

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
運輸及工務科
香港花園道美利大廈



**Environment, Transport
and Works Bureau
Government Secretariat
Transport and Works Branch
Murray Building, Garden Road,
Hong Kong**

Ref : ETWB(W) 546/94/01

Group : 15, 17

13 June 2005

**Environment, Transport and Works Bureau (ETWB)
Technical Circular (Works) No. 11/2005**

**Electronic Dissemination of Tender Documents and
Electronic Submission of Tender Returns on Removable Media**

Scope

1. This Circular updates the provisions for electronic dissemination of tender documents and electronic submission of tender returns on removable media for Works Contracts.

Effective Date

2. This Circular shall take effect on 16 June 2005.

Effect on Existing Circulars

3. This Circular replaces the ETWB TCW No. 39/2002 which is hereby cancelled.

4. Appendix 4 of the ETWB TCW No. 39/2002 is identical to Clause 19 of the General Conditions of Tender (GCT), and is no longer required in this Circular. Appendix 5 of the ETWB TCW No. 39/2002 is identical to GCT Clause 4, and is no longer required in this Circular.

Definition

5. In this Circular, unless the context otherwise requires,
- (a) "Authorized Service Provider" means a non-government organization, which has signed a service agreement with ETWB on the provision of electronic dissemination services for EDP.
 - (b) "CD-ROM" means CD-ROM media complying with ISO 9660 standard and/or DVD-ROM media in DVD+R or DVD-R format.
 - (c) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.
 - (d) "Dissemination Procedures" means the "Electronic Tendering of Public Works Contracts – Procedures for Electronic Dissemination" in Appendix 1.
 - (e) "Electronic Dissemination Package" (or "EDP") means the collection of electronic files comprising-
 - (i) files containing the contents of a set of Tender Documents;
 - (ii) the licence conditions on using the files in Clause 5(e)(i) above; and
 - (iii) supporting files containing information on using the files in Clause 5(e)(i) above.
 - (f) "ETW Department" means Architectural Services Department, Civil Engineering and Development Department, Drainage Services Department, Electrical and Mechanical Services Department, Environmental Protection Department, Highways Department, Transport Department or Water Supplies Department.
 - (g) "Organizational e-Cert" means a digital certificate issued under the name of an organization by a recognized certification authority as defined under section 2 of the Electronic Transactions Ordinance (Cap.553).
 - (h) "Tender Addendum" means a set of documents and its attachments in the form of hard copy or electronic files issued before the Tender Closing Date to amend the tender documents.
 - (i) "Tender Closing Date" means the date and time set for the return of tender for a Works Contract.
 - (j) "Tender Documents" means the documents in the form of hard copy or electronic files issued for the tendering of Works Contracts, including-
 - (i) the invitation to submit tenders and other documents issued together with it; and

- (ii) Tender Addenda.
- (k) "Works Contract" means a contract managed by a ETW Department for design, construction, operation or maintenance of infrastructure or buildings and includes maintenance term contracts and design and build contracts. A Works Contract does not include-
 - (i) contracts awarded through the Government Logistics Department;
 - (ii) consultancy agreements awarded in accordance with the consultant selection procedures in the Stores and Procurement Regulations; and
 - (iii) procurements made in accordance with Chapter II of the Stores and Procurement Regulations.

Background

6. WBTC No. 21/2000 came into effect on 25 August 2000, making provision for electronic dissemination of tender documents. For most works contracts that have since been put out to tender, electronic copies of the tender documents in the form of electronic dissemination packages (EDP) were also distributed. The scope of electronic dissemination was subsequently expanded through the promulgation of WBTC no. 21/2001 in September 2001 to include the provisions for dissemination through the Internet. The practice of issuing EDP's has been well received by the construction and engineering industry at large. Recognising this, the ETWB drew up a framework of plans to enable electronic tender returns to be made on removable media as a step forward in the development of electronic tendering.

7. Subsequently, WBTC No. 32/2001 was promulgated to make provision for electronic tender submission on removable media and to consolidate WBTC No. 21/2001 to form a comprehensive document on electronic tendering. Further revisions to WBTC No. 32/2001 were made in 2002 leading to the promulgation of ETWB TCW No. 39/2002.

