

Task Force on Electronic Tendering

Discussion Paper 2/2000 **Implementation of Electronic Dissemination** **of Tender Documents**

1. Purpose

- 1.1. This paper advises on Works Bureau's (WB) proposal for implementing the electronic dissemination of tender documents for works contracts.

2. Background

- 2.1. During the Plenary Meeting on 6 September 1999, the Task Force on Electronic Tendering (the "task force") endorsed the proposal in Discussion Paper 2/99 to implement electronic tendering in two stages, viz.-

- (a) Electronic dissemination of tender documents
- (b) Electronic submission of tender returns

- 2.2. During the last series of Sub-group meetings held at the end of March 2000, we submitted to the Sub-groups for consideration Discussion Paper 1/2000 setting out the framework for implementing for electronic dissemination. The Sub-groups supported the proposed framework and tasked WB to develop the framework into a Works Bureau Technical Circular (WBTC) for implementing electronic dissemination.

3. WBTC on Electronic Dissemination

- 3.1. We will implement electronic dissemination through the promulgation of the draft WBTC in Appendix 1. The circular is derived from the framework in Discussion Paper No. 1/2000 and takes into account comments made by the Sub-groups during the series of meetings at the end of March 2000.

- 3.2. The main provisions of the circular are as follows-

- (a) Scope

The makes provisions for the distribution of electronic files containing the contents of tender documents for works

contracts. It will apply to all tenders for works contracts issued on or after the circular takes effect;

(b) Technical arrangements

The files containing the contents of tender documents will be distributed as Electronic Dissemination Packages (EDP) hosted on CD-ROM's. EDP's will be prepared for the original set of tender documents and will be updated when tender addenda are issued;

(c) Administrative arrangements

(i) EDP's will be distributed with the hard copies of the original set of tender documents and hard copies of tender addenda. One EDP for the original set of tender documents and one EDP for each tender addenda will be issued to each and every tenderer free of charge;

(ii) The existing practice of distributing hard copies of tender documents and tender addenda will continue;

(d) Legal provisions

(i) The EDP's will NOT form part of the tender documents. Instead, they will be a set of data that the tenderers are licensed to use in accordance with the licence conditions in Annex 2 of the draft WBTC;

(ii) A standard clause in the Special Conditions of Tender (SCT) is inserted to stipulate the licence conditions for using the hard copy tender documents. The SCT clause is included in Annex 4 of the draft WBTC.

3.3. We have not included Internet dissemination in the draft WBTC because we need further deliberations on the following issues-

(a) whether there should be access control to tender documents published on the Internet;

(b) registration of downloading of tender documents; and

(c) intellectual property issues of Internet dissemination.

3.4. We will actively consider the issues for Internet dissemination and will submit a paper on Internet dissemination to the task force in October 2000.

4. Implementation Programme

4.1. The draft WBTC is an important milestone for electronic dissemination. We intend to put the draft WBTC into operation in August 2000. This target is dependent on activities programmed as follows-

Activity	Target Date	Remarks
Submission to the Works Group Directors' Meeting (WGDM)	26 June 2000	The WGDM will be requested to consider the proposal for electronic dissemination during the meeting scheduled for 26 June 2000 and to give policy support for implementation.
Submission to Contract Committee (CC)	July 2000	The CC will be requested to consider the proposal for electronic dissemination and give support its implementation.
Preparatory works by Works Departments	August 2000	The Works Departments have already started the preparatory works for electronic dissemination and will be ready by late July 2000.

5. Publicity

5.1. We will publicize electronic dissemination through the following measures-

(a) Feature article on electronic dissemination

We will prepare a feature article on electronic dissemination covering the following topics-

- (i) the proposed implementation of electronic dissemination;
- (ii) the benefits of electronic dissemination for the industry; and
- (iii) how the industry could take advantage of electronic dissemination;

We will arrange to publish the articles on WB's web site and in the publications of professional institutions and trade associations;

(b) Workshops on electronic dissemination

We will organize two workshops for the industry, covering the topics in (a) above. One of the workshops will be held in early July 2000 and the other one will be held in late July. The details of the workshops will be announced in due course.

