

**APPENDIX 4.16 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT :
ADAPTION TO NEW ARBITRATION ORDINANCE**

(The revised SCE for Adaption to New Arbitration Ordinance, as promulgated in SDEV's memorandum ref. (02BYW-01-2) in DEVB(W) 505/17/01 dated 27.5.2011 and amended in SDEV's memorandum ref. DEVB(W) 510/10/01 dated 4.12.2014, have been subsumed hereunder. The revised SCE should be adopted for consultancy agreements for which Technical and Fee Proposals are invited on or after 1 January 2015.)

Revised SCE XA

General Conditions of Employment Clause 44 is deleted and replaced by the following:

" **44.** *(A) / (1) If any dispute or difference of any kind whatsoever shall arise between the Employer and the *Consultants / Consultant in connection with or arising out of this Agreement, either party shall be entitled to refer the dispute or difference to the Director and the partner or director of the *Consultants / Consultant, who shall meet within 21 days of such matter being referred to them.

 *(B) / (2) If the dispute or difference cannot be resolved within 2 months of a meeting under sub-clause *(A) / (1) of this Clause or upon written agreement that the dispute or difference cannot be resolved, either the Employer or the *Consultants / Consultant may at any time thereafter request that the matter 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 for the time being in force.

 *(C) / (3) If the matter cannot be resolved by mediation, or if either the Employer or the Consultants do not wish the matter to be referred to mediation then either the Employer or the *Consultants / Consultant may within the time specified herein require that the matter 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 such reference to arbitration shall be made within 90 days of either the refusal to mediate, or the failure of the mediation.

 *(D) / (4) (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. "

*(E) / (5) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

*(F) / (6) 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. "

* *Delete as appropriate.*