8. This Circular provides an updated version of the comprehensive document on electronic tendering. The following revisions have been made in this Circular:

- (a) Guidelines on reducing the number of EDP files added to Appendix 1;
- (b) Additional file formats for video, movie and animation;
- (c) Deletion of Appendices 4 and 5 of the ETWB TCW No. 39/2002.

Electronic Dissemination of Tender Documents

Dissemination Policy

9. The electronic version of Tender Documents for Works Contracts should be disseminated in the form of EDP's prepared in accordance with the manner and format contained in Section 3 of the Dissemination Procedures at Appendix 1 to this Circular.

10. EDP's should be disseminated through each of the following channels-

- (a) Direct Dissemination – EDP's should be issued to tenderers eligible to submit tenders for Works Contracts; and
- (b) Dissemination through Authorized Service Providers – EDP's should also be disseminated through Authorized Service Providers.

11. The existing practice of issuing hard copies of Tender Documents should continue. Departments should only issue one set of hard copies free of charge to tenderers eligible to submit tenders. Additional hard copies should be charged at the rates prescribed from time to time by the relevant authorities.

12. The hard copy disseminated according to Clause 11 and the EDP of the Tender Documents are each a complete set of the Tender Documents, bearing equal status.

13. Electronic dissemination of Tender Documents should apply to all Works Contracts delivered using in-house resources of ETW Departments or through consultants.

Direct Dissemination

14. EDP's containing the following documents should be issued:-

- (a) the original version of tender documents; and
- (b) any Tender Addenda issued in accordance with the Conditions of Tender.

15. EDP's should be issued free of charge to tenderers who are eligible to submit tenders for a Works Contract. Requests for additional electronic copies of tender drawings should be charged in accordance with the provisions of the prevailing ETWB technical circular on charges of electronic drawings. Request for additional electronic copies of other types of Tender Documents should be charged at the rates prescribed from time to time by the relevant authorities.

Dissemination through Authorized Service Providers

16. ETWB may from time to time enter into service agreements with non-government

organizations (including, without limitations, construction industry trade associations and commercial entities) for:-

- (a) distribution of EDP's through their web sites (Internet dissemination services);
- (b) distribution of duplicates of EDP's (replication services); and
- (c) providing value-added services through their web sites using the contents of the EDP's (value-added services).

17. Hard copies of Tender Documents shall not be issued to Authorized Service Providers.

18. The procedures for negotiating service agreements are set out in Section 4 of the Dissemination Procedures at Appendix 1 to this Circular.

19. In determining any organization to be authorized, ETWB will consider all relevant circumstances including, but not limited to, the following considerations-

- (a) nature of the organization and its connection with the construction industry;
- (b) purposes of providing the Internet dissemination services, replication services and value-added services;
- (c) capability for providing satisfactory levels of service to users;
- (d) the adequacy of the proposals for providing the various services, in particular the proposed levels of services;
- (e) reputation of the organization; and
- (f) whether such authorization will have detrimental effects on the image of ETWB and ETW Departments.

20. Service agreements will be made using the standard agreement in Appendix 3. The list of Authorized Service Providers is posted on ETWB's web site at www.etwb.gov.hk/gov/asp.htm.

Dissemination Procedures

21. ETW Departments shall follow Appendix 1 on the Dissemination Procedures to disseminate the electronic version of Tender Documents for Works Contracts.

Electronic Submission of Tender Returns in Removable Media

Electronic Submission of Tender is Optional

22. Tender submission in electronic format is optional. The following note shall be included in the Notes for Tenderers:

"Tenderers may submit tenders in traditional hard copy format or partly in electronic format in accordance with Clause 4 of the General Conditions of Tender. All tenders, whether in hard copy format or partly in electronic format, will be evaluated on an equal basis.

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 [&]^{##}."

Note: [&] Insert the appropriate number.

^{##} The requirements have been set out in Appendix 4 of this Circular.