6. Advice Sought

6.1. Members are requested to -

- (a) support the implementation of electronic dissemination through the promulgation of the draft WBTC in Appendix 1; and
- (b) advise on their views on the proposal for implementing electronic dissemination.

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Appendix 1

Draft Works Bureau Technical Circular
on Electronic Dissemination of Tender Documents

Ref. : WB(CS) 1/2/5

Group : 15,17

[to be inserted]

Works Bureau Technical Circular No. [to be inserted]/2000

Electronic Dissemination of Tender Documents

Scope

1. This circular applies to works contracts managed by departments under Works Bureau.

Effective Date

2. This circular takes effect on [date to be inserted].

Effects on Existing Circulars

3. This has no effect on other circulars.

Related Circulars

4. This circular should be read in conjunction with Works Bureau Technical Circular No. 7/2000 – Electronic Drawings.

Definitions

5. In this circular, unless the context otherwise requires-

"Architect/Engineer Designate" (or "AED") means the person who will perform the duty of the Architect or the Engineer for a Works Contract being tendered;

"Authorized Representative" (or "AR") means the person who is authorized by the AED to Digitally Sign Document Files and Supporting Files;

"Digital Signature" means a digital signature as defined in section 2 of the ETO satisfying the requirements stipulated in section 6 of that ordinance. "Digitally Sign" should be interpreted accordingly;

"Distribution Medium" means the removable electronic storage medium containing all or part of the files of an EDP;

"Document File" means a Native File or an Image File;

"Electronic Dissemination Package" (or "EDP") means the collection of-

- (i) Document Files containing the contents of a version of a set of Tender Documents; and
- (ii) Supporting Files for the Document Files;

"Image File" means a file that contains-

- (a) the printed image of a Native File; or
- (b) the scanned image of a Tender Document or part of a Tender Document.

"ISO 9660" means the standard for the volume and file structure of CD-ROM information interchange promulgated by the International Organization for Standardization (ISO) (Document Reference: ISO 9660:1988);

"Map Data" means any data in which Lands Department has copyright. Map Data do NOT include any data from other sources including any land surveys commissioned by Works Departments;

"Native File" means a file containing the whole or part of the contents of a Tender Document in the native format of the application used for creating the file;

"Supporting Files" means computer files containing Supporting Information;

"Supporting Information" means information and guidance on the proper settings and methods for viewing, editing and printing Document Files;

"Tender Addendum" means a document and its attachments issued during the tendering period to amend the Tender Documents;

"Tender Document" means a tender document issued for the tendering of Works Contracts and includes Tender Addendum;

"Works Contract" means a contract managed by a Works Department for construction, design, operation and

maintenance of infrastructures or buildings. Works Contract does not include-

- (a) contracts awarded through the Government Supplies Department; or
- (b) consultancy agreements awarded in accordance with the consultant selection procedures in the Stores and Procurement Regulations.

"Works Department" means a department under Works Bureau.

Background

6. The construction industry intends to enhance its productivity and competitiveness through electronic tendering. In electronic tendering, tender documents are tender returns are exchanged electronically. This new mode of tendering will foster tighter collaboration between project participants, increase the productivity of the tendering process, enhance the quality of tender submission and hence the overall quality of construction projects.

7. Works Bureau supports electronic tendering, because it is one form of electronic services delivery, a strategic components in the Government IT strategy presented in the Digital 21 publication.

8. To bring electronic tendering to fruition, Works Bureau formed the Task Force on Electronic Tendering under the Contracts Committee of the Construction Advisory Board in September 1999. The task force recommends implementing electronic tendering in two stages. The first stage is the electronic dissemination of tender documents. The second stage is the electronic submission of tender returns. Electronic dissemination is implemented first because the legal and technical frameworks are already in place. Electronic submission will involve re-engineering of the tendering process and hence further deliberations from the project participants.

