section for Establishment Works and Aftercare to Old and Valuable Trees**.

* Delete as appropriate.

- (9) (a) Subject to sub-clause (9)(b) below, the Contractor or B&C first-tier sub-contractor, as the case may be, may second any CCTS Trainee or CCTS Graduate in his employment to work under another contract in Hong Kong, whether it is a public works contract or not (hereinafter referred to in this sub-clause (9) as “Seconded Contract”). The work of the CCTS Trainee or CCTS Graduate in the Seconded Contract shall be in the same CCTS Trade in which the seconded CCTS Trainee is or the CCTS Graduate was trained under the CCTS (such CCTS Trade is hereinafter referred to in this sub-clause (9) as “the CCTS Trade concerned”).

Provided that:

(i) (I) the main contractor of the Seconded Contract shall be the Contractor; or

(II) if the main contractor of the Seconded Contract is a joint venture, one of the participants or shareholders of the main contractor of the Seconded Contract shall be the Contractor; or

(III) if the Contractor is a joint venture, one of the participants or shareholders of the Contractor shall be the main contractor of the Seconded Contract; or

(IV) if the Contractor is a joint venture and the main contractor of the Seconded Contract is another joint venture, one of the participants or shareholders of the Contractor is a participant or shareholder of the main contractor of the Seconded Contract; and

(ii) in the case where the CCTS

Trainee or CCTS Graduate is employed by a B&C first-tier sub-contractor, such first-tier sub-contractor shall, unless otherwise agreed by the Supervising Officer, also be a first-tier sub-contractor of the main contractor of the Seconded Contract under a sub-contract to execute works of the CCTS Trade concerned under the Seconded Contract during the period of secondment.

- (b) The secondment of a CCTS Trainee shall be subject to the approval of the CIC or the relevant authority under the CCTS in accordance with the CCTS terms and conditions. The Contractor shall notify the CIC through the CCTS training proposal for the CCTS trade or in writing within the time specified by the CIC prior to the secondment the details as required by CIC in accordance with the CCTS terms and conditions of the secondment and shall, subject to any requirement which may be specified by the CIC or the relevant authority under the CCTS, include, but not limited to, the contract number, the title of the Seconded Contract, the location at which the seconded CCTS Trainee will work, the nature of his work and the anticipated period of secondment. The Contractor shall at the same time send a copy of his aforesaid notification to the Supervising Officer and provide any other details of the secondment as may be required by the Supervising Officer.
- (c) A CCTS Trainee seconded pursuant to this sub-clause (9) shall only be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a) of this Clause but not under the Seconded Contract. For the avoidance of doubt, a trainee

employed to undergo CCTS training under another contract and seconded to work under the Contract shall not be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a) of this Clause.

- (10)** For the avoidance of doubt, sub-clauses (1) and (7)/(8)⁵ of the Special Conditions of Contract Clause SCC[zz] and sub-clauses X.1(1), X.2(1), X.2(2), X.2(4) and X.5 of the Particular Specification “Section X” on “Payment of Wages of Site Personnel” shall apply to the CCTS Trainees and employed CCTS Graduates who have been seconded to work under Seconded Contracts pursuant to sub-clause (9) of this Clause.
- (11) The Contractor shall notify the Supervising Officer in writing of any change in the employment terms of a CCTS Trainee or CCTS Graduate, or of the intention of the CCTS Trainee, the CCTS Graduate, the Contractor or, as the case may be, the B&C first-tier sub-contractor to terminate the employment contract of the CCTS Trainee or CCTS Graduate, within 3 working days of the Contractor or the B&C first-tier sub-contractor knowing the change or intention, whichever is earlier, and provide with the written notification under this sub-clause (11) the reason for the change of employment terms or termination of the employment contract. In the case of any change in the employment terms of a CCTS Trainee or there being any intention of the CCTS Trainee, the Contractor or the B&C first-tier sub-contractor to terminate the employment contract of the CCTS Trainee, the Contractor shall also notify the CIC in accordance with the CCTS terms and conditions.
- (12) (a) Subject to sub-clause (12)(b) below, any increase or decrease in Cost to the Contractor in complying with this Clause resulting from any Change to the CCTS Terms and Conditions shall be taken into account in ascertaining the Final Contract
- ** Use this sub-clause if the Special Condition of Contract for Payment of Wages of Site Personnel is used. Otherwise delete this sub-clause.
- * Delete as appropriate.
- ⁵ Use sub-clause (7) for consultant-administered capital works contracts and use sub-clause (8) for in-house capital works contracts.

