

[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.