9. The circular stipulates how electronic dissemination can be implemented on the basis of the framework developed by the task force.

10. This circular does not cover the following issues-

- (a) electronic submission of tender returns;
- (b) Internet dissemination of EDP's; and
- (c) issue of EDP's to parties who are not eligible to submit tenders.

11. The issues in paragraph 10 are under active consideration and will be covered by other circulars.

Policy

Overview

12. For tenders of Works Contracts issued on or after the effective date of this circular, electronic files containing the contents of the Tender Documents should be disseminated to tenderers in accordance with the provisions in the following paragraphs.

Electronic Dissemination Packages

13. The Document Files containing the contents of Tender Documents should be issued as EDP's prepared in accordance with the manner and format in Annex 1.

14. EDP's should be issued for-

- (a) the original version of Tender Documents; and
- (b) revised versions of Tender Documents resulting from Tender Addenda issued in accordance with the Conditions of Tender.

15. EDP's are not part of the Tender Documents. Instead, they are only sets of electronic data that the Government licenses the tenderers to use subject to the licence conditions in Annex 2. EDP's will NOT form part of the contract between the Government and the successful tenderer.

16. EDP's should be issued free of charge to tenderers 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 Works Bureau Technical Circular No. 7/2000 – 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.

17. 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 tenders eligible to submit tenders. Additional hard copies should be charged at the rates prescribed from time to time by the relevant authorities.

Digital Signatures

18. Each EDP files should be Digitally Signed. The AED may sign the files personally or appoint an AR to sign on his/her behalf using the standard pro-forma in Annex 3. The duly completed and signed hard copy of the pro-forma should be issued with the Tender Documents.

19. All Document Files and Supporting Files should be Digitally Signed. Other types of files should not be signed.

Intellectual Property Issues

Standard clause for Special Conditions of Tender

20. The standard clause in Annex 4 should be included as a Special Conditions of Tender. The clause stipulates on the licence conditions for Tender Documents.

21. As EDP's are not part of the Tender Documents, they are not subject to the clause in Annex 4. The use of EDP's is subject to the licence conditions in Annex 2.

Map Data and other contents subject to pre-existing copyrights

22. Files containing Map Data should be designated as Special Files in the licence conditions in Annex 2 to prevent re-distribution by the tenderers.

23. The inclusion any other contents subject to pre-existing copyrights in EDP's should be avoided. Instead of including these contents, Works Departments should consider the alternative of providing the Internet addresses for obtaining the information from the copyright owners.

Enquiries

24. Enquiries on this circular may be made to Computer Services Unit of Works Bureau at fax no. 2905 1181 or e-mail address csu@wb.gov.hk.

(W. S. Chan)
Deputy Secretary (Works Policy)

Annex 1 – Manner and Format for Preparation of Electronic Dissemination Packages

Introduction

1. This annex stipulates the manner and format for the preparation of EDP's.
2. Works Departments may issue departmental guidelines to supplement the provisions in this annex. Works Departments should consult Works Bureau and their business partners, in particular consultants and contractors, before formally promulgating the departmental guidelines.

Distribution Medium

3. EDP's should be distributed on CD-ROM's complying with the requirements of ISO 9660.
4. The Distribution Media should be contained in envelopes or other similar enclosures and sealed with labels containing the following notice-

"Please read the 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 it. If you do not agree with the Licence Conditions, please return the package to [name of department and address]."

Reference Number

5. Each EDP should be identified by a unique reference number consisting of two fields-
 - (a) Standard prefix consisting of the letters "EDP";
 - (b) Contract number that is the contract number for the Works Contract;
 - (c) Serial number to be assigned as follows-
 - (i) EDP for Original Version – 0;
 - (ii) EDP for Tender Addendum – reference assigned to the addendum.
6. The following examples illustrate the rules in paragraph 5 above-

Tender Documents	EDP Reference
EDP issued with original set of tender documents for DC/98/12	EDP-DC/98/12-0
EDP issued with Tender Addendum No. 2 for DC/98/12	EDP-DC/98/12-2