Preparation and Submission of Tender Return

23. A tenderer shall prepare his tender submission in accordance with Clause 4 of the General Conditions of Tender promulgated under ETWB TCW No. 26/2004. He may submit his tender return in either hard copy format or electronic files format as follows:

<u>Type of Document in Tender Return</u>	
<u>Format of submission allowed</u>	

- | | |
|--|---|
| (a) Form of Tender | In hard copy format only. |
| (b) Bills of Quantities or Schedule of Rates | In hard copy format provided by the ETW Department, or
in electronic format only if electronic files of Bills of Quantities or Schedule of Rates in Excel 97 format are provided in the EDP. |
| (c) Other documents | In hard copy format or in electronic format |

24. A tenderer who wishes to submit his tender partly in electronic format shall prepare the electronic part of the tender return in accordance with the "Requirements for Tender submission in Electronic Format" in Appendix 4.

25. All electronic files in the tender return shall be Digitally Signed by the tenderer. Organizational e-Cert used for the purpose of applying Digital Signatures shall be issued under the name of the tenderer and shall be valid as at the Tender Closing Date.

26. A tenderer shall package necessary hard copy and electronic files together in accordance with Clause 4 of the General Conditions of Tender promulgated under ETWB TCW No. 26/2004 and submit the complete tender return to the designated tender box as required by the Gazette Notification

or the Letter of Invitation or the Tender Notice.

Tender Opening

27. The tender opening teams of the Central Tender Board and the Public Works Tender Board will continue to open tenders in the usual manner and will pass the original set of the tender returns to the relevant ETW Department for checking and evaluation while retaining the copy set of the tender returns.

Tender Evaluation

28. All tenders, whether in the form of hard copy or in electronic files, shall be checked and evaluated on an equal basis.

29. ETW Departments should preserve the contents of the electronic files in the tender returns. No alteration to the electronic files of the tender returns is allowed. To avoid any inadvertent changes or damage made to the tenderers' electronic files, the following measures shall be adopted:-

- (a) CD-ROM drive which is NOT capable of writing or re-writing data on CD-ROM media shall always be used to read the electronic files.
- (b) Duplicate CD-ROM copies of the tenderers' electronic files shall be made and used for the purpose of tender evaluation. The original set of the tenderers' electronic files shall not be used as far as possible.

30. ETW Departments should check the validity of electronic files submitted with the tender as follows-

- (a) All files have been Digitally Signed by the tenderer.
- (b) The Digital Signatures are generated by an Organizational e-Cert of the tenderer.
- (c) The Organizational e-Cert corresponding to the Digital Signatures is valid as at the Tender Closing Date.

31. If an electronic file in the tender return cannot be opened properly for viewing and printing following the tenderers' instructions referred to in paragraph 2 of Appendix 4, that file shall be considered as missing from the tender return.

32. The ETW Department should only ask a tenderer to provide any missing information provided that the ETW Department is satisfied that the non-submission of the missing information is an unintentional error of form and that a late submission of that missing information would not give the tenderer any advantage over other tenderers. Any opportunity given to the tenderer to correct unintentional errors of form shall not be permitted to give rise to discriminatory practice.

33. ETW Departments should verify whether any alteration has been made to the original text in the Bills of Quantities and/or Schedule of Rates. Any such alterations shall be taken as qualifications made by the tenderer and be examined in accordance with the ETWB TCW No. 7/2004.

34. The electronic part of the tender return shall be checked and evaluated as if it were in hard copy format except that where errors are found, corrections shall be made on printouts of the electronic part of the tender return.

Preparation of Contract Documents

35. The following shall be included as part of the contract documents-

- (a) The tender return including any electronic files therein.
- (b) All correspondence in relation to tender correction.

36. For unsuccessful tenders, the retention and destruction of electronic files shall be handled in the same manner as tenders submitted in hard copy format.