Sum.

- (b) If the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in decrease in Cost to the Contractor in complying with this Clause resulting from any Change to the CCTS Terms and Conditions or upon written application by the Contractor to the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost to the Contractor in complying with this Clause for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change to the CCTS Terms and Conditions, the Supervising Officer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with General Conditions of Contract Clause 79.

- (13) For the purpose of Particular Specification Clause [yy]⁶, the CCTS Trainees for the Contract or seconded from other contracts to work under the Contract shall not form part of the total local workforce on the Site when calculating the minimum number of Qualified Tradesmen and Intermediate Tradesmen to be employed by the Contractor under the Contract.
- (14) Nothing in this Clause shall derogate from or in any way affect the respective obligations of the Contractor and the B&C first-tier sub-contractors to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.
- (15) Notwithstanding any other provisions in the Contract but without prejudice to sub-clause (12) of this Clause, there shall not be any measurement or separate payment for any of the work, services or obligations under this Clause. All the cost and expenses for complying with this Clause shall be deemed

⁶ This refers to the Particular Specification promulgated under Works Bureau Technical Circular No. 13/2002.

to be included in the Contractor’s overheads.

Note

The CCTS with minimum total number of CCTS Trainees in B&C Trades only shall be specified in capital works contracts (excluding E&M supply and installation contracts) or term maintenance contract (excluding E&M term maintenance contracts) with contract sum or estimated total expenditure for term contract exceeding \$200M and the Contract Period of 2.5 years or more, and (i) without E&M works or (ii) with E&M works of estimated total value of 50 million or below or estimated construction period for the E&M works of less than 6 months.

The minimum total number of CCTS Trainees in B&C Trades to be specified shall be –

Contract Sum / Estimated Total Expenditure for Term Contracts	Minimum Total Number of CCTS Trainee in B&C Trades to be Specified in SCC[X](2)(a)
> \$200 million and <= \$400 million	10 or 5% of forecast total demand for workers in “specified B&C trades” for the Contract, whichever is greater
> \$400 million	20 or 5% of forecast total demand for workers in “specified B&C trades” for the Contract, whichever is greater

➤ “specified B&C trades” means the trades included in the Enhanced Construction Manpower Training Scheme (ECMTS) operated by the CIC. The latest list of trades in ECMTS should be adopted. The list of ECMTS trades as at 31 July 2013 are provided below for reference only –

- Bar Bender and Fixer
- Rigger/Metal Formwork Erector
- Carpenter (Formwork)
- Concretor
- Drainlayer
- Leveller
- Metal Worker
- Scaffolding Worker
- Tower Crane Dismantling/Erection Workers’ Assistant
- Tunnel Worker
- Marble Worker
- Tiler
- Bricklayer
- Plasterer
- Painter
- Plumber
- General Welder

➤ Forecast total demand for workers in “specified B&C trades” can be estimated making reference to the “Guideline for Estimation of Manpower Requirements arising from Public Works” published in June 2003 by the then Environment, Transport and Works Bureau and any of its amendment and revision.