File types

7. In terms of functions, the files in an EDP may be divided into two types-
- (a) Document Files
These are files containing the contents of the Tender Documents; and
 - (b) Supporting Files
These are files containing the Supporting Information for the proper viewing, editing and printing of the Document Files.
8. Document Files should be provided in two forms-
- (a) Native Files – These are files containing the contents of the Tender Document or Supporting Information in the native format of the application used for creating these files;
 - (b) Image Files – These are files containing the printed image of the Native Files.
9. Native Files may be readily used in the computer-aided tools for office automation, design, construction planning and cost estimating. They are intended for use by the tenderers and their downstream business partners in the tendering workflow.
10. Native Files are, however, susceptible to loss of fidelity when they are exchanged. As Image Files are less susceptible, they will be useful reference if there are doubts on the proper setting for viewing, editing and printing the Native Files.

File Formats for Document Files

11. The following files formats may be used for Document Files-

Type of File	Format for Native File	Format for Image File
Bills of Quantities, Schedule of Rates and any other schedules	Excel 97* Rich Text Format Word 97	Adobe Acrobat

Type of File	Format for Native File	Format for Image File
Other text documents (including Supporting Files and Tender Addenda)	Rich Text Format* Word 97	Adobe Acrobat
Scanned text documents	Not applicable	Adobe Acrobat
Drawings	Microstation* or AutoCAD* Document Exchange Format (DXF) Initial Graphic Exchange Standard (IGES)	Adobe Acrobat
Scanned drawings	Not applicable	TIFF

* Preferred file format

12. If more than one file format is specified, files need to be provided in one of the specified formats only. In so far as possible, the preferred file formats should be used.

13. As the conversion of drawing files to Adobe Acrobat format may slightly distort the scale of the drawing elements, line scales should be included in drawings files to enable the tenderers to ascertain the correction factors to compensate for the distortion.

14. File compression programs should NOT be used to compress files in EDP's.

Supporting Information

15. The Supporting Information should be presented as a list with the following information-

- (a) File Name – The name of the file;
- (b) Content Description – Description of the contents of the file;
- (c) Settings – any special settings for viewing, editing and printing the file, including, without limitations-
 - (i) the printer to be used for printing the file;
 - (ii) the paper size;
 - (iii) requirements for special fonts; and
 - (iv) any special printing instructions

- (d) Revision history – summary of the revisions made to the file including the Tender Addenda making the revisions.
16. List of Contents may be in Word 97 for HTML format.

EDP for Tender Addenda

17. The following are the procedures for preparing the EDP for a Tender Addendum-

- (a) Document Files containing contents superseded by the addendum should be removed from the EDP that is current before the issue of the addendum (to be referred to as the "last EDP");
- (b) The following files should be inserted into the last EDP-
 - (i) Document Files containing new or updated contents;
 - (ii) Image Files containing the contents of the Tender Addendum;
- (c) The Supporting Files should be updated to-
 - (i) reflect the alterations made in (a), (b) and (c) above; and
 - (ii) record the revision history.

18. The whole of the EDP for the revised version should be transferred to the Distribution Media, which should be issued to the tenderers with the hard copy of Tender Addenda.

Schedules in Licence Conditions

19. The use of EDP should be subject to the licence conditions in Annex 2. Departments should be responsible for completing the Schedules for the licence conditions. Hard copies of the licence conditions with the completed schedules should be issued together with the Tender Documents.

File Naming Convention

General provisions

20. File names should consist of fields separated by the dash character ("-").
21. File names should include type identifiers to identify whether the file is a Native File or Image File. Native Files should be identified by "N" and Image File should be identified by "I".
22. If contract numbers, drawing numbers and other similar attributes are used in file names, the characters that are not allowed in file names should be replaced with the underscore character ("_").