(C S W A I)
**Deputy Secretary for the Environment,
Transport and Works (Works) 2**

Licence Conditions
for Electronic Dissemination Packages
Distributed Through Direct Dissemination

EDP Reference - ¹

1. This set of "Licence Conditions for Electronic Dissemination Packages Distributed Through Direct Dissemination" may be cited as the "Licence Conditions".
2. In these conditions, unless the context otherwise requires-
 - (a) "Contract" means the works contract named in Schedule 1 hereto.
 - (b) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in Section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.
 - (c) "Distribution Medium" means the removable electronic storage medium containing all or part of the files of an EDP.
 - (d) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.
 - (e) "Electronic Dissemination Package" (or "EDP") means the electronic files in Schedule 2 hereto containing the contents of the Tender Documents, the supporting information for using these electronic files and these Licence Conditions.
 - (f) "Employer" means the Government of the Hong Kong Special Administrative Region.
 - (g) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.
 - (h) "Licensee" means the person who has collected from the Employer and uses the EDP and includes, if the person acts on behalf of another person, that other person.
 - (i) "Relevant File" means an electronic file that-
 - (i) is derived from duplication of any files in the EDP; or
 - (ii) contains any contents extracted from any files in the EDP.
 - (j) "Signed Editable File" means a file listed under the column "Signed Editable File" in Schedule 2 hereto containing the Digitally Signed version of an Editable File.

¹ To be inserted by department

- (k) "Signed Image File" means a file listed under the column "Signed Image File" in Schedule 2 hereto containing the Digitally Signed version of an Image File.
- (l) "Special File" means a file listed in Schedule 3 hereto.
- (m) "Sub-licensee" means a party licensed by the Licensee to use the EDP.
- (n) "Tender" means the tender that may be submitted for the Contract.
- (o) "Tender Addendum" means a set of documents and its attachments in the form of electronic files issued before the Tender Closing Date to amend the tender documents.
- (p) "Tender Closing Date" means the date and time set for the return of tender for the Contract.
- (q) "Tender Documents" means the documents in the EDP issued for the tendering of the Contract, including:-
 - (i) the invitation to submit tenders and other documents issued together with it; and
 - (ii) Tender Addenda.
- (r) "Triggering Event" means one of the following events-
 - (i) The Licensee does not submit a Tender by the Tender Closing Date;
 - (ii) The Licensee receives notification from the Employer that his Tender is invalid;
 - (iii) The Licensee receives notification from the Employer that his Tender is not accepted;
 - (iv) The Licensee withdraws his Tender; or
 - (v) The execution of the Articles of Agreement for the Contract.

3. Words importing the singular only also include the plural and vice versa where the context requires. Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.

4. Subject to the provisions hereof, the Employer grants the Licensee, free of charge, a non-exclusive and revocable licence for using the EDP solely for the purpose of preparing the Tender. The Licensee shall not use the EDP for any other purpose. Save as aforesaid, all other rights in the EDP are reserved by the relevant copyright owners.

5. The Licensee 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 by the Licensee of Clause 4 hereof.

6. (1) The licence for using the EDP shall expire within seven working days of the occurrence of a Triggering Event.
 - (2) Sub-clause (1) shall not apply if the Licensee is nominated as a sub-contractor or supplier in a tender submitted by a tenderer who is holding a valid licence to use the EDP (the "Relevant Licence"). In this case, the licence of the Licensee shall expire with the Relevant Licence. If there are more than one Relevant Licences, the licence shall expire with the last Relevant Licence.
 - (3) On or before the expiration date of the licence, the Licensee shall-
 - (a) either destroy the Relevant Files in his possession or retain them as archives; and
 - (b) ensure that all sub-licensees have either destroyed the Relevant Files in their possession or retained these files for archive purpose
7. Any files kept as archives pursuant to Clause 6 shall not be used for any other purpose.
8. Subject to the following conditions, the Licensee may license other persons as Sub-licensees to use the EDP-
- (a) The Licensee shall obtain from each Sub-licensee an undertaking in writing that the Sub-licensee shall not use the EDP for any purpose other than for the purpose of preparing the Tender;
 - (b) The Licensee shall be liable to the Employer for the breach of the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;
 - (c) The Licensee shall indemnify and keep the Employer indemnified 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 the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;
 - (d) Provided that:-
 - (i) The Licensee shall not license any Sub-licensee to use the Special Files enumerated in Schedule 3 hereto; and
 - (ii) The Licensee shall not grant any Sub-licensee the right to license other parties to use the EDP.