SCC 81	(1) General Conditions of Contract Clause 50(1)(c)(ii) is deleted and replaced by the following : " (ii) a shortage of Constructional Plant, or"	Extension of Time due to Labour Shortage	DEVB TC(W) No. 5/2013. Mandatory for use with all GCCs
SCC 82	(1) General Conditions of Contract Clause 4 is amended by adding the following: (8)(a) Where the Contractor is to [sub-contract/sub-let] ¹ part of the Works execution of which involves trades available under the Primary Register of the Subcontractor Registration Scheme, the Contractor shall engage, for the purposes of execution of such part of the Works, sub-contractors as stated in the Contactor’s latest updated submission of the Sub-contractor Management Plan and who have completed their registration under the relevant trades available in such Primary Register before the commencement of the works under the relevant sub-contracts. Provided that the Contractor shall not engage a sub-contractor who is suspended or in the process of an appeal against his suspension from registration under such Primary Register unless the suspension is lifted before the commencement of the works under the relevant sub-contracts. The foregoing shall also apply to the Contractor’s engagement of [Nominated Sub-contractors] ² , [Specialist Sub-contractors] ³ and [sub-contractors for specialist works referred to in Special Condition of Contract Clause [] ⁴] ⁵ . (b) The Contractor shall ensure that where any part of the part of the Works sub-contracted to :- (i) a sub-contractor engaged under sub-clause 8(a) of this Clause; [(ii) a Nominated Sub-contractor;] ² [(iii) a Specialist Sub-contractor; or] ³ [(iv) a sub-contractor for specialist	Engagement of sub-contractors who are registered under the respective trades available in the Primary Register of the Subcontractor Registration Scheme	SDEV’s memo ref: (02KJ8-01-4) in DEVB(W) 510/94/02 dated 22.7.2013 Mandatory for use with all GCCs Notes: 1. Use “sub-contract” or “sub-let” as appropriate depending on the type of GCC’s used in individual contract. 2. Use as appropriate depending on the type of GCC’s used in individual contract. 3. Use when the standard SCC in WBTC No. 25/94 (entitled “Standard Form of Domestic Sub-contract for specialist works”) is used in individual contract. 4. Insert the number of the SCC in the individual contract which has used the standard SCC for sub-contracting in Secretary for Works’ memo WB(W) 209/32/110 (entitled “Library of Special Conditions of Contract Clause 14 -

works referred to in Special Condition of Contract Clause [⁴ ⁵]],

Sub-contracting”) dated 23.3.2001.

execution of which involves trades available under the Primary Register of the Subcontractor Registration Scheme is further sub-contracted (irrespective of any tier), sub-contractors (irrespective of any tier) as stated in the Contractor's latest updated submission of the Sub-contractor Management Plan and who have completed their registration under the relevant trades available in such Primary Register before the commencement of the works under the relevant further sub-contracts are engaged for the purposes of execution of such part of the part of the Works. The Contractor shall also ensure that a sub-contractor (irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration under such Primary Register shall not be engaged for the aforesaid further sub-contracting (irrespective of any tier) unless the suspension is lifted before the commencement of the works under the relevant further sub-contracts.

5. Use when standard SCC on sub-contracting in Secretary for Works' memo WB(W)209/32/110 (entitled “Library of Special Conditions of Contract Clause 14 - Sub-contracting”) dated 23.3.2001 is used in individual contract.

(c) For the purposes of this sub-clause, “Subcontractor Registration Scheme” and “Primary Register of the Subcontractor Registration Scheme” respectively means the Subcontractor Registration Scheme managed by the Construction Industry Council and the Primary Register of the Subcontractor Registration Scheme as referred to in the Rules and Procedures applicable to the aforementioned Subcontractor Registration Scheme.”

SCC 83

(1) For the purposes of this Special Condition of Contract:

“last Section” means the Section with the latest time for completion;

“PFSPMS” means the Pay for Safety Performance Merit Scheme;

“performance-tied payment items” means the performance-tied payment items listed in the Schedule of Performance-tied Payment Items of

Pay for Safety Performance Merit Scheme (PFSPMS)

SDEV’s memo ref: (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013

Guidance Notes:

1. The following SCC# shall be used when the Pay for Safety Performance Merit Scheme (PFSPMS) is

the PFSPMS in Appendix # to the Special Conditions of Contract under the PFSPMS; and

“time for completion” means the time for completion prescribed by General Conditions of Contract Clause 49 or, where applicable, the extended time for completion granted under General Conditions of Contract Clause 50.