23. The following are the suggested identifiers for identifying files belonging to the various parts of the EDP-

Part	Part Identifier
General specification	GS
Standard method of measurement	SMM
Articles of agreement	AA
General conditions of contract	GCC
General conditions of tender	GCT
Special conditions of tender	SCT
Form of tender	FTR
Special conditions of contract	SCC
Particular specifications	PS
Bills of quantities	BQ
Drawings	DRG
Tender Addenda	TDA

24. Works Departments may adapt or extend the list in paragraph 23 above to suit their requirements.

25. File names should include version numbers that may consist of alphabets, numerals or a combination of both.

Drawing files

26. The file name should consist of the following fields-

- (a) type identifier;
- (b) drawing number; and
- (c) version number

Tender Addenda

27. The file names for Tender Addenda should consist of the following fields-

- (a) Type Identifier;
- (b) Contract number;
- (c) Part Identifier for Tender Addenda;
- (d) Tender Addendum number – the reference number assigned to the Tender Addendum; and

- (e) Component number – a field for distinguishing the different files containing the contents of a Tender Addendum.

Other types of files

28. The file name for the other types of files should consists of the following fields-

- (a) Type Identifier;
- (b) Contract number;
- (c) Part Identifier;
- (d) Component number – a field for distinguishing the different files containing the contents of a Part of the EDP; and
- (e) Version number.

Directory Structure

29. The files in the EDP should be stored in directories structured as follows-

Directory for Document Files

Directories for different Parts of Tender Documents

Document Files containing the contents of each Part

Directory for Supporting Files

File for List of Contents

Annex 2 - Licence Conditions **for Electronic Dissemination Packages**

EDP Reference - 1

1. This set of conditions may be cited as "Licence Conditions for Electronic Dissemination Packages".

2. In these conditions, unless the context otherwise requires-

"Cessation Notice" means the notice stipulated in Schedule 4 hereto;

"Contract" means the works contract named in Schedule 1 thereto;

"Distribution Medium" means the removable electronic storage medium containing all or part of the files of an EDP;

"Electronic Dissemination Package" (or "EDP") means the electronic files in Schedule 2 hereto containing the contents of the Tender Documents and the supporting information for using these electronic files;

"Employer" means the Government of the Hong Kong Special Administrative Region;

"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;

"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;

"Special File" means a file listed in Schedule 3 hereto;

"Sub-licensee" means a party licensed by the Licensee and any to use the EDP;

"Tender" means the tender that may be submitted for the Contract;

¹ To be inserted by department

"Tender Document" means a tender document issued in accordance with the General Conditions of Tender and Special Conditions of Tender for the Contract;

"Tender Closing Date" means the closing date for the tender of the Contract;

"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 or is not within the lowest three;
- (iii) The Licensee receives notification from the Employer that his Tender is not accepted; or
- (iv) The Licensee withdraws his Tender.

3. Subject to the provisions hereof, the Employer grants the Licensee, free a charge, a non-exclusive and revocable licence for using the EDP.

4. The Licensee shall use the EDP for the purpose of preparing the Tender only. The EDP shall not be used for any other purposes.

5. The EDP does not form part of the Tender Documents and shall not form part of the Contract with the Licensee if his/her Tender is accepted by the Employer.

6. The Licensee shall not adduce the whole or part of the EDP as evidence in any proceedings whether judicial or quasi-judicial in nature or in any dispute resolution process against the Employer, his agents, employees and consultants without the Employer's prior consent in writing.

7. If there are discrepancies between the EDP and the Tender Documents, the latter shall prevail. The Employer, his agents, employees and consultants shall not be liable for any loss or damage of whatever nature and whether occasioned directly or otherwise arising from such discrepancies.

8. The EDP is provided by the Employer without any guarantee on the fitness for preparing the Tender or for any other purposes. The Employer, his agents, employees and consultants shall not be liable for any loss or damage of whatever nature and whether occasioned directly or otherwise arising from or in connection with the use of the whole or part of the EDP.

9. The EDP shall only be used by the Licensee for the purpose of preparing the Tender. Save as aforesaid, all other rights in the EDP are reserved by the relevant copyright owners.

10. 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 9 hereof.