Schedule 1²

Contract No. _____

Contract Title _____

Department _____

Tender Closing Date³ _____

² To be completed by department.

³ Please also fill in the time.

Schedule 2 – Electronic Dissemination Package⁴

Tender Documents	Version no.	Signed Image File ⁵	Signed Editable File ⁶

⁴ To be completed by department

⁵ the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)

⁶ the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)

Schedule 3 – Special Files⁷
(Files not to be re-distributed by tenderers)

(List the file names of the special files in the EDP)

⁷ To be completed by department

Licence Conditions
for Electronic Dissemination Packages
Distributed Through Authorized Service Providers

EDP Reference - ¹

1. This set of "Licence Conditions for Electronic Dissemination Packages Distributed Through Authorized Service Providers" may be cited as the "Licence Conditions".
2. In these conditions, unless the context otherwise requires-
 - (a) "Authorized Service Provider" means a service provider which has been authorized by the Employer to provide dissemination services for EDP.
 - (b) "Contract" means the works contract named in Schedule 1 hereto.
 - (c) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.
 - (d) "Distribution Medium" means the removable electronic storage medium containing all or part of the files of an EDP.
 - (e) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.
 - (f) "Electronic Dissemination Package" (or "EDP") means the electronic files in Schedule 2 hereto containing the contents of the Tender Documents, the supporting information for using these electronic files and these Licence Conditions.
 - (g) "Employer" means the Government of the Hong Kong Special Administrative Region.
 - (h) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.
 - (i) "Licensee" means-
 - (i) the person who has obtained the Distribution Medium from an Authorized Service Provider and uses the EDP and includes, if the person acts on behalf of another person, that other person; or
 - (ii) the person who has downloaded any of the electronic files contained in the EDP from an

¹ To be inserted by department

Authorized Service Provider and includes, if the person acts on behalf of another person, that other person.

- (j) "Relevant File" means an electronic file that-
 - (i) is derived from duplication of any files in the EDP; or
 - (ii) contains any contents extracted from any files in the EDP.
- (k) "Signed Editable File" means a file listed under the column "Signed Editable File" in Schedule 2 hereto containing the Digitally Signed version of an Editable File.
- (l) "Signed Image File" means a file listed under the column "Signed Image File" in Schedule 2 hereto containing the Digitally Signed version of an Image File.
- (m) "Special File" means a file listed in Schedule 3 hereto.
- (n) "Sub-licensee" means a party licensed by the Licensee to use the EDP.
- (o) "Tender" means a tender that may be submitted for the Contract.
- (p) "Tender Addendum" means a set of documents and its attachments in the form of electronic files issued before the Tender Closing Date to amend the tender documents.
- (q) "Tender Closing Date" means the date and time set for the return of tender for the Contract.
- (r) "Tender Documents" means the documents in the EDP issued for the tendering of the Contract, including:-
 - (i) the invitation to submit tenders and other documents issued together with it; and
 - (ii) Tender Addenda.
- (s) "Triggering Event" means one of the following events-
 - (i) The Licensee does not submit a Tender by the Tender Closing Date;
 - (ii) The Licensee receives notification from the Employer that his Tender is invalid;
 - (iii) The Licensee receives notification from the Employer that his Tender is not accepted;
 - (iv) The Licensee withdraws his Tender; or
 - (v) The execution of the Articles of Agreement for the Contract.

3. Words importing the singular only also include the plural and vice versa where the context requires. Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.
4. Subject to the provisions hereof, the Employer grants the Licensee, free of charge, a non-exclusive and revocable licence for using the EDP solely for the purpose of preparing the Tender. Save as aforesaid, all other rights in the EDP are reserved by the relevant copyright owners.
5. The Licensee 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 by the Licensee of Clause 4 hereof.
6.
 - (1) The licence for using the EDP shall expire within seven working days of the occurrence of a Triggering Event.
 - (2) Sub-clause (1) shall not apply if the Licensee is nominated as a sub-contractor or supplier in a tender submitted by a tenderer who is holding a valid licence to use the EDP (the "Relevant Licence"). In this case, the licence of the Licensee shall expire with the Relevant Licence. If there are more than one Relevant Licences, the licence shall expire with the last Relevant Licence.
 - (3) On or before the expiration date of the licence, the Licensee shall-
 - (a) either destroy the Relevant Files in his possession or retain them as archives; and
 - (b) ensure that all sub-licensees have either destroyed the Relevant Files in their possession or retained these files for archive purpose.
7. Any files kept as archives pursuant to Clause 6 shall not be used for any other purpose.
8. Subject to the following conditions, the Licensee may license other persons as Sub-licensees to use the EDP-
 - (a) The Licensee shall obtain from each Sub-licensee an undertaking in writing that the Sub-licensee shall not use the EDP for any purpose other than for the purpose of preparing the Tender;
 - (b) The Licensee shall be liable to the Employer for the breach of the undertaking referred in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;
 - (c) The Licensee shall indemnify and keep the Employer indemnified 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 the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;

(d) Provided that:-

- (i) The Licensee shall not license any Sub-licensee to use the Special Files enumerated in Schedule 3 hereto; and
- (ii) The Licensee shall not grant any Sub-licensee the right to license other parties to use the EDP.

Schedule 1²

Contract No. _____

Contract Title _____

Department _____

Tender Closing Date³ _____

² To be completed by department

³ Please also fill in the time.

Schedule 2 – Electronic Dissemination Package⁴

Tender Documents	Version no.	Signed Image File ⁵	Signed Editable File ⁶

⁴ To be completed by department

⁵ the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)

⁶ the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)

Schedule 3 – Special Files⁷
(Files not to be re-distributed by tenderers)

(List the file names of the special files in the EDP)

⁷ To be completed by department

Appendix 3 - Service Agreement
for Dissemination of Electronic Dissemination Packages

Agreement No. – [to be assigned]

THIS AGREEMENT is made day of between the Government of the Hong Kong Special Administrative Region ("the Grantor") and [insert the full name of the service provider] ("the Grantee") whose registered office is [insert address].

RECITALS

(A) The Grantee has requested for use of the Electronic Dissemination Packages for providing Internet Dissemination Service, Replication Service, and Value-added Services.

(B) The Grantor has agreed to grant to the Grantee right to use the Electronic Dissemination Packages subject to the terms and conditions as hereinafter contained.

IT IS AGREED by the Grantor and the Grantee as follows:-

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires-

- (a) "Customer" means a person who uses RS, IDS or VAS.
- (b) "Duplicate" means a removable medium or a set of removable media which is an exact duplicate of an EDP.
- (c) "Electronic Dissemination Package" (or "EDP") means a removable electronic storage medium hosting the electronic files of the tender documents of a Works Contract issued by the Grantor through an Issue Notice.
- (d) "Hosting Web Site" means the web site for hosting the IDS and VAS.
- (e) "Internet Dissemination Service" (or "IDS") means the dissemination of the whole or parts of EDP's through a Hosting Web Site.
- (f) "Issue Notice" means a notice in the form as set out in Schedule 2 hereto.
- (g) "Licence Conditions" means the licence conditions stipulated in the Issue Notice for using an EDP.
- (h) "Relevant File" means an electronic file that is derived from duplication of any files in the EDP or contains any contents extracted from any files in the EDP.
- (i) "Replication Service" (or "RS") means the production of Duplicates and distributing them to Customers.
- (j) "Return Notice" means a notice in the form as set out in Schedule 3 hereto.

- (k) "Licensed Services" means RS, IDS and VAS.
 - (l) "Service Proposal" means the Grantee's proposal on the service level of RS, IDS and VAS to be offered by the Grantee to their Customers.
 - (m) "Technical Specification" means a set of basic service requirements that the Grantee shall meet for providing RS, IDS and VAS.
 - (n) "Tender Closing Date" means the date and time set for the return of the tender stipulated in an Issue Notice.
 - (o) "Value-added Services" (or "VAS") means the value-added services to be provided by the Grantee using the contents of the EDP's.
- 1.2 Words importing the singular only also include the plural and vice versa where the context requires. Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.
- 1.3 The headings or notes in this Agreement are for ease of reference only and shall not limit or extend the interpretation of this Agreement.
- 2. Service Level**
- 2.1 The Licensed Services provided by the Grantee shall comply with the Technical Specification contained in Schedule 1 hereto.
- 2.2 The Grantee shall provide the Licensed Services in accordance with the terms of this Agreement and the annexed Service Proposal dated [insert date of Service Proposal]. The Service Proposal shall form an integral part of this Agreement for all purposes.
- 2.3 In the event of any inconsistency between the provisions of this Agreement (excluding the Service Proposal) and those of the Service Proposal, the former shall prevail.
- 3. Issue of EDP's**
- 3.1 The Grantor may issue EDP to the Grantee from time to time through the Issue Notices in Schedule 2 hereto. Upon receiving an Issue Notice, the Grantee shall collect at his own cost the EDP stated in the notice from the Grantor.
- 4. Licence**
- 4.1 Upon the issue of an Issue Notice, the Grantor grants to the Grantee free-of-charge a non-exclusive and revocable licence for using the EDP stated in the notice to provide the Licensed Services.
- 4.2 The licence granted in accordance with Clause 4.1 for an EDP shall expire within seven working days of the Tender Closing Date stipulated in the Issue Notice.
- 5. Return Notice**
- 5.1 Upon the expiration of the licence, the Grantee shall return the completed Return Notice and shall include therein-

- (a) a list showing the names and addresses of Customers who have obtained EDP's or parts of an EDP through RS, IDS or VAS;
 - (b) confirmation that all undistributed Duplicates have been destroyed; and
 - (c) confirmation that the EDP issued with the Issue Notice and the Relevant Files have either been destroyed, or kept by the Grantee as archive.
- 5.2 EDP's kept as archive may be used for verifying the authenticity of the Duplicates made from the EDP and for locating source of computer viruses and shall not be used for any other purposes.
- 5.3 Relevant Files kept as archive shall not be used for any other purposes.

6. Provision of Licensed Services

- 6.1 The Grantee shall provide the Licensed Services in accordance with the terms of this Agreement and the Service Proposal.
- 6.2 The Grantor may by written notice request the Grantee to provide evidence of compliance. The Grantee shall provide evidence to the satisfaction of the Grantor within 5 working days of such notice.
- 6.3 The Grantee shall provide the Grantor with all reasonable assistance in verifying compliance with Sub-Clause 6.1, including giving reasonable access to sections of the Hosting Web Site.

7. Indemnity

- 7.1 The Grantee hereby indemnifies the Grantor against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Grantor whether direct or consequential arising from any breach of this Agreement.

8. Warranty

- 8.1 EDP's are provided by the Grantor without any warranty, representation or undertaking on their fitness for any purpose. The Grantor, its employees or agents, shall not be responsible whatsoever for their fitness for any purpose.

9. Termination

- 9.1 The Grantor may terminate any licence granted pursuant to this Agreement by serving on the Grantee a 7-day notice in writing to this effect. Furthermore, the Grantor may terminate or revoke any licence granted forthwith by serving a notice in writing on the Grantee under any of the following circumstances-
- (a) the Grantee shall fail to perform or observe any of the obligations on its part to be performed or observed under this licence provided that in the case of a breach which is capable of being remedied, such breach has remained unremedied for a period of more than 10 days after written notice to remedy the same has been given to the Grantee;

(b) a winding-up resolution or petition in respect of the Grantee is passed or presented (otherwise than solely for the purpose of a bona fide reconstruction or amalgamation) or a receiver has been appointed over any of its assets.

9.2 Termination of the licence by the Grantor, for any reason, shall be without prejudice to its rights accrued on or at any time up to the date of termination.

10. Assignment

10.1 The Grantee shall not assign, mortgage, charge or otherwise transfer any rights or obligations under this Agreement, without the prior written consent of the Grantor.

11. Notices

11.1 All notices arising out of or in connection with this Agreement shall be served-
upon the Grantor, at [insert address of Environment, Transport and Works Bureau]; and
upon the Grantee, at [insert address].

IN WITNESS HEREOF the parties hereto have hereunto set their hands the day and year first above written.