(2) The PFSPMS is included in the Contract with the aim of encouraging the Contractor through payment for the performance-tied payment items for achieving better safety performance. The Contractor shall comply with the provisions of this Special Condition of Contract and Particular Specification Clause # “Particular Specification for Site Safety”** for participation in the PFSPMS.

(3) The Contractor shall submit Monthly Reports on Safety Performance (each of such reports is hereinafter referred to in this Clause as “Monthly Report”) and relevant documentary proof for the performance-tied payment items as required by Particular Specification Clause # “Particular Specification for Site Safety”** for the agreement by the Supervising Officer.

(4) The Supervising Officer shall assess the amounts for the performance-tied payment items submitted in each Monthly Report on Safety Performance in accordance with the Measurement Rules for the Performance-tied Payment Items of the PFSPMS and the Schedule of Performance-tied Payment Items of the PFSPMS in Appendix # to the Special Conditions of Contract and notify the Contractor of the assessed amounts. The Contractor shall include the assessed amounts in the next interim statement submitted in accordance with General Conditions of Contract Clause 78 or where there is no further interim statement, in the statement of final account submitted in accordance with General Conditions of Contract Clause 79(6).

(5)(a) If the Contractor or the Supervising Officer considers that adjustment of any of the Monthly Reports, including those submitted and agreed by the Supervising Officer previously, is required, the Contractor shall revise and re-submit the relevant Monthly Report to the Supervising Officer for correction and

applicable.

2. Pursuant to “Guidelines on the Inclusion of the Pay for Safety Performance Merit Scheme (PFSPMS) as Extension to the Existing System of the Pay for Safety Scheme (PFSS) or the Pay for Safety and Environment Scheme (PFSES)” issued by DEVB’s memo ref. DEVB(W) 516/70/03 dated 22 November 2013, it is a mandatory requirement for public works contracts, but excluding term contracts, that are included in the existing PFSS or PFSES, to be included in the PFSPMS.

(*Delete as appropriate.)
(**Amend as appropriate.)
(# Insert as appropriate.)

agreement. Any amounts for the performance-tied payment items previously certified by the Supervising Officer under General Conditions of Contract Clause 79 shall be corrected accordingly.

(b) Any accident which is suspected to be a reportable accident shall be counted as a reportable accident in the Monthly Report for the month in which the accident occurs. Without prejudice to the generality of sub-clause (5)(a) above, if it is subsequently concluded that the accident is not a reportable accident, the Contractor shall revise and re-submit the relevant Monthly Report to the Supervising Officer for correction and agreement. Any amounts for the performance-tied payment items previously certified by the Supervising Officer under General Conditions of Contract Clause 79 shall be corrected accordingly.

(6) There shall be no adjustment for retention of the percentage stated in the Contract [or fluctuations in the cost of labour and materials]* referred to in General Conditions of Contract Clause 79(1) [and Clause 89]* in respect of the amounts certified by the Supervising Officer for the performance-tied payment items. [Note: Delete the words in square brackets where contract price fluctuations are not provided for under the contract.]

(7) Further to General Conditions of Contract Clause 79(5), the Supervising Officer shall have the power to omit from any certificate the amounts for the performance-tied payment items if he is for the time being dissatisfied with the documentary proof for those items submitted by the Contractor and for that purpose, or for any other reason which to the Supervising Officer may seem proper, he may by any certificate delete, correct or modify any amounts previously certified by him in respect of the performance-tied payment items.

(8) The Supervising Officer shall finalise the assessment of the performance-tied payment items within the time period required by the Contract for the issue of the final payment certificate. Effect shall be given to such assessment in the calculation of the Final Contract Sum and in the payment due from the

Employer to the Contractor or from the Contractor to the Employer as the case may be under the final payment certificate issued in accordance with General Conditions of Contract Clause 79.