11. The licence for using the EDP shall expire within seven working days of the occurrence of a Triggering Event. On or before the expiration date of the licence, the Licensee shall-

- (a) destroy the Relevant Files in his possession;
- (b) ensure that all Sub-licensees have destroyed the Relevant Files in their possession;
- (c) report to the Employer that the requirement in sub-clause (a) has been complied with by serving on him a Cessation Notice by post; and
- (d) return the Distribution Media with the Cessation Notice.

12. 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 undertaking in writing to comply with the Licence Conditions for Electronic Dissemination Packages;
- (b) The Licensee shall be liable to the Employer for breach of any Licence Conditions for EDP 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 by the Sub-licensee of the user condition of the Licence Conditions for EDP;

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 licence other parties to use the EDP.

Schedule 1²

Contract No. _____

Contract Title _____

Department _____

² To be completed by department

Schedule 2 – Electronic Dissemination Package³

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

³ To be completed by department

Schedule 3 – Special Files⁴

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

⁴ To be completed by department

Schedule 4 – Cessation Notice

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

EDP Reference – [reference to be inserted]

In this notice-

"Distribution Medium" means the removable medium containing the EDP;

"EDP" means the EDP with reference shown above;

"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;

"Sub-licensee" means a party licensed by us to use the EDP.

2. We certify that-

- (a) We and all Sub-licensees have ceased using the EDP; and
- (b) We and all Sub-licensees have destroyed all Relevant Files in our possession.

3. The Distribution Media are returned with this notice.

Company Chop

Signed for and on behalf of the contractor

Signature _____

Name _____

Designation _____

Tel. No. _____

Fax No. _____

Date _____

Company Address _____

Annex 3 – Appointment of Authorized Representative
Contract No. – [insert contract no.]
Contract Title – [insert contract title]

I appoint the following Authorized Representative to execute the Digital Signatures for the Electronic Dissemination Packages for [insert contract no. and contract title]-

Organization	
Name	
Post	

Name of Architect/Engineer Designate	
Post	
Organization	
Signature	
Date	

Annex 4 – Special Conditions of Tender
on Licence Conditions for Tender Documents

SCT [A] Copyright

(a) The documents, plans, drawings or other materials forming part of the tender documents shall only be used by a tenderer for the purpose of preparing his tender. All other rights in the aforesaid materials are reserved by the relevant copyright owners.

(b) 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 by the tenderer of SCT [A](a). In this connection the tenderer shall submit with his tender a duly executed Letter of Indemnity in the form set out in Appendix (Y) to these Special Conditions of Tender. Where the tenderer is a joint venture partnership, each and every partner of the joint venture shall duly execute the Letter of Indemnity. Where the tenderer is a joint venture company, the joint venture company and each and every member of the joint venture company shall duly execute the Letter of Indemnity.

(c) Failure to submit the duly executed Letter of Indemnity required under SCT [A](b) may invalidate the tender."

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 the tender ("the tender") submitted to you by [] ("the tenderer"), 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 my/our violation of Special Condition of Tender [insert number] (a). [We agree that we shall be jointly and severally liable for our obligations under this letter of indemnity.]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 am/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 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 partners/shareholders of (name of the tenderer)]¹. This letter of indemnity shall be applicable whether the tender accepted by you comprises the conforming or any alternative tender or with any amendments modification or change thereto agreed between the tenderer and yourself.

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]¹.

(1) THE COMMON SEAL of
[])
was affixed in the presence of)
[])

OR

SIGNED, SEALED AND DELIVERED²)
for and on behalf of as lawful attorney)
of [] under a power of attorney)
dated [])
by [])
In the presence of [])

OR

SIGNED, SEALED AND DELIVERED³)
by [])
In the presence of [])

(2) ditto 1

(3) ditto 2 et seq

¹ For use where the tenderer is a joint venture.

² For use where the tenderer or the partner/shareholder of a joint venture executes by an attorney

³ For use by the partner of a joint venture or by the sole proprietor of a firm.