Signed by [insert name of Government's representative] for and on behalf of the Grantor)
)
)

in the presence of:)
)

Signed by for and on behalf of the Grantee)
)
)

in the presence of:)
)

Name:
Position: Director

Name:
Position: Director/Secretary

Schedule 1
Technical Specification

1. Authentication

1.1 The Grantee shall implement to the satisfaction of the Grantor procedures for authenticating the identities of the Customers that use any of the Licensed Services.

2. Acceptance of Licence Conditions

2.1 The Grantee shall implement to the satisfaction of the Grantor the procedures for securing the Customers' acceptance of the Licence Conditions for an EDP before they are allowed to use the IDS or VAS that make use of the EDP contents.

3. Tender Addendum

3.1 The Grantee shall implement to the satisfaction of the Grantor procedures for notifying Customers of the issue of Tender Addendum.

4. Replication Services

4.1 Duplicates shall be exact duplicates of an EDP. The Grantee shall not alter any contents of EDP's in the replication process.

4.2 Each Duplicate shall be distributed by the Grantee-

(a) with a copy of the Licence Conditions stipulated in the Issue Notice for the EDP;

(b) in an envelope or other similar enclosures and sealed with a label containing the following notice-

"Please read the attached "Licence Conditions for Electronic Dissemination Packages" (the Licence Conditions) before opening this package. If you open this package, you will be deemed to have read the Licence Conditions and to have accepted them. If you do not agree with the Licence Conditions, please do not open this package and do return the package to [name of Grantee and address]."

5. Internet Dissemination Service (IDS)

5.1 IDS shall only be provided through the Hosting Web Site specified in the Service Proposal.

5.2 An exact copy of all files in the EDP shall be available in the Hosting Web Site for downloading by Customer using IDS. The Grantee shall maintain the original file and directory structure of the EDP when disseminating the EDP through IDS.

Schedule 2 - Issue Notice for EDP

Issue Notice for EDP

To- [Name and address of Grantee]

In accordance with Agreement No. [insert agreement no.] dated [insert date of agreement], I enclose the EDP Reference [insert EDP Reference] for Contract No. [insert contract no.] – [insert contract title] for your use in providing the Licensed Services. The Tender Closing Date is [insert tender closing date and time].

The Licence Conditions for using the EDP Reference [insert EDP Reference] are attached.

Please collect the above mentioned EDP at [address for collecting EDP].

If you wish to obtain further information about the contract, would you please contact [insert name of subject officer responsible for the tender] at telephone no. [insert telephone no].

Yours faithfully,

([Name])

for [Head of Department or Office Head]

Acknowledge Receipt of EDP

(to be completed by Grantee and returned to the issuing office when collecting the EDP)

To- [Department]

We hereby acknowledge receipt of the EDP Reference [insert EDP Reference] and the Licence Conditions for using the EDP.

(chop of Grantee & date)

[Name of Grantee]

Schedule 3 - Return Notice for EDP

To: [Name of department to be inserted]
 [Address to be inserted]

EDP Reference –[reference to be inserted]

We refer to the EDP Reference [insert EDP reference] issued with Issue Notice of [insert date of Issue Notice].

We wish to provide the following return on the distribution of the EDP-

No. of Duplicates made	
No. of Duplicates distributed	

We confirm that all undistributed duplicates have been destroyed. We also confirm that the EDP Reference [insert EDP reference] issued with the Issue Notice and the Relevant Files have been-

- o permanently destroyed; or
- o kept in this office as archive. We understand that the archive may be used for verifying the authenticity of duplicates of the EDP and for locating source of computer viruses. We undertake to seek the prior written approval of Environment, Transport and Works Bureau of the Government of Hong Kong Special Administrative Region for other uses.

The following Customers have obtained duplicates of the EDP-

[insert names and addresses of Customers]

The following Customers have downloaded the EDP through Internet Dissemination Service or Value-added Services-

[insert names and addresses of Customers]

Chop of Grantee

Signed for and on behalf of Grantee

Signature _____
Name _____
Designation _____
Tel. No. _____
Fax No. _____
Date _____
